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Schöning.

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translation has most recently been revised and updated by Samson Übersetzungen GmbH,  
Dr. Carmen v. Schöning.

Stand: Die Übersetzung berücksichtigt die Änderung(en) des Gesetzes durch Artikel 1 des  
Gesetzes vom 10. August 2021 (BGBl. I S. 3515).

Version information: The translation includes the amendment(s) to the Act by Article 1 of the  
Act of 10 August 2021 (Federal Law Gazette I p. 3515).

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## German Civil Code

### BGB

Civil Code in the version promulgated on 2 January 2002 (Federal Law Gazette  
[*Bundesgesetzblatt*] I page 42, 2909; 2003 I page 738), last amended by Article 1 of the Act  
of 10 August 2021 (Federal Law Gazette I p. 3515).

This statute serves to implement 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, traders**

**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 their 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**

A person who is incapable of contracting or who has limited capacity to contract can neither establish nor terminate residence without the consent of their legal representative.

**Section 9  
Residence of a soldier**

(1) Soldiers have their residence in their garrison. The residence of a soldier who has no garrison within the territory of Germany is deemed to be their last garrison within the territory of Germany.

(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**

Minor children share the residence of their parents; they do 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, then the child shares the residence of the person who has this right. The child retains the residence until the child 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, then the person entitled may require the other to remove the infringement. If there is the concern that further infringements may ensue, the person entitled may seek a prohibitory injunction.

**Section 13  
Consumer**

A consumer means every natural person who enters into a legal transaction for purposes that predominantly are outside the consumer's trade, business or profession.

**Section 14  
Trader**

(1) A trader means a natural or legal person or a partnership with legal personality who or which, when concluding a legal transaction, acts in exercise of their trade, business or profession.

(2) A partnership with legal personality is a partnership that has the capacity to acquire rights and to enter into obligations.

**Sections 15 - 20  
(repealed)**

**Title 2  
Legal persons**

**Subtitle 1  
Associations**

**Chapter 1  
General provisions**

**Section 21  
Non-commercial association**

An association the object of which does not consist of commercial business operations acquires legal personality by entry in the register of associations maintained by the competent local court.

**Section 22**  
**Commercial association**

An association the object of which consists of commercial business operations acquires legal personality, for lack of special provisions under federal law, by state grant. The grant is in the power of the *Land* in the territory of which the association has its seat.

**Section 23**  
**(repealed)**

**Section 24**  
**Seat**

The seat of an association, unless otherwise provided, is the place at which 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 and representation**

(1) An association must have a board. The board represents the association in court and out of court; it has the status of a legal representative. The extent of the power of agency may be restricted by the articles of association with effect in relation to third parties.

(2) Where the board consists of several persons, the association is represented by the majority of the board members. If a declaration of intent is to be submitted to an association, then it is sufficient to submit it to one member of the board.

**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 remuneration as contractually agreed. The revocability may be restricted by the articles of association to that case in which there is a compelling reason for the revocation; such a reason includes in particular a gross breach of duty or inability to effect proper management.

(3) The provisions on mandate in sections 664 to 670 apply accordingly to the management by the board. The members of the board act free of charge.

**Section 28**  
**Passing of resolutions by the board**

In case of a board consisting of more than one person, resolutions are passed under the provisions of sections 32 and 34, which govern the resolutions by the members of the association.

**Section 29**  
**Emergency appointment by local court**

To the extent that the board is lacking the necessary members, they are to be appointed, in urgent cases and for the period until such defect is corrected, on the application of a person concerned, by the local court maintaining 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 them 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 them in carrying out the business with which they have been entrusted, where the act gives rise to a liability in damages.

### **Section 31a**

#### **Liability of members of organs and special representatives**

(1) If members of organs or special representatives act free of charge, or if they receive remuneration for their activity which does not exceed 840 euros per year, they are liable towards the association for damage caused in performing their duties only in case of intent or gross negligence. Sentence 1 also applies to liability towards the members of the association. If it is in dispute as to whether a member of an organ or a special representative has caused damage with intent or gross negligence, then the burden of proof is on the association or on the member of the association.

(2) If members of organs or special representatives are obliged under subsection (1) sentence 1 to provide to another party compensation for damage which they caused in performing their duties, they may demand that the association release them from the obligation. Sentence 1 does not apply if the damage was caused with intent or gross negligence.

### **Section 31b**

#### **Liability of members of the association**

(1) If members of the association pursue activities for the association free of charge, or if they receive remuneration for their activity that does not exceed 720 euros per year, then they are liable to the association for damage they have caused in performing the duties of the association, in accordance with the articles of association, that have been assigned to them, only in case of intent or gross negligence. Section 31a (1) sentence 3 is to be applied accordingly.

(2) If members of the association are obliged under subsection (1) sentence 1 to provide to another party compensation for damage, which they caused in performing the duties of the association, in accordance with the articles of association, that have been assigned to them, they may demand that the association release them from the obligation. Sentence 1 does not apply if the members of the association have caused the damage with intent or gross negligence.

### **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 votes cast.

(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 requires a majority of three quarters of the votes cast. 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, the ratification by the competent authority is necessary for every amendment of the articles of association.

#### **Section 34**

##### **Exclusion from voting**

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

#### **Section 35**

##### **Special rights**

Special rights of a member may not be adversely affected by a resolution of the general meeting without the member's consent.

#### **Section 36**

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

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

#### **Section 37**

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

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

(2) If the request is not granted, the local court may authorise the members who made the request to convene the meeting; it may make orders on the chairing of the meeting. The court with jurisdiction is the local court maintaining 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. It is not possible to entrust the exercise of membership rights 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 fiscal year or only after a notice period; the maximum notice period is two years.

#### **Section 40**

##### **Flexible provisions**

The provisions of section 26 (2) sentence 1, section 27 (1) and (3), sections 28 and 31a (1) sentence 2 as well as sections 32, 33 and 38 do not apply where the articles of association provide otherwise. It is not possible to deviate from section 34 by way of the articles of association, even for the passing of resolutions by the board.

#### **Section 41**

##### **Dissolution of the association**

An association may be dissolved by resolution of the general meeting. The resolution requires a majority of three-quarters of the votes cast, unless otherwise provided in the articles of association.

## **Section 42 Insolvency**

(1) An association is dissolved by the opening of insolvency proceedings and upon the order becoming final and binding by means of which the opening of the insolvency proceedings has been rejected for insufficiency of assets. If the proceedings are discontinued on the request of the debtor, or terminated after the confirmation of an insolvency plan that provides for the association to continue in existence, then 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 opened, the association is to continue as an association without legal personality; in this case as well, provided the prerequisites of sentence 2 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, then the board is to apply for the opening of insolvency proceedings. If the filing of the request is delayed, 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**

An association the legal personality of which is the result of a grant may be deprived of its legal personality if it pursues objects different from those determined in the articles of association.

## **Section 44 Jurisdiction and procedure**

Jurisdiction and the procedure for the deprivation of legal personality under section 43 are governed by the law of the *Land* in which the association has its seat.

## **Section 45 Devolution of the assets of the association**

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

(2) The articles of association may stipulate that the persons entitled to receive the assets be specified by a resolution of the general meeting or by another organ of the association. If the objects of the association do not consist of commercial business operations, then the general meeting may, even if no such provision has been made, allocate the assets to a public foundation or institution.

(3) If no persons entitled to receive the assets are specified, then if, according to its articles, the association exclusively served the interests of its members, the assets will devolve 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 *Land* in the territory of which the association had its seat.

## **Section 46 Devolution on the treasury**

If the assets of the association devolve to the treasury, the provisions on an inheritance that devolves to the treasury as the heir on intestacy apply accordingly. If at all feasible, the treasury is to 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 to the treasury, then there must be a liquidation, unless insolvency proceedings have been opened with regard to the assets of the association.

#### **Section 48 Liquidators**

- (1) The liquidation is effected by the board. Other persons also may 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 are several liquidators, then they will have authority to represent only jointly, and may take decisions only unanimously, unless otherwise provided.

#### **Section 49 Duties of the liquidators**

- (1) The liquidators are to bring to an end 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 the assets. In order to complete transactions that are in progress, the liquidators also may 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 the assets.
- (2) The association is deemed to continue in existence until the end of the liquidation if the purpose of the liquidation so requires.

#### **Section 50 Notice by publication of the association in liquidation**

- (1) Notice of the dissolution of the association or its deprivation of legal personality is to be given by the liquidators by publication. In the notice, the creditors are to be requested to register their claims. The notice by publication is made through the newspaper specified in the articles of association for this purpose. Notice by publication is deemed to have been effected at the end of the second day after the publication or first publication.
- (2) Known creditors are to be requested by special invitation to register their claims.

#### **Section 50a Newspaper for notices**

If an association has not specified a newspaper in the articles of association, or if the newspaper specified for notices has ceased publication, then notices of the association are to be published in the newspaper that is specified for notices by publication of that local court in the district of which the association has its seat.

#### **Section 51 One-year waiting period**

The assets may not be paid out to the persons entitled to receive the assets until a year has passed after publication of the notice as to the dissolution of the association or the deprivation of legal personality.

#### **Section 52 Security for creditors**

- (1) Where known creditors do not register their claim, the amount owed, if the right to deposit exists, is to be deposited for such creditors.
- (2) If the discharge of an obligation is not possible at the time, or if an obligation is disputed, the assets may be distributed to the persons entitled to receive them only if security is provided to the creditor.

#### **Section 53 Liability in damages of the liquidators**

Liquidators who commit breaches of their duties under section 42 (2) and sections 50, 51 and 52 or who, before the satisfaction of the creditors, distribute assets to the persons



entitled to receive them are responsible, if they are at fault, 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, then they are liable as joint and several debtors.

#### **Chapter 2**

##### **Registered associations**

#### **Section 55**

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

The entry of an association of the kind specified in section 21 in the register of associations is to be made at the local court in the district of which the association has its seat.

#### **Section 55a**

##### **Electronic register of associations**

(1) The *Land* governments may provide by statutory instrument that and to what extent the register of associations is maintained in electronic form as a computerised data file. In this context, 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 the copies thereof are kept in safe custody,
2. the entries to be made are promptly 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 Code (*Grundbuchordnung*) are taken.

The *Land* governments may confer, by statutory instrument, the authorisation under sentence 1 upon the *Land* departments of justice

(2) 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 is to be added to the corresponding pages of the previous register of associations.

(3) An entry comes into effect as soon as it is entered in the memory intended for the register entries and it is possible to permanently reproduce its contents unchanged and in readable form. It is to be verified by a confirmation message or in some other appropriate way whether these prerequisites have been met. As a rule, each entry is to show the date on which it came into effect.

#### **Section 56**

##### **Minimum number of members of the association**

As a rule, the entry in the register is to be made only if the number of members is at least seven.

#### **Section 57**

##### **Minimum requirements of the articles of association**

(1) As a rule, the articles of association are to set out the objects, the name and the seat of the association and indicate that it is intended to enter the association in the register.

(2) As a rule, the name is to 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**

As a rule, the articles of association are to 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, of what type these contributions are to be,
3. on the composition of the board,
4. on the prerequisites based on which the general meeting is to be convened, on the form required for convening it and on the notarial recording of the resolutions.

#### **Section 59**

##### **Application for registration**

- (1) The board is to apply for the association to be registered.
- (2) Copies of the articles of association and of the documents on the appointment of the board are to be attached to the application.
- (3) As a rule, the articles of association are to be signed by at least seven members and are to state the date of their establishment.

#### **Section 60**

##### **Rejection of the application**

If the requirements of sections 56 to 59 have not been met, then the application is to be rejected by the local court, stating the reasons.

#### **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 agency 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**

##### **Notice by publication of the entry and safekeeping of documents**

- (1) The local court is to publish the entry of the association in the register of associations by means of publication in the electronic information and communication system designated by the *Land* department of justice.
- (2) The documents submitted with the application are kept by the local court.

#### **Section 67**

##### **Changes to the board**

- (1) The board is to apply for entry in the register of every change to the board. A copy of the document about the change is to be attached to the application.
- (2) Board members appointed by the court are entered in the register by the court of 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, then the change of the board may be used as a defence against the third party only if, at the time 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, then the third parties need not allow it to apply against them if they do not know of it and their lack of knowledge does not result from negligence.

#### **Section 69**

##### **Documentary proof of composition of the board**

Documentary proof that the board consists of the persons entered in the register is furnished to public authorities in the form of a local court certificate confirming the entry.

#### **Section 70**

##### **Protection of public confidence in case of entries on power of agency**

The provisions of section 68 also apply to provisions that restrict the scope of the power of agency of the board or that lay down different arrangements for the power of agency of the board than the provision in section 26 (2) sentence 1.

#### **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 is to apply for entry of the amendment in the register. A copy of the resolution containing the amendment and of the wording of the articles of association is to be enclosed with the application for registration. In the wording of the articles of association, the amended provisions must agree with the resolution on the amendment of the articles of association, the unchanged provisions must agree with the most recently submitted full wording of the articles of association and, if the articles of association have been amended without the full wording of the articles of association being submitted, the unchanged provisions must also agree with the previously-entered amendments.

(2) The provisions of sections 60, 64 and section 66 (2) apply accordingly.

#### **Section 72**

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

At any time the local court so demands, the board is to file a written certificate on the number of members of the association.

#### **Section 73**

##### **Decrease to below the minimum number of members**

If the number of members of the association falls below three, the local court is to deprive the association of legal personality on application by the board and, if the application is not made within three months, of its own motion after having heard the board.

#### **Section 74**

##### **Dissolution**

(1) The dissolution of the association and the deprivation of legal personality are to be entered in the register of associations.

(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, then the board is to apply for entry of the dissolution in the register. In the former case, a copy of the resolution for dissolution is to be attached to the notification.

(3) (repealed)

#### **Section 75**

##### **Entries in the case of insolvency**

The opening of insolvency proceedings and the final and binding order by which the opening of the insolvency proceedings is rejected for insufficiency of assets, as well as the dissolution

of the association pursuant to section 42 (2) sentence 1, are to be registered by the court of its own motion. The following also are to be entered of the court's own motion

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 prohibited from disposing over the assets or if it is ordered that dispositions by the debtor are effective only with the approval of the provisional insolvency administrator, and the repeal of such a preservation measure,
3. an order as to debtor-in-possession management by the debtor and the reversal of this order, as well an order that certain 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.

(2) If the association is continued by resolution of the general meeting pursuant to section 42 (1) sentence 2, then the board is to apply for entry of the continuation in the register. A copy of the resolution is to be enclosed with the application.

#### **Section 76**

##### **Register entries in the event of liquidation**

(1) In the event of the association being liquidated, the liquidators and their power of agency are to be entered in the register of associations. The same applies to the termination of the association subsequent to liquidation.

(2) The board is to file the application for entry of the liquidators in the register. The application for registration is to state the extent of the liquidators' power of agency. The liquidators are to apply for entry in the register of changes to the liquidators or their power of agency, as well as the termination of the association. The application for registration of the liquidators appointed by resolution of the general meeting is to have attached to it a copy of the resolution so appointing them, and the application for registration of any power of agency determined in derogation from section 48 (3) is to have attached to it a copy of the document containing this provision.

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

#### **Section 77**

##### **Parties obliged to apply for entry in the register and form of applications**

The applications for entry in the register of associations are to be submitted by members of the board and by the liquidators, who are entitled to represent the association in this regard, by way of publicly certified declaration. The declaration may be submitted to the court in the original or in a publicly certified copy.

#### **Section 78**

##### **Assessment of coercive fines**

(1) The local court may enjoin the members of the board to comply with the provisions of section 67 (1), section 71 (1), section 72, section 74 (2), section 75 (2) and section 76 by imposing coercive fines.

(2) In the same manner, 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 as well as the documents filed with the local court by the association. A copy of the entries may be required; on

request, the copy is to be certified. Where the register of associations is maintained by computer, the copy is replaced by a hard copy and the certified copy by an official hard copy.

(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 assured that

1. the retrieval of data does not exceed the inspection permitted under subsection (1) and

2. it is possible to monitor the permissibility of the retrievals on the basis of a log.

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

(3) Users are to be informed that they may use the data transmitted only for information purposes. The competent agency is to verify (e.g. by spot checks) whether there is evidence that the inspection permitted under sentence 1 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 the user endangers the functional reliability of the retrieval equipment, exceeds the inspection permitted under subsection (3) sentence 1 or abuses transmitted data; the same applies in cases in which the threat of the permissible inspection being exceeded or abused is imminent.

(5) The competent agency is the *Land* department of justice. The agency with local jurisdiction is the *Land* department of justice within the portfolio of which the competent local court falls. This provision on jurisdiction may be varied by statutory instrument of the *Land* government. The *Land* government may confer, by statutory instrument, this authorisation upon the *Land* department of justice. The *Länder* may also agree to the jurisdiction being transferred to the competent agency of another *Land*.

### **Section 79a**

#### **Application of Regulation (EU) 2016/679 to registration proceedings**

(1) The rights enshrined in Article 15 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation (OJ L 119 of 4 May 2016, p. 1; L 314 of 22 November 2016, p. 72; L 127 of 23 May 2018, p. 2) are provided under section 79 and the provisions of the Ordinance on the Maintenance of the Register of Associations (*Vereinsregisterverordnung*) enacted in its regard by the inspection of the register or the retrieval of registry data via the nationwide electronic information and communication system. The court of registration is not obliged to inform persons whose personal data are stored in the register of associations or in the files of the register of the disclosure of these data to third parties.

(2) The right to rectification enshrined in Article 16 of Regulation (EU) 2016/679 may be exercised with regard to personal data stored in the register of associations or in the files of the register only subject to those prerequisites and using that procedure stipulated for the erasure or rectification of entries in the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction (*Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit* – FamFG) and in the Ordinance on the Maintenance of the Register of Associations.

(3) The right to object enshrined in Article 21 of Regulation (EU) 2016/679 does not apply to personal data stored in the register of associations and in the files of the register.

### **Subtitle 2 Foundations**

#### **Section 80 Formation of a foundation having legal personality**

(1) The formation of a foundation with legal personality requires an endowment transaction and recognition of the foundation 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), 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. In the case of a foundation that is established for a certain period, the assets of which are to be depleted in pursuing its purpose (principal-depleting foundation), the ongoing performance of the object of the foundation is to be deemed secured if the foundation is to exist for a period defined in the endowment transaction that is at least 10 years.

(3) Provisions of the *Land* legislation on church foundations remain unaffected. The same applies accordingly to foundations which *Land* legislation treats as equivalent to church foundations.

### **Section 81**

#### **Endowment transaction**

(1) An endowment transaction *inter vivos* requires the written form. It must contain the binding declaration by the founder that they will dedicate assets, which also may be intended for depletion, to achieve an object they have specified. 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 and if the founder is dead, then section 83 sentences 2 to 4 applies accordingly.

(2) Until the foundation is recognised as having legal personality, the founder has a right to revoke the endowment transaction. Where 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 recorded by a notary, 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 for the transfer of which the assignment contract suffices pass to the foundation upon its recognition, unless the endowment transaction indicates that the founder intended otherwise.

### **Section 83**

#### **Testamentary foundation**

If the endowment transaction is a testamentary disposition, then the probate court is to 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, then the foundation will be given a charter or additions will be made to an incomplete charter by the competent public authority before recognition; in so doing, the will of the founder is to be taken into account. The seat of a foundation, unless otherwise provided, is the place at which the management is carried out.

In case of doubt, the last residence of the founder within the territory of Germany is deemed the seat.

#### **Section 84**

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

If the foundation is recognised as having legal personality only after the death of the founder, then for the purpose of the endowment payments made by the founder it will be deemed to have come into existence already prior to their 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 26 and 27 (3) and of sections 28 to 31a and section 42 apply accordingly to foundations, but the provisions of section 26 (2) sentence 1, section 27 (3) and section 28 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 26 (2) sentence 2 and of section 29 do not apply to foundations the administration of which is conducted by a public authority.

#### **Section 87**

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

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

(2) In altering the objects, the intention of the founder as a rule is to be taken into account, and in particular, it generally is to be ensured that the income generated by 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 so requires.

(3) Before the objects are altered and the constitution is changed, the board of the foundation as a rule is to be heard.

#### **Section 88**

##### **Devolution of assets**

When the foundation ceases to exist, the assets devolve to the persons specified in the constitution. If no persons entitled to receive the assets are specified, the assets devolve to the treasury of the *Land* in which the foundation had its seat, or upon another person entitled to so receive the assets under the law of this *Land*. The provisions of sections 46 to 53 apply accordingly.

#### **Subtitle 3**

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

#### **Section 89**

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

(1) The provision of section 31 applies accordingly 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 set out in 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. The provisions that apply to things are to be applied accordingly to animals, unless 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 the intended use of which consists of their consumption or alienation.

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

**Section 93**  
**Essential parts of a thing**

It is not possible for parts of a thing that cannot be separated without one or the other being destroyed or undergoing a change of nature (essential parts) to 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 upon being sown, and a plant upon being 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 has been 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 to 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 such time as it is expected that the same or similar produce will be obtained, as well as the fertiliser 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, then the following will be owed that person, unless otherwise provided:

1. the products and parts designated in section 99 (1), even if the person 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 fall due during the period of entitlement; however, if the fruits consist of remuneration for the permission of use or of enjoyment of fruits and benefits, in interest, in profit shares or other periodically paid income, then a share corresponding to the duration of the person's entitlement will be owed that person.

### **Section 102**

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

Anyone who has a duty to surrender 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 is to bear, unless otherwise provided, the periodically recurring charges in the proportion of the period of time of their duty, and bear other charges to the extent that they are payable during the period of time in which the person 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. the person has not yet attained the age of seven years,
2. the person 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 it is possible to effect using means of low value, then the contract that person 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 does not apply in the case of considerable danger to the person incapable of contracting or their assets.

**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 minors do not receive merely a legal benefit, the minors require consent by their 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 approval by the legal representative.
- (2) If the other party demands that the representative declare approval, the declaration may be made only to the other party; a declaration or refusal of approval made to the minor before the demand of the other party becomes ineffective. The approval may only be declared before the expiry of two weeks following receipt of the demand; if approval is not declared, then it is considered to have been refused.
- (3) If the minor has become fully capable of contracting, then the approval by the minor will take the place of the approval by the representative.

**Section 109**  
**Right of withdrawal by the other party**

- (1) Until the contract is ratified, the other party is entitled to withdraw from it. The declaration of withdrawal also may be made to the minor.
- (2) If the other party knew that they were dealing with a minor, they may withdraw from the contract only if the minor untruthfully stated that the legal representative had given consent;

they may not withdraw even in this case if, when the contract was concluded, they were aware of the lack of consent.

#### **Section 110**

##### **Performance effected with means of the minor's own**

A contract concluded by the minor without the approval of the legal representative is deemed effective from the outset if the minor effects performance under the contract with means that were made available to the minor for this purpose or for the minor's free disposition by the legal representative or by a third party with the representative's approval.

#### **Section 111**

##### **Unilateral legal transactions**

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

#### **Section 112**

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

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

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

#### **Section 113**

##### **Service or employment relationship**

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

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

(3) If the legal representative is a guardian and they refuse to grant the authorisation, then on demand by the minor, the family court may grant a substitute authorisation. The family court is to grant substitute authorisation if this is in the interest of the ward.

(4) The authorisation given for an individual case in case of doubt is deemed to constitute a 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 declaring person has made a mental reservation that they do not want what they are declaring to be realised. The declaration is void if it is to be made to another person and that person knows of the reservation.

#### **Section 117**

##### **Sham transaction**

- (1) If a declaration of intent that is to be made to another person is made, with that person's consent, only for the sake of appearance, it is void.
- (2) If a sham transaction hides another legal transaction, then 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 the person would not have made the declaration had they been aware of the factual position and had they had a sensible understanding of the case.
- (2) A mistake about such characteristics of a person or a thing as are regarded as essential in business dealings also is deemed 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 prerequisite as that governing the avoidance of a declaration of intent made by mistake under section 119.

**Section 121**  
**Period for avoidance**

- (1) Avoidance must be effected, in the cases governed by sections 119 and 120, without culpable delay (without undue delay) after the person entitled to avoid obtains knowledge of the ground for avoidance. Avoidance effected to an absent person is deemed to have been effected in good time if the declaration of avoidance is forwarded without undue delay.
- (2) Avoidance is excluded if 10 years have passed since the declaration of intent was made.

**Section 122**  
**Liability in damages of the person avoiding a declaration**

- (1) If a declaration of intent is void under section 118, or if it is avoided on the basis of sections 119 and 120, then the declarant is to pay damages, if the declaration was to be made to another person, to that person, or failing this to any third party, for the damage that the other person or the third party suffers as a result of having relied on the validity of the declaration; but not in excess of the total amount of the interest that the other person 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 negligence (ought to have known).

**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 the declaration.
- (2) Where a third party committed this deceit, a declaration that had to be made to another person may be avoided only if the latter knew of the deceit or ought to have known of 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 that person may be avoided if they knew or ought to have known of the deceit.

**Section 124**  
**Period of time 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 at which the duress ends. The provisions in sections 206, 210 and 211 applicable to limitation apply accordingly to the running of the period.
- (3) Avoidance is barred if 10 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 their name in their own hand, or by their notarially certified mark.
- (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) The 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 statute, the issuer of the declaration must add their name to it and provide the electronic document with a qualified electronic signature.
- (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 statute, a readable declaration, in which the person making the declaration is named, must be made on a durable medium. A durable medium is any medium that

1. enables the recipient to keep a record of or store a declaration included on the medium that is addressed to the recipient personally such that it is accessible to the recipient for a period of time adequate to its purpose, and
2. that allows the unchanged reproduction of such declaration.

#### **Section 127**

##### **Agreed form**

- (1) The provisions of 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 it suffices, unless a different intention is to be assumed, for the message to be transmitted using means of telecommunication 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 that 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 that 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 corresponding to the stipulations of 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 of the Code of Civil Procedure (*Zivilprozessordnung*) replaces the 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 statute, then the declaration must be made in writing and the signature of the declarant must be certified by a notary. If the declaration is signed by the issuer making a mark, then the certification of the mark provided for in section 126 (1) will be required 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 person becomes effective, if made in that person's absence, at the point in time at which said declaration reaches them. It does not become effective if a revocation reaches the other person previously or at the same time.

(2) The effectiveness of a declaration of intent is not affected if the declarant 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, then it does not become effective until it has reached that person's 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 consent, then the declaration becomes effective at the time 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 court bailiff as intermediary. The service is effected in accordance with the provisions of the Code of Civil Procedure.

(2) If the declarant is unaware, through no negligence of their own, of the identity of the person to whom the declaration is to be made, or if the whereabouts of this person are unknown, then service may be effected in accordance with the provisions of the Code of Civil Procedure relating to service by publication. In the former case, the local court competent for the approval is the one in the district of which the declarant is resident, or in the absence of a residence within the territory of Germany, in which they have their abode; in the latter case, the local court competent for the approval is the one in the district of which the person to whom service is required to be effected last resided, or, in the absence of a residence within the territory of Germany, in which they had had their 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 alienation**

(1) If the disposition over a thing violates a statutory prohibition against alienation 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 that is effected by means of compulsory enforcement or enforcement of a seizure.

(2) The provisions to the benefit of those who derive rights from an unauthorised person apply accordingly.

### **Section 136**

#### **Official prohibition of alienation**

A prohibition of alienation that is issued by a court or by any other public authority in keeping with its competence is equivalent to a statutory prohibition of alienation of the kind described in section 135.

### **Section 137**

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

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

### **Section 138**

#### **Legal transaction offending common decency; usury**

(1) A legal transaction that offends common decency is void.

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

### **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**

Where a void legal transaction meets the requirements of another legal transaction, the latter is deemed to have been entered into if it may be assumed that its validity would be intended if the invalidity were known.

### **Section 141**

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

(1) If a void legal transaction is confirmed by the person who undertook it, then the confirmation is to be seen as the transaction once again being entered into.

(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 outset.

**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 they 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 contractual party and, in the case governed by 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 that was to be entered into in relation to another person, the other person is the opponent. The same applies to a legal transaction that is required to be entered into in relation to another person or to a public authority, even if the legal transaction has already been entered into 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. However, the avoidance may be made, if the declaration of intent was to be made to a public authority, by declaration to the authority; the public authority as a rule is to 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 is not subject to the requirements as to form laid down 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 the person has ruled out the offer's being binding upon them.

**Section 146**  
**Expiry of an offer**

An offer expires if a refusal is made to the offeror, or if no acceptance is made to the offeror 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 some other technical system.
- (2) An offer made to a person who is absent may be accepted only until the time at which 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 be effected 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 the offeror in good time had it been forwarded in the usual way, and if the offeror ought to have recognised this, then the offeror is to notify the acceptor of the delay following receipt of the declaration without undue delay, unless this had been done already previously. If the offeror delays the sending of the notification, the acceptance is deemed not to be late.

#### **Section 150**

##### **Late acceptance and acceptance altering the offer**

- (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 in time at which 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 in the case of notarial recording**

If a contract is recorded by a notary without both parties being present at the same time, then 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 of the offeror or offeror's incapacity to contract**

The contract is not prevented from coming into existence 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 concluded. 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, then the contract is, in case of doubt, not concluded until the recording has taken place.

#### **Section 155**

##### **Hidden lack of agreement**

If the parties to a contract which they consider to have been concluded in fact have 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 concluded even without a provision concerning this point.

### **Section 156**

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

At an auction, a contract does not come into existence 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, then 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, then the effect of the legal transaction ends when the condition is satisfied; at this point in time, 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 onwards, then the parties are under a duty, when the condition is satisfied, to render each other the performance that they would have rendered if the consequences had occurred at the earlier time.

### **Section 160**

#### **Liability during the period pending fulfilment of the condition**

- (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 pending fulfilment of the condition, is at fault for frustrating or adversely affecting the right that is dependent on the condition.
- (2) In the case of a legal transaction entered into subject to a condition subsequent, the person to the benefit of whom the former legal situation is restored has the same claim based on the same prerequisites.

### **Section 161**

#### **Ineffectiveness of dispositions in the period pending fulfilment of the condition**

- (1) If a person has disposed over a thing, and the disposition is subject to a condition precedent, then any further disposition which the person makes as regards the thing during the period pending fulfilment of the condition is ineffective on the satisfaction of the condition to the extent that it would frustrate or impair the effect subject to the condition. Such a disposition is equivalent to a disposition that is effected, during the period pending fulfilment of the condition, by way of compulsory enforcement or enforcement of a seizure or by the insolvency administrator.
- (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 to the benefit of those who derive rights from an unauthorised person apply accordingly.

### **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 detriment it would inure, then 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 of sections 158, 160 and 161 applicable to conditions precedent and in the latter case the provisions of sections 158, 160 and 161 applicable to conditions subsequent apply accordingly.

**Title 5**  
**Agency and authority**

**Section 164**  
**Effect of a declaration made by the agent**

(1) A declaration of intent that a person makes within the scope of their own power of agency in the name of a principal takes effect directly for 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 intended to be made in the principal's name.

(2) If the intent to act on behalf of another is not evident, then no regard will be had to the lack of intent on the part of the agent to act on their own behalf.

(3) The provisions of subsection (1) apply accordingly if a declaration of intent to be made to another is made to their 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**  
**Vitiating of intent; imputed knowledge**

(1) Insofar as the legal consequences of a declaration of intent are influenced by a vitiating of intent or by the knowledge or the constructive notice of certain circumstances, regard will be had not to the person of the principal, but to that of the agent.

(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 was aware. 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 accordingly 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 to the benefit 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 it is notified by the principal of the expiry thereof.

#### **Section 171**

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

(1) If a person has announced by separate notification of a third party or by notice by publication that they have granted authority to another, then 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 power of agency 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, then 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 power of agency 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 is to return the letter of authorisation to the principal; the authorised representative is not entitled to a right of retention.

#### **Section 176**

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

(1) The principal may declare, by way of a notice by publication, the letter of authorisation to be invalid; the declaration of invalidity must be published in compliance with the provisions of the Code of Civil Procedure 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 in the district of which the principal is subject to general jurisdiction and the local court that would have jurisdiction, irrespective of the value of the matter in dispute, over the action for the return of the letter of authorisation equally are competent to authorise the publication.

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

#### **Section 177**

##### **Entry into contract by a representative having no power of agency**

(1) If a person enters into a contract in the name of another without having 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 demands that the principal make a declaration as to the ratification of the contract, the declaration may be made only to that other party; a ratification or a refusal of ratification declared to the representative before the demand becomes ineffective. The ratification may only be declared before the expiry of two weeks following receipt of the demand; if it is not declared, then 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 they knew of the lack of power of agency when they concluded the contract. The revocation also may be declared to the representative.

#### **Section 179**

##### **Liability of a representative having no power of agency**

(1) A person who has concluded a contract as an agent is, unless they furnish proof of having been granted power of agency, obliged to the other party at the other party's choice either to perform the contract or to pay damages to the latter, if the principal refuses to ratify the contract.

(2) If the agent was not aware of their lack of power of agency, they are obliged to provide 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 representative is not liable if the other party knew or ought to have known of the lack of power of agency. The representative also is not liable if they had limited capacity to contract, unless they acted with the approval of their legal representative.

#### **Section 180**

##### **Unilateral legal transactions**

Agency without power of agency 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 representative claimed to have, or if they were in agreement that the representative was to act without power of agency, the provisions on contracts apply accordingly. The same applies if a unilateral legal transaction is undertaken in relation to a representative having no power of agency with the representative's consent.

#### **Section 181**

##### **Contracting with oneself**

Agents may not, unless otherwise permitted, enter into a legal transaction in the name of the principal with themselves in their own name or as the 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 specified for the legal transaction.  
(3) If a unilateral legal transaction the effectiveness of which 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 accordingly.

**Section 183**  
**Revocability of consent**

Prior approval (consent) may be revoked until the legal transaction is undertaken, unless the legal relationship on which this approval 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 in time onwards at which 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 way of compulsory enforcement or enforcement of a seizure or by the insolvency administrator.

**Section 185**  
**Disposition by an unauthorised person**

- (1) A disposition over 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 earlier disposition is effective.

**Division 4**  
**Periods of time and fixed dates**

**Section 186**  
**Scope of applicability**

The provisions on interpretation stipulated in 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 in time falling in the course of a day, then the day on which the event or point in time occurs is not included in the calculation of the period.  
(2) If the beginning of a day is the determining point in 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 in computing the age of a person.

**Section 188**  
**End of a period of time**

- (1) A period of time specified by days ends on 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 governed by 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 in time occurs, or in the case governed by 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 specified 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 15 days.  
(2) If a period of time is specified as one or more than one whole month and a half-month, then the 15 days are to be counted last of all.

#### **Section 190**

##### **Extension of a period of time**

If a period of time is extended, then 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, then a month is counted as 30 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 specified day or within a period, and if the particular day or the last day of the period falls on a Sunday, a general holiday officially recognised at the place of the declaration or performance, or on a Saturday, the next working day takes the place of this day.

### **Division 5**

#### **Limitation**

##### **Title 1**

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

#### **Section 194**

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

- (1) The right to demand that another person does or refrains from an act (claim) is subject to limitation.  
(2) Claims based on a family-law relationship are not subject to limitation to the extent that they are directed towards creating a situation appropriate for the relationship for the future or towards consent to a genetic test to clear up biological descent.

#### **Section 195**

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

The standard limitation period is three years.

#### **Section 196**

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

Claims to the transfer of ownership of land and to the creation, transfer or cancellation of a right to a plot of land or to a change of the subject-matter of such a right and entitlements to consideration are statute-barred after ten years.

#### **Section 197**

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

(1) Unless otherwise provided, the following are statute-barred after 30 years:

1. damage claims based on intentional injury to life, limb, health, liberty or sexual self-determination,
2. claims to surrender based on ownership, other rights in rem, sections 2018, 2130 and 2362, as well as claims serving to assert the claims to surrender
3. claims that have been finally and bindingly established,
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 compulsory enforcement.

(2) 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 30 years.

#### **Section 198**

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

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

#### **Section 199**

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

(1) Unless another commencement of limitation is determined, 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 they had not shown gross negligence.

(2) Claims for damages based on injury to life, limb, health or liberty, notwithstanding the manner in which they arose and notwithstanding knowledge or a grossly negligent lack of knowledge, are statute-barred 30 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, 10 years after they arise and
2. regardless of how they arose and of knowledge or a grossly negligent lack of knowledge, 30 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.

(3a) Claims based on the devolution of an inheritance or whose claiming is contingent on knowledge of a disposition *mortis causa* become statute-barred 30 years from when the claim comes into being regardless of knowledge or of grossly negligent lack of knowledge.

(4) Notwithstanding knowledge or a grossly negligent lack of knowledge, claims other than those under subsections (2) to (3a) become statute-barred 10 years after the date on 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 accordingly.

## **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 on which the decision becomes final and binding, the enforceable instrument is executed or the claim is recognised in insolvency proceedings, but not before the claim arises. Section 199 (5) applies accordingly.

## **Section 202**

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

- (1) In the case of liability for intent, the limitation period may not be eased in advance by legal transaction.
- (2) The limitation period may not be extended by legal transaction beyond a period of 30 years from the commencement 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 establishment of the existence of a claim, for the granting of a clause of execution or for the issuance of a judgment for enforcement,
  - 1a. the bringing of a model action for a declaratory judgment regarding a claim that an obligee effectively has applied to have entered in the complaint register maintained with regard to the action, where the claim registered is based on the same circumstances as the establishment objectives of the model action for a declaratory judgment,
  2. the service of an application in the simplified procedure for the maintenance of minors,
  3. the service of a payment order in summary proceedings for a payment order or of the European order for payment in the European order for payment procedure in accordance with Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure (OJ EU L 399 p. 1),
  4. arranging for notice to be given of an application, by which the claim is being asserted, to a
    - a) governmental dispute resolution body or state-recognised dispute resolution body, or

- b) some other dispute resolution body in cases in which the proceedings are being pursued by mutual agreement with the respondent;

the limitation period is suspended already upon the application being received by the dispute resolution body if notice of the application will be given shortly,

5. the assertion of a set-off of a claim in a legal action,
6. the service of a third-party notice,
- 6a. the service of an application for registration for a model case proceedings of claims designated therein, insofar as they are based on the same circumstances as the establishment objectives of the model case proceedings, and if the action for performance or for the establishment of the existence of the claims designated in the registration is lodged within three months of the final termination of the model case proceedings,
7. the service of an application for evidence to be taken in proceedings for the conservation of evidence,
8. the beginning of agreed expert opinion proceedings,
9. the service of an application for an attachment order, an injunction or an interim order, or, if the application is not served, the filing of the application if the order for attachment, the 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,
- 10a. the ordering of a ban on enforcement in accordance with the Act on the Stabilisation and Restructuring Framework for Enterprises (*Unternehmensstabilisierungs- und -restrukturierungsgesetz*), by which ban the creditor is prevented from initiating compulsory enforcement for a claim,
11. the beginning of arbitration proceedings,
12. the filing of an application with a public authority, if the admissibility of the action depends on the prior decision taken by that public authority and the action is brought within three months after the application has been disposed of; this applies accordingly to applications required to be brought before a court or a dispute resolution body referred to in no. 4, the admissibility of which depends on the prior decision by a public authority,
13. the filing of an application with the higher court, if the higher court is to decide which court has jurisdiction over the claim and the action is brought, or the application is filed for which a decision on jurisdiction is to be handed down, within three months after the application has been disposed of, and
14. arranging for notice to be given of the first application for the grant of assistance with court costs or 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) ends six months after the final and binding decision in the proceedings that have been commenced, or after the proceedings end in some other way. The suspension provided for in subsection (1) no. 1a also ends six months after retraction of the application for entry in the complaint register. If the proceedings come to a standstill because the parties do not pursue 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 to pursue the proceedings.

(3) Sections 206, 210 and 211 apply accordingly to the period governed by subsection (1), nos. 6a, 9, 12 and 13.

#### **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 pursuing their rights.

#### **Section 207**

##### **Suspension of limitation for reasons of family relationship and similar reasons**

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

1. life partners for as long as the life partnership exists,
2. the child, and
  - a) the child's parents or
  - b) the spouse or life partner of one parent,

until the child attains the age of 21,

3. a guardian and the ward, for the duration of the guardianship,
4. a person placed under the care of a custodian and the custodian, for the duration of a care relationship, and
5. a person subject to curatorship and the 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 attains the age of 21. 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, then 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 who is incapable of contracting or who has limited capacity to contract has no legal representative, then a limitation period to their benefit or detriment does not end until the expiry of six months after the time at which the person acquires unlimited capacity to contract or the lack of representation is remedied. If the limitation period is shorter than six months, then 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 of the limitation period 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 at which the inheritance is accepted by the heir or at which insolvency proceedings in respect of the estate are opened or onwards of which the claim may 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 making partial payment, paying interest, providing security or in some other manner, 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 application by the obligee or because the statutory prerequisites are lacking.
- (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 revoked before the act of execution or if the act of execution obtained is cancelled under subsection (2).

### **Section 213**

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

The suspension, suspension of expiry of the limitation period 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 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**

The 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 first could 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 their claim out of the object encumbered.
- (2) If a right has been procured for the purpose of securing a claim, then the retransfer of the right may not be demanded on the basis of the claim having become statute-barred. If title has been retained, then the rescission of the contract may be effected even if the secured claim is statute-barred.
- (3) Subsections (1) and (2) do not apply to the limitation of claims to interest and other recurring obligations.

## **Section 217**

### **Limitation of collateral performance**

A claim for collateral performance contingent 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 rescission**

- (1) Rescission for non-performance or for the failure to perform as contractually agreed is ineffective if the claim for performance or the claim to cure has become statute-barred and the obligor invokes this. This applies even if, in accordance with section 275 (1) to (3), section 439 (4) 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 accordingly.

## **Sections 219 to 225 (repealed)**

## **Division 6**

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

## **Section 226**

### **Prohibition of chicanery**

The exercise of a right is not permitted if its only possible purpose consists of 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 themselves or from another a danger threatened by the thing is not acting 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 is at fault for the danger, then they are 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, is not acting unlawfully if help cannot be obtained from the authorities in good time and there is the danger, if no immediate intervention takes place, that the realisation of the claim will be frustrated or become considerably more difficult.

**Section 230**  
**Limits of self-help**

- (1) Self-help may not extend beyond what is required to ward off the danger.
- (2) In the case in which things are removed, then, unless compulsory enforcement is being effected, a writ of attachment in rem is to be sought.
- (3) In the case of the arrest of the person obliged, unless the person obliged is set free again, an application for their preventive custody is to be filed with the local court in the district of which the arrest took place; the person obliged is to be presented to the court without undue delay.
- (4) If the application for arrest is delayed or rejected, the things seized are to be returned and the person arrested is to be 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 prerequisites necessary to exclude unlawfulness are satisfied, then that person 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 Debt Register of a *Land* (*Landesschuldbuch*),
  - 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 plots of land within the territory of Germany,
  - by the pledge of claims for which there is a mortgage on a plot of land within the territory of Germany, or
  - by the pledge of land charges or annuity land charges on plots of land within the territory of Germany.
- (2) If security cannot be provided in this manner, it is admissible to furnish a qualified surety.

**Section 233**  
**Effect of deposit**

Upon the deposit being made, the person entitled acquires a security right over the money deposited or the securities deposited and, if the money or the securities devolve into the ownership of the treasury or the institution designated as the depository institution, then they acquire a security right over the claim for reimbursement.

**Section 234**  
**Suitable securities**

- (1) Securities are only suitable as a means of providing security if they are made out to the bearer, have a market value and belong to a class of securities in which money held in trust for a ward may be invested. Instruments made out to order and furnished with a blank endorsement 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**  
**Book-entry securities**

A book-entry security 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 their claim registered in the debt book.

**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 there is the concern that they will spoil or if their safekeeping entails 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 a means of providing security only if it corresponds to the prerequisites to be met for the investment of money held in trust for a ward in mortgage claims, land charges or annuity land charges at the place at which security is provided.

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

**Section 239**  
**Surety**

(1) A surety is qualified if they possess assets appropriate for the amount of security to be provided and if they have their general place of jurisdiction within the territory of Germany.

(2) The declaration of suretyship must contain a waiver of the defence of failure to pursue remedies.

**Section 240**  
**Duty to supplement security**

If the security provided becomes insufficient without this being the fault of the person entitled, then it is to be supplemented or security is to be provided in some other manner.

**Book 2**  
**Law of obligations**

**Division 1**  
**Subject matter of obligations**

**Title 1**  
**Duty to render 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 of forbearance.

(2) By its contents, an obligation may 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 movable things that are not being sold based on measures of compulsory enforcement or other judicial measures (goods), or the provision of other services to the consumer by a trader, does not give rise to a claim against the consumer if the consumer has not ordered these goods or other services.
- (2) Statutory claims are not excluded if the performance was not intended for the recipient or was made in the mistaken belief that there had been an order, and the recipient was aware of this or could have been aware of this had they exercised the care required in business dealings.
- (3) There may be no derogation from the stipulations of this provision to the disadvantage of the consumer. The stipulations apply even if they are circumvented by other arrangements.

**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 described by class**

- (1) A person who owes a thing defined only by class is to supply a thing of average kind and quality.
- (2) If the obligor has done what is necessary on their part to supply such a thing, then 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 territory of Germany, 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, then payment is to be made in the same way as if the denomination of coin were not specified.

**Section 246**  
**Statutory interest rate**

Where 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) 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.

**Section 248**  
**Compound interest**



(1) An agreement made in advance that interest due is intended to in turn bear interest is void.

(2) Savings banks, credit institutions and owners of banking businesses may agree in advance that as a rule, interest not collected on deposits is to be considered as fresh interest-bearing deposits. Credit institutions entitled to issue interest-bearing bonds for the amount of the loans granted by them may have commitments made to them in advance, for such loans, to pay interest on interest in arrears.

#### **Section 249**

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

(1) A person who is liable in damages is to restore the position that would exist if the circumstance obliging them 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 amount of money in lieu of restoration. Where a thing is damaged, the amount of money 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 time limit for the person liable in damages to undertake restoration and declare that they will reject restoration after the period of time ends. After the end of the period, 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 is to compensate the obligee in money.

(2) The person liable in damages may compensate the obligee in money if restoration is possible only at disproportionate expense. 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 also comprises the profits lost. 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 be expected to be attained as a matter of likelihood.

#### **Section 253**

##### **Intangible damage**

(1) Money may be demanded in compensation for any damage that is not a 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, then equitable compensation in money also may be demanded for any damage that is not a pecuniary loss.

#### **Section 254**

##### **Contributory negligence**

(1) Where fault on the part of the injured person contributed to the occurrence of the damage, liability in damages as well as the extent of compensation to be provided depend on the circumstances, in particular on the extent to which the damage was 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

aware of the danger nor ought to have been aware of it, or to failing to avert or mitigate the damage. The provision of section 278 applies accordingly.

#### **Section 255**

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

A person who is to pay damages for the loss of a thing or a right is obliged to compensate only 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 is to pay interest on the amount expended from the date of the expense onwards 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 is to 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 to release**

A person who is entitled to demand reimbursement of expenses they incur for a specific purpose may demand release, if they assume an obligation for this purpose, from the obligation. If the obligation is not yet due, then the person liable in damages may provide security to the person entitled instead of releasing them from the obligation.

#### **Section 258**

##### **Right of removal**

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

#### **Section 259**

##### **Extent of duty to render accounts**

- (1) A person who is obliged to render accounts for management related to earnings or expenses is to provide the person entitled with accounts containing a structured compilation of earnings or expenses and, where receipts are customarily given, is to submit receipts.
- (2) If there is reason to assume that the information on earnings contained in the accounts rendered has not been provided with the requisite care, then upon demand, the person obliged is to declare for the record in lieu of an oath that they have indicated the earnings as completely as they are 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 surrendering objects or providing information on an aggregate of objects**

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

#### **Section 261**

##### **Modification of a declaration in lieu of an oath; costs**

- (1) The court may order that the declaration in lieu of an oath be adjusted according to the circumstances.
- (2) The costs of administering the declaration in lieu of an oath are to be borne by the person demanding that such declaration be made.

#### **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 outset.

#### **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 compulsory enforcement, then the obligee, at their choice, may direct the compulsory enforcement at one performance or the other; however, as long as the obligee has not received the performance chosen, as a whole or in part, the obligor may obtain release from their obligation through one of the other acts of performance.
- (2) If the obligee entitled to the right of choice is in default, then the obligor may demand that they exercise that right, specifying a reasonable time limit. At the end of the period of time, the right of choice devolves 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 outset 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 also may render performance. Consent by 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 compulsory enforcement against an object belonging to the obligor, anyone who risks losing a right in the object due to the compulsory enforcement is entitled to satisfy the obligee. The possessor of a thing is entitled to the same right if they risk losing possession due to the compulsory enforcement.
- (2) Satisfaction also may be effected by deposit or by set-off.
- (3) To the extent that the third party satisfies the obligee, the claim devolves to the third party. The devolution 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 where it is not evident from the circumstances, in particular from the nature of the obligation, performance is to be made at the place at which the obligor had their residence at the time the obligation arose.
- (2) If the obligation arose in the commercial undertaking of the obligor, then the place of the commercial establishment takes the place of the residence if the obligor maintains their commercial establishment at another place.
- (3) It is not to be concluded solely from the circumstance that the obligor has assumed the costs of shipping that the place to which shipment is to be made is intended to be the place of performance.

#### **Section 270** **Place of payment**

- (1) In case of doubt, the obligor is to transfer money at their own risk and their 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 the place of the commercial establishment takes the place of the residence if the obligee maintains their commercial establishment at another place.
- (3) If, as the result of a change in the obligee's residence or commercial establishment occurring after the obligation arises, the costs or risk of transmission increase, the obligee is to bear the increased costs in the former case and is to bear the risk in the latter case.
- (4) The provisions on the place of performance remain unaffected.

#### **Section 270a** **Agreements on fees for the use of non-cash means of payment**

An agreement obligating the obligor to pay a fee for the use of a SEPA core direct debit, a SEPA business-to-business direct debit, a SEPA credit transfer or a debit card is ineffective. Sentence 1 applies to the use of debit cards only in the case of payment transactions with consumers to which Chapter II of Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions (OJ L 123 of 19 May 2015, page 1) is applicable.

#### **Section 271** **Time of performance**

- (1) Where no time for performance has been specified or where it is not 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 it is to be assumed, in case of doubt, that the obligee may not demand performance, but the obligor may effect it prior to that time.

#### **Section 271a** **Agreements on payment deadlines, verification periods or periods for acceptance**

- (1) An agreement according to which the obligee may demand discharge of a claim for payment only after more than 60 days have lapsed following receipt of the consideration is effective only if it was made expressly and is not grossly inequitable with a view to the concerns of the obligee. Where, following receipt of the consideration, an invoice or an equivalent statement of payment is submitted to the obligor, the time at which said invoice or statement of payment is received will take the place of the time at which the consideration is received as set out in sentence 1. Until evidence of a different point in time is provided, the presumption will be that the point in time at which the invoice or the statement of payment was received was the same as the time at which consideration was received; where the obligee has stated a later time, this will take the place of the point in time at which the consideration was received.
- (2) Where the obligor is a public contracting entity within the meaning of section 99 nos. 1 to 3 of the Act against Restraints of Competition (*Gesetz gegen Wettbewerbsbeschränkungen*), then in derogation from subsection (1)

1. an agreement according to which the obligee may demand discharge of a claim for payment only after more than 30 days have lapsed following receipt of the consideration is effective only if it was made expressly and if, due to the special nature or due to the characteristics of the obligation, it is based on an objectively justified reason;

2. an agreement according to which the obligee may demand discharge of a claim for payment only after more than 60 days have lapsed following receipt of the consideration is ineffective.

Subsection (1) sentences 2 and 3 is to be applied accordingly.

(3) If a claim for payment is to be discharged only after the consideration has been verified or accepted, then an agreement according to which the time allowed for the verification or acceptance of the consideration is more than 30 days following receipt of the consideration is effective only if it was made expressly and is not grossly inequitable with a view to the concerns of the obligee.

(4) Where an agreement pursuant to subsections (1) to (3) is ineffective, the contract remains effective in all other respects.

(5) Subsections (1) to (3) are not to be applied to

1. the agreement of part payments and other instalments;

2. an obligation under which a consumer owes the discharge of the claim for payment.

(6) Subsections (1) to (3) leave other provisions unaffected that give rise to restrictions for agreements on payment deadlines, verification periods or periods for acceptance.

#### **Section 272 Interim interest**

If the obligor pays an interest-free debt prior to its falling due, then they are 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, then unless the obligation leads to a different conclusion, the obligor may refuse the performance they owe until the performance owed to them is rendered (right of retention).

(2) A person who is obliged to surrender an object has the same right, if they are entitled to a claim that is due on account of outlays for the object or on account of damage caused to them by the object, unless they 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 provision of security by sureties is excluded.

#### **Section 274 Effects of the right of retention**

(1) In comparison to a legal action brought by the obligee, the assertion of the right of retention only has the effect that the obligor is to be ordered by the court to render performance in return for receiving the performance owed to them (fulfilment in return for, and concurrently with, performance).

(2) On the basis of such a court order, the obligee may pursue their claim by way of compulsory enforcement, without effecting the performance they owe, 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 an expenditure of time and effort that, taking into account the subject matter of the obligation and the requirement of acting in good faith, is grossly disproportionate to the obligee's interest in performance. In determining what efforts reasonably may be required of the obligor, it also is to be taken into account whether they are responsible for the impediment preventing performance.

(3) In addition, the obligor may refuse performance if they are to render the performance in person and, having weighed the impediment preventing performance by them against the obligee's interest in performance, performance cannot reasonably be required of the obligor.

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

#### **Section 276**

##### **Responsibility of the obligor**

(1) The obligor is responsible for intent and negligence if a higher or lower degree of liability neither is laid down nor is to be inferred from the other subject matter of the obligation, in particular the giving of a guarantee or the assumption of a procurement risk. The provisions of sections 827 and 828 apply accordingly.

(2) Anyone acts negligently who fails to exercise the care required in business dealings.

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

#### **Section 277**

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

A person who owes only the care that they customarily exercise in their 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 their legal representative, and of persons of whose services they avail themselves in order to perform their obligation, to the same extent they are responsible for fault on their 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, then the obligee may demand compensation of the damage caused thereby. This does not apply if the obligor is not responsible for the breach of duty.

(2) The obligee may demand compensation of damages for delay in performance only subject to the additional prerequisite set out in section 286.

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

#### **Section 281**

##### **Damages in lieu of performance for non-performance 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 prerequisites set out in section 280 (1), demand damages in lieu of performance, if the obligee has set a reasonable time limit for the obligor for performance or cure and this has expired without result. If the obligor has performed only in part, then the obligee may demand damages in lieu of complete performance only if they have no interest in the part performance. If the obligor has not

rendered performance as owed, then the obligee may not demand damages in lieu of performance if the breach of duty is trivial.

(2) Setting a period of time for performance may be dispensed with if the obligor seriously and definitively refuses performance or if there are special circumstances which, having weighed the interests of both parties against each other, 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 not an available option, then a warning notice is to be given instead.

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

(5) Where the obligee demands damages in lieu of complete performance, the obligor is entitled to claim the return of their performance in accordance with 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), then the obligee may, subject to the prerequisites set out in section 280 (1) having been met, demand damages in lieu of performance if it cannot reasonably be required of the obligee any longer 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 has no duty of performance, then the obligee may, subject to the prerequisites set out in section 280 (1) having been met, demand damages in lieu of performance. Section 281 (1) sentences 2 and 3 and subsection (5) apply accordingly.

### **Section 284**

#### **Reimbursement of futile expenses**

In place of damages in lieu of performance, the obligee may demand reimbursement of the expenses they have incurred and were entitled to so incur, on an equitable basis, in reliance on receiving performance, unless the purpose of the expenses would not have been achieved even if the obligor had not breached their duty.

### **Section 285**

#### **Surrender of substitute benefit**

(1) If the obligor, as a result of the circumstance by reason of which, under section 275 (1) to (3), the obligor has no duty of performance, obtains a substitute benefit or a claim to a substitute benefit for the object owed, the obligee may demand that what has been obtained as a substitute benefit be surrendered, or that the claim to the substitute benefit be assigned.

(2) If the obligee may demand damages in lieu of performance, then, if they exercise the right defined in subsection (1), the damages are reduced by the value of the substitute benefit or the claim to the substitute benefit they have obtained.

### **Section 286**

#### **Default of the obligor**

(1) If the obligor fails to perform, following a dunning letter from the obligee that is made after performance is due, then the obligor will be in default as a result of the dunning letter.

Bringing an action for performance and serving an order for payment in summary proceedings for a payment order are equivalent to a dunning letter.

(2) There is no need for a dunning letter if

1. a period of time defined in calendar terms has been specified,
2. performance is to be preceded by an event, and a reasonable time limit for performance has been specified in such a way that it is possible to calculate it in calendar terms from the event onwards,

3. the obligor seriously and definitively refuses performance,
4. having weighed the interests of both parties against each other, the immediate commencement of default is justified for special reasons.

(3) The obligor of a claim for payment will be in default at the latest if they do not perform within 30 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 specifically have been noted in the invoice or statement of payment. If the time at which the invoice or payment statement is received by the obligor is uncertain, then an obligor who is not a consumer will be in default at the latest 30 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 they are not responsible.

(5) Section 271a (1) to (5) applies accordingly to an agreement made in derogation from subsections (1) to (3) concerning the time at which the obligor begins to be in default.

### **Section 287**

#### **Responsibility during default**

While the obligor is in default, they are responsible for all negligence. The obligor 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 and other damage caused by default \*)**

(1) Any money debt is to 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 entered into by parties other than a consumer, the rate of interest for claims to payment is nine percentage points above the basic rate of interest.

(3) The obligee may demand higher interest on other legal grounds.

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

(5) Where the obligor is not a consumer and is in default in making payment, the obligee of such claim for payment moreover is entitled to payment of a lump sum in the amount of 40 euros. This applies also where the claim for payment consists of a part payment or of some other type of instalment. The lump sum pursuant to sentence 1 is to be set off from damages owed inasmuch as the damages are caused by the costs of litigation.

(6) An agreement is ineffective that is made in advance and rules out the entitlement to default interest of the obligee who has a claim for payment. The same applies to an agreement restricting such claim or ruling out or restricting the entitlement, of the obligee who has a claim for payment, to the lump sum defined in subsection (5) or to the compensation of the damages they have suffered by reason of the costs of litigation, if said agreement is grossly inequitable with a view to the concerns of the obligee. In case of doubt, an agreement ruling out the lump sum pursuant to subsection (5) or the compensation of the damage by reason of the costs of litigation is to be considered grossly inequitable. Sentences 1 to 3 are not to be applied if the claim is directed against a consumer.

### **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 that cannot be returned for a reason occurring during a period of default, then the obligee may demand interest on the amount to be compensated from that point in 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 is to pay interest on a money debt from the date onwards on which litigation becomes pending, even if the obligor is not in default; if the debt falls due only later, then interest is to be paid from its due date onwards. The provisions of section 288 (1) sentence 2, subsections (2) and (3) and section 289 sentence 1 apply accordingly.

#### **Section 292**

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

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

(2) The same applies to the claim the obligee has to surrender or to payment of remuneration for emoluments and to the claim the obligor has to reimbursement of outlays.

#### **Title 2**

##### **Default by the obligee**

#### **Section 293**

##### **Default in acceptance**

The obligee is in default if they do not accept the performance offered to them.

#### **Section 294**

##### **Actual offer**

The obligee must factually 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 the obligor that they will not accept the performance, or if effecting the performance requires an act by the obligee, in particular if the obligee is to collect the thing owed. Demanding that the obligee undertake the act required is equivalent to an offer of performance.

#### **Section 296**

##### **Dispensability of the offer**

If a period of time defined in calendar terms has been specified for the act that the obligee is to undertake, then making an offer will be necessary only if the obligee undertakes the act in good time. The same applies if the act is to be preceded by an event and a reasonable time limit is specified for the act in such a way that it is possible to calculate it in calendar terms from the event onwards.

#### **Section 297**

##### **Inability of the obligor**

The obligee is not in default if the obligor is incapable of effecting performance at the time of the offer or, in the case of section 296, at the time determined for the action of the obligee.

#### **Section 298**

##### **Concurrent performance**

If the obligor is obliged only to perform in return for an act of performance by the obligee, then the obligee is in default if, although they are willing to accept the performance offered, they do 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, then the obligee is not in default merely because they are temporarily prevented from accepting the performance offered, unless the obligor notifies them of the performance at a reasonable time in advance.

### **Section 300**

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

(1) During the period in which the obligee is in default, the obligor is responsible only for intent and gross negligence.

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

### **Section 301**

#### **Cessation of interest**

During the period in which the obligee is in default, the obligor need not pay interest on an interest-bearing money debt.

### **Section 302**

#### **Emoluments**

If the obligor is to surrender or reimburse the emoluments of an object, then the obligor's obligation is limited, for the period in which the obligee is in default, to the emoluments they take.

### **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, they may abandon possession upon the obligee being in default. The obligee must be warned of the abandonment beforehand, unless issuing such a warning is inadvisable.

### **Section 304**

#### **Compensation for extra expenses**

If the obligee is in default, then the obligor may demand reimbursement of extra expenses they were 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**

### **Section 305**

#### **Incorporation of standard business terms into the contract**

(1) Standard business terms are all contract terms that are pre-worded for more than two contracts which one contractual party (the user) presents to the other party when the contract is concluded. 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 is used for them and what form the contract takes. Contract terms are not standard business terms insofar as they have been negotiated in detail by the contractual parties.

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

1. refers the other contractual party to them explicitly or if, due to the manner in which the contract is concluded, making such explicit reference would be possible only with disproportionate difficulty, if the user posts a clearly visible notice at the place at which the contract is concluded, and

2. gives the other contractual party the opportunity to take notice of their contents in a manner that reasonably can be expected of the other party to accept and that also adequately takes account of any physical handicap of the other contractual party that is discernible to the user,

and if the other contractual party agrees to their applying.

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

### **Section 305a Incorporation in special cases**

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

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 concluded off business premises by the posting of items in post boxes,

b) into contracts on telecommunications, information services and other services that are provided directly 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 concluded.

### **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 party contracting 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 to the detriment of the user.

### **Section 306 Legal consequences of non-incorporation and ineffectiveness**

(1) If standard business terms as a whole or in part have not become part of the contract or are ineffective, then the remainder of the contract will remain 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 for in subsection (2), would constitute an unreasonable hardship for one party.

### **Section 306a Prohibition of circumvention**

The provisions of this Division apply even if they are circumvented by other arrangements.

### **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 party contracting with the user. An unreasonable disadvantage also may arise from the provision not being clear and comprehensible.
- (2) In case of doubt, an unreasonable disadvantage is 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) as well as sections 308 and 309 apply only to provisions in standard business terms on the basis of which arrangements deviating from legal provisions, or arrangements supplementing those legal provisions, are agreed. Other provisions may be ineffective by virtue of subsection (1) sentence 2 in conjunction with subsection (1) sentence 1.

### **Section 308**

#### **Prohibited clauses with the possibility of valuation**

In standard business terms, the following in particular are ineffective:

1. (Period of time for acceptance and performance) a provision by which the user reserves the right to unreasonably long or insufficiently specific periods of time for acceptance or rejection of an offer or for rendering performance; the reservation of the right not to perform until after the end of the period of time for withdrawal provided for in section 355 subsections (1) and (2) is exempt herefrom;
  - 1a. (Payment deadline)  
a provision by which the user reserves the right to an unreasonably long period of time for discharging a claim for payment of the other contracting party; where the user is not a consumer, the presumption will be, in case of doubt, that a period of more than 30 days following receipt of the consideration or, if an invoice or an equivalent statement of payment is submitted to the obligor following receipt of the consideration, a period of more than 30 days following receipt of such invoice or statement of payment is unreasonably long;
  - 1b. (Verification period and period for acceptance)  
a provision by which the user reserves the right to an unreasonably long period of time for verification or acceptance of the consideration before discharging a claim for payment of the other contracting party; where the user is not a consumer, the presumption will be, in case of doubt, that a period of more than 15 days following receipt of the consideration is unreasonably long;
2. (Additional period of time) a provision by which the user, contrary to legal provisions, reserves the right to an unreasonably long or insufficiently specific additional period of time for the performance the user is to render;
3. (Reservation of rescission) the agreement of a right of the user to free themselves from their 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 reasonably can 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 party contracting with the user, made when performing or omitting a specific act, is deemed to have been made or not made by the party contracting with the user unless

- a) the other contracting party is granted a reasonable time limit to make an express declaration, and
- b) the user agrees to especially draw the attention of the other contracting party, at the beginning of the period of time, to the intended consequences of the contracting party's behaviour;

6. (Fictitious receipt) a provision stipulating 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. (Winding up of contracts) a provision by which the user, in order to provide for the event that a contractual party revokes the contract or gives notice of termination of the contract, may demand

- a) unreasonably high remuneration for the use or deployment of a thing or for the exercise of 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 themselves 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 contracting party, without undue delay, of the unavailability, and
- b) reimburse the other contracting party, without undue delay, for consideration.

9. (Exclusion of assignment) a provision by which assignability is excluded

- a) for a claim to money of the other contractual party against the user, or
- b) for some other right that the other contractual party has against the user if
  - aa) the user has no interest meriting protection in the exclusion of assignment or if
  - bb) legitimate concerns of the other contractual party in the assignability of the right outweigh the user's interest meriting protection in the exclusion of assignment;

letter (a) does not apply to claims under payment services framework contracts, and letters (a) and (b) do not apply to claims to benefits within the meaning of the Company Pensions Act (*Betriebsrentengesetz*).

### **Section 309**

#### **Prohibited clauses without the possibility of valuation**

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 stipulating an increase in payment for goods or services that are to be delivered or rendered within four months of the contract having been concluded; 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 party contracting with the user is entitled under section 320 is excluded or restricted, or
  - b) a right of retention to which the party contracting with the user is entitled, insofar as it is based on the same contractual relationship, is excluded or restricted, or in particular is made contingent on the acknowledgement of defects by the user;
3. (Prohibition of set-off) a provision by which the party contracting with the user is deprived of the power to set off a claim that is uncontested or has been finally and bindingly established;
4. (Dunning letter, setting of a period of time) a provision by which the user is exempted from the statutory requirement of dunning the other party to the contract or of setting a period of time for the latter to provide performance 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 reduction in value if
  - a) the lump sum, in the cases covered, exceeds the damage expected under normal circumstances or the customarily occurring reduction in value, or
  - b) the other party to the contract is not expressly permitted to prove that damage or reduction in value either has not occurred or is substantially less than the lump sum;
6. (Penalty for breach of contract) 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, in the event of payment default or in the event that the other party to the contract frees itself from the contract;
7. (Exclusion of liability for injury to life, limb or health and in case of gross fault)
  - a) (Injury to life, limb or health) an exclusion or limitation of liability for damage from injury to life, limb or health due to negligent breach of duty by the user or intentional or negligent breach of duty by a legal representative or the user or by a person deployed to perform an obligation of the user;
  - b) (Gross fault) an 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 by a person deployed 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, in the event of a breach of duty for which the user is responsible and which does

not consist of a defect of the object of the purchase or the work, excludes or restricts the right of the other party to the contract to free itself from the contract; this does not apply to the terms of transport and tariff rules referred to in no. 7 under the prerequisites set out there;

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

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

bb) (Limitation to cure) the claims against the user are limited in their entirety or with 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 revoke the contract;

cc) (Expenses for cure) the duty of the user to bear, or reimburse, the expenses necessary for the purpose of effecting cure pursuant to section 439 subsections (2) and (3) or section 635 (2) 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 when 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) (Easing of limitation) the limitation of claims against the user due to defects in the cases governed by section 438 (1) no. 2 and section 634a (1) no. 2 is eased, or in other cases a limitation period of less than one year reckoned from the beginning of the statutory limitation period is attained;

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

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

b) a tacit extension of the contractual relationship that is binding on the other party to the contract, unless the contractual relationship is extended only for an indefinite period of time and the other contractual party is granted the right to terminate the extended contractual relationship at any time, observing a notice period of no longer than one month, or

c) a notice period incumbent on the other party to the contract of longer than one month prior to the expiry of the duration of the contract as initially provided for;

this does not apply to contracts relating to the supply of things sold as belonging together, nor does it apply to insurance contracts;

10. (Change of other contracting party) a provision according to which, in the case of purchase, loan or service contracts or contracts to produce a work, 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 itself from the contract;

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

- a) a liability or obligation to assume liabilities for the principal on the part of the agent itself, 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

- a) to a more stringent form than the written form for a contract regarding which the law prescribes notarial recording,
- b) to a more stringent form than the text form for contracts other than those set out in letter (a), or
- c) to special receipt requirements;

14. (Waiver of action) a provision by which the other party to the contract is permitted to assert its claims vis-à-vis the user in court only after it has attempted to amicably settle the matter in proceedings serving the out-of-court resolution of disputes.

15. (Part payments and provision of security) a provision by which, in the case of a contract to produce a work, the user

- a) may demand part payments from the other party to the contract for part performance that are significantly higher than the part payments to be made pursuant to section 632a (1) and section 650m (1), or
- b) is not obliged to provide the security pursuant to section 650m (2) or only in a lower amount.

### **Section 310** **Scope of application**

(1) Section 305 subsections (2) and (3), section 308 no. 1 and numbers 2 to 9, and section 309 do not apply to standard business terms that are used in contracts with a trader, a legal person under public law or a special fund under public law. Section 307 (1) and (2) nevertheless applies to the cases governed by sentence 1 insofar as this leads to the ineffectiveness of the contract provisions set out in section 308 no. 1 and numbers 2 to 8, and section 309; reasonable account is to be taken of the practices and customs that apply in business dealings. In the cases governed by sentence 1, section 307 (1) and (2) as well



as section 308 nos. 1a and 1b do not apply to contracts in which the entire Award Rules for Building Works, Part B (*Vergabe- und Vertragsordnung für Bauleistungen Teil B - VOB/B*) in the version applicable at the time of conclusion of the contract are included without deviation as to their content, relating to an examination of the content of individual provisions.

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

(3) In the case of contracts between a trader and a consumer (consumer contracts) the rules of this Division apply subject the following provisos:

1. Standard business terms are deemed to have been presented by the trader, 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 46b of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*) apply to pre-worded terms of contract 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 pre-worded text, had no influence on their contents;

3. in judging an unreasonable disadvantage under section 307 (1) and (2), the other circumstances attending the conclusion of the contract also are to 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 is to be taken of the special aspects that apply under labour law; section 305 (2) and (3) is not to 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 required, 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 its rights, legal interests and other interests, or entrusts these to the other party, 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 contractual parties. 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 conclusion of the contract.

#### **Section 311a**

##### **Impediment preventing performance at conclusion of contract**

- (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 impediment preventing performance already exists when the contract is concluded.
- (2) The obligee may, at its option, demand damages in lieu of performance or reimbursement of its expenses in the scope specified in section 284. This does not apply if the obligor was not aware of the impediment preventing when concluding the contract and is also not responsible for their lack of awareness. Section 281 (1) sentences 2 and 3 and subsection (5) apply accordingly.

#### **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 is to be recorded by a notary. A contract not concluded 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 its future assets or a fraction of its future assets or to charge them with a usufruct is void.
- (3) A contract by which one party agrees to transfer its present assets or a fraction of its present assets or to charge them with a usufruct is to be recorded by a notary.
- (4) A contract relating to the estate of a third party who is still alive 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 alive.
- (5) Subsection (4) does not apply to a contract concluded between future heirs on intestacy relating to the hereditary share on intestacy or the compulsory portion of one of them. Such a contract is to be recorded by a notary.

#### **Section 311c**

##### **Application to accessories**

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

#### **Subtitle 2**

##### **Principles applying to consumer contracts; particular types of sale**

#### **Chapter 1**

##### **Scope of application and principles applying to consumer contracts**

#### **Section 312**

##### **Scope of application**

- (1) The provisions of Chapters 1 and 2 of this Subtitle are to be applied to consumer contracts in which the consumer enters into obligation to pay a price.
- (1a) The provisions of Chapters 1 and 2 of this Subtitle also are to be applied to consumer contracts in which the consumer makes available personal data to the trader or enters into obligation to do so. This does not apply if the trader processes the personal data provided by the consumer exclusively in order to comply with its duty of performance or legal requirements made of it, and does not process them for any other purpose.
- (2) Of the provisions set out in Chapters 1 and 2 of this Subtitle, solely section 312a (1), (3), (4), and (6) is to be applied to the following contracts:
1. contracts that have been recorded by a notary

- a) and that relate to financial services, where such contracts are off-premises contracts,
  - b) and that do not constitute a contract relating to financial services; this applies to contracts, regarding which the law does not require the contract or the declaration as to the conclusion of a contract to be recorded by a notary, solely in those cases in which the notary instructs the parties that the obligations to provide information pursuant to section 312d (1) and the right of withdrawal pursuant to section 312g (1) have ceased to apply;
2. contracts relating to the creation, acquisition or transfer of ownership of plots of land or other rights to same,
  3. construction contracts with consumers pursuant to section 650i (1),
  4. (repealed)
  5. contracts relating to the carriage of passengers,
  6. timeshare contracts, long-term holiday product contracts, brokerage contracts and exchange system contracts pursuant to sections 481 to 481b,
  7. treatment contracts pursuant to section 630a,
  8. contracts relating to the supply of food products, beverages or other household objects of everyday use that are supplied to the residence, place of abode or place of employment of a consumer by a trader in the course of frequent and regular rounds,
  9. contracts that are concluded with the use of automatic vending machines and automated business premises,
  10. contracts for the use of public payphones that are concluded with telecommunications operators through such public payphones,
  11. contracts concluded for the use of one single connection by telephone, Internet or fax established by a consumer,
  12. off-premises contracts, in which the performance is immediately rendered and paid for at the conclusion of the negotiations and the remuneration to be paid by the consumer does not exceed 40 euros, and
  13. contracts relating to the sale of movable things by way of compulsory enforcement or other measures instructed by a court.
- (3) Solely the following of the provisions set out in Chapters 1 and 2 of this Subtitle apply to contracts relating to social services, such as childcare and support of families and persons permanently or temporarily in need, including long-term care:
1. the definitions of off-premises contracts and of distance contracts pursuant to sections 312b and 312c,
  2. section 312a (1) regarding the disclosure obligation in the case of telephone calls,
  3. section 312a (3) regarding the effectiveness of an agreement directed towards obtaining extra payment in addition to the remuneration agreed upon for the principal performance,
  4. section 312a (4) regarding the effectiveness of an agreement for fees for the use of means of payment,

5. section 312a (6),

6. section 312d (1) in conjunction with Article 246a section 1 (2) and (3) of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*) regarding the obligation to inform on the right of withdrawal, and

7. section 312g regarding the right of withdrawal.

(4) Of the provisions made in Chapters 1 and 2 of this Subtitle, solely the stipulations set out in subsection (3) numbers 1 through 7 apply to contracts relating to the rental of accommodation for residential purposes. The stipulations set out in subsection (3) numbers 1, 6, and 7 do not apply, however, to the creation of a lease for accommodation serving residential purposes if the lessee has previously inspected the dwelling.

(5) In the case of contractual relationships relating to banking services and services of a credit, insurance, personal pension, investment or payment nature (financial services), that consist of an initial agreement with transactions following upon it or a series of separate transactions following upon it of the same nature performed close in time, the provisions made in Chapters 1 and 2 of this Subtitle apply only to the first agreement. Section 312a (1), (3), (4) and (6) additionally applies to each transaction. Where the transactions set out in sentence 1 follow one another without such an agreement, the provisions on the duties of a trader 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 3.

(6) Of the provisions made in Chapters 1 and 2 of this Subtitle, solely section 312a (3), (4) and (6) applies to contracts relating to insurance policies as well as to contracts relating to the brokerage of such policies.

(7) Of the provisions made in this Subtitle, solely sections 312a (3) to (6), sections 312i, 312j (2) to (5) and section 312k are to be applied to package travel contracts as defined in sections 651a and 651c; these provisions are to be applied also if the traveller is not a consumer. If the traveller is a consumer, then section 312g (1) also is to be applied to package travel contracts defined in section 651a that are off-premises contracts, unless the oral negotiations on the basis of which the contract was concluded were conducted in response to a previous order placed by the consumer.

### **Section 312a**

#### **General obligations and principles applying to consumer contracts; limits to the agreement of remuneration**

(1) Where the trader or a person acting in the trader's name or on the trader's behalf makes a telephone call to the consumer with a view to concluding a contract with same, the caller is to disclose, at the beginning of the conversation, their identity and, where applicable, the identity of the person on whose behalf the caller is making the call, as well as the commercial purpose of the call.

(2) The trader is obliged to inform the consumer in accordance with the stipulations of Article 246 of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*). The trader may demand that the consumer cover freight, delivery, or postal charges and other costs only inasmuch as the trader has informed the consumer of these costs in accordance with the requirements established in Article 246 (1) no. 3 of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*). Sentences 1 and 2 apply neither to off-premises contracts nor to distance contracts nor to contracts relating to financial services.

(3) A trader may conclude an agreement with a consumer that is directed towards obtaining extra payment from the consumer in addition to the remuneration agreed upon for the principal performance only if this is done expressly. Where the trader and the consumer conclude a contract in electronic commerce, such an agreement will form part of the contract only if the trader does not bring about the agreement by means of a default option.

- (4) An agreement obligating a consumer to pay a fee for the use of a certain means of payment by way of meeting their contractual obligations is ineffective if
1. no customary and reasonable payment method is available to the consumer that is free of charge, or
  2. the fee agreed exceeds the cost borne by the trader for the use of such means of payment.
- (5) An agreement obligating a consumer to pay a fee for those cases in which the consumer contacts the trader via a telephone line that the trader operates for the purpose of answering questions or providing explanations regarding a contract concluded by the parties is ineffective if the fee agreed upon exceeds the fee charged for the use merely of the telecommunications service as such. Where an agreement is ineffective pursuant to sentence 1, the consumer is not bound to pay a fee for the call to the telecommunications services provider, either. The telecommunications services provider has the right to demand the fee for the use merely of the telecommunications services from the trader who has concluded the ineffective agreement with the consumer.
- (6) Where an agreement pursuant to subsections (3) to (5) has not come to form part of the contract or where it is ineffective, the contract remains effective in all other respects.

## **Chapter 2**

### **Off-premises contracts and distance contracts**

#### **Section 312b**

##### **Off-premises contracts**

- (1) Off-premises contracts are contracts
1. that are concluded with the simultaneous physical presence of the consumer and of the trader, in a place that is not the business premises of the trader,
  2. for which an offer was made by the consumer in the same circumstances as referred to in no. 1,
  3. that are concluded on the business premises of the trader or through any means of distance communication, but where, immediately prior to such conclusion, the consumer had been personally and individually addressed, in a place that is not the business premises of the trader, in the simultaneous physical presence of the consumer and the trader, or
  4. that are concluded during an excursion organised by the trader or with the trader's assistance, with the aim of promoting goods or services to the consumer and entering into the corresponding contracts with them.

Any persons acting in the trader's name or on the trader's behalf are in a position equivalent to that of the trader.

(2) Business premises within the meaning of subsection (1) are any immovable retail premises in which the trader carries out their activity on a permanent basis and any movable retail premises in which the trader carries out their activity on a usual basis. Any retail premises in which the person acting in the trader's name or on the trader's behalf carries out their activity on a permanent basis or customarily are equivalent to the premises of the trader.

#### **Section 312c**

##### **Distance contracts**

(1) Distance contracts are contracts for which the trader, or a person acting in the trader's name or on the trader's behalf, and the consumer exclusively avail themselves of means of distance communication in negotiating and concluding the contract, except where the

conclusion of the contract does not take place in the context of a sales or service-provision scheme organised for distance sales.

(2) Means of distance communication within the meaning of this Code are all means of communication that may be used to initiate or to conclude a contract, without requiring the simultaneous physical presence of the contractual parties, such as letters, catalogues, telephone calls, faxes, emails, text messages sent via the mobile telephone service (SMS) as well as messages broadcast and sent via teleservices.

#### **Section 312d**

##### **Obligations to provide information**

(1) In the case of off-premises contracts and of distance contracts, the trader is obliged to inform the consumer according to the stipulations of Article 246a of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*). Unless the contractual parties expressly have agreed otherwise, the information the trader provides by way of meeting this obligation becomes part of the contract's content.

(2) In the case of off-premises contracts and of distance contracts for financial services, the trader is obliged, in derogation from subsection (1), to inform the consumer in accordance with the stipulations of Article 246b of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*).

#### **Section 312e**

##### **Violation of information obligations as to costs**

The trader may demand that the consumer cover any freight, delivery or postal charges and other costs insofar as the trader has informed the consumer of these costs in accordance with the requirements set out in section 312d (1) in conjunction with Article 246a section 1 (1) sentence 1 no. 4 of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*).

#### **Section 312f**

##### **Copies and confirmations**

(1) In the case of off-premises contracts, the trader is obliged to forthwith provide the consumer with the following documents on paper:

1. a copy of a contract document signed by the parties concluding the contract such that their identity is recognisable, or
2. a confirmation of the contract reflecting the contract's content.

If the consumer agrees, some other durable medium may be used for the copy or the confirmation of the contract. The confirmation pursuant to sentence 1 must include the information specified in Article 246a of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*) unless the trader has provided the consumer with such information on a durable medium, by way of meeting the trader's obligations to provide information pursuant to section 312d (1), already prior to concluding the contract.

(2) In the case of distance contracts, the trader is obliged to provide the consumer with a confirmation of the contract, on a durable medium, in which the content of the contract is set out, and to do so within a reasonable time limit after having concluded the contract, at the latest, however, at the time of the delivery of the goods or before the performance of the service. The confirmation pursuant to sentence 1 must include the information specified in Article 246a of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*) unless the trader has provided the consumer with such information on a durable medium prior to concluding the contract by way of meeting the trader's obligations to provide information pursuant to section 312d (1).

(3) In the case of contracts for the supply of digital content (section 327 (2) sentence 1) that is not made available in a tangible medium, the copy or the confirmation of the contract

pursuant to subsections (1) and (2) likewise is to record, where appropriate, that prior to the performance of the contract, the consumer

1. has expressly consented to the trader commencing with the performance of the contract prior to expiry of the withdrawal period, and
2. has acknowledged that, by granting consent, the consumer will lose the right to withdraw from the contract upon the performance of the contract having commenced.

(4) This provision does not apply to contracts relating to financial services.

### **Section 312g** **Right of withdrawal**

(1) In the case of off-premises contracts and of distance contracts, the consumer has a right of withdrawal in accordance with section 355.

(2) Unless otherwise agreed by the parties, the right of withdrawal does not exist for the following contracts:

1. contracts for the supply of goods that are not pre-fabricated and the production of which is governed by an individual choice of, or decision by, the consumer, or that are clearly tailored to personal needs of the consumer,
2. contracts for the supply of goods that are highly perishable, or that may quickly pass their expiration date,
3. contracts for the supply of sealed goods that are not suitable for return due to health protection or hygiene reasons, if such goods were unsealed after delivery,
4. contracts for the supply of goods that, by their nature, are inseparably mixed, after delivery, with other items,
5. contracts for the supply of alcoholic beverages, the price of which has been agreed upon at the time of the conclusion of the sales contract, the delivery of which can only take place at the earliest after 30 days following the conclusion of the sales contract, and the current value of which is dependent on market fluctuations outside of the trader's control,
6. contracts for the supply of sealed audio or sealed video recordings or sealed computer software, if they were unsealed after delivery,
7. contracts for the delivery of newspapers, periodicals or magazines with the exception of subscription contracts for the supply of such publications,
8. contracts for the supply of goods or the provision of services including the provision of financial services, the price of which is dependent on fluctuations on the financial market that are outside of the trader's control and that may occur within the withdrawal period, including in particular services in connection with stock, with shares in open-ended investment assets within the meaning of section 1 (4) of the Investment Code (*Kapitalanlagegesetzbuch*), and with other tradeable securities, foreign currencies, derivatives or money market instruments,
9. contracts for the provision of services in the fields of accommodation other than for residential purposes, transport of goods, car rental services, deliveries of food and beverages, or further services related to leisure activities, if the contract provides for a specific date or period of performance,
10. contracts that are concluded in the context of a method of sale where goods or services are offered by the trader to consumers, who attend or are given the possibility to attend the auction in person, through a transparent, competitive bidding procedure run by

an auctioneer and where the successful bidder is obliged to purchase the goods or services (publicly accessible auction),

11. contracts where the consumer has specifically requested a visit from the trader for the purpose of carrying out urgent repairs or maintenance; this does not apply as regards additional services provided on the occasion of such visit that the consumer has not specifically requested, or as regards any goods delivered on the occasion of such visit that are not absolutely required as replacement parts in carrying out the maintenance or in making the repairs,

12. contracts for the provision of betting and lottery services, unless the consumer has made their declaration as to the conclusion of a contract by telephone or the contract is an off-premises contract, and

13. contracts that are recorded by a notary; this will apply to distance contracts relating to financial services only in those cases in which the notary confirms that the rights of the consumer set out in section 312d (2) are safeguarded.

(3) In addition, the right of withdrawal does not exist for contracts regarding which the consumer, under sections 495 and 506 to 513, already is entitled to a right of withdrawal under section 355, nor does it exist in the case of off-premises contracts regarding which the consumer is already entitled to a right of withdrawal pursuant to section 305 subsections (1) to (6) of the Investment Code (*Kapitalanlagegesetzbuch*).

#### **Section 312h**

##### **Termination and authorisation to terminate**

If a continuing obligation is established between a trader and a consumer pursuant to this Subtitle that is intended to substitute a continuing obligation existing between the consumer and another trader, and if on the occasion of the establishment of the continuing obligation the consumer

1. declares the termination of the existing continuing obligation and commissions the trader or a third party commissioned by the latter to transmit the termination to the previous party contracting with the consumer, or

2. authorises the trader or a third party commissioned by the latter to declare the termination towards the party thus far contracting with the consumer,

then the consumer's termination or the authorisation will require text form.

#### **Chapter 3**

##### **Contracts concluded in electronic commerce**

#### **Section 312i**

##### **General obligations in electronic commerce**

(1) If a trader uses teleservices in order to conclude a contract for the supply of goods or the rendering of services (e-commerce contract), then the trader is to

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 placing their order,

2. communicate to the customer clearly and comprehensibly the information specified in Article 246c of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*) in good time prior to the customer placing their order,

3. confirm receipt of the order without undue delay by electronic means for the customer, and



4. provide the customer with the opportunity to retrieve the contract terms including the standard business terms when the contract is concluded, and to save them in a form that allows for their reproduction.

The order and the acknowledgement of receipt within 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 no. 1 to 3 is not to be applied if the contract is concluded exclusively by way of personal communication. Subsection (1) sentence 1 no. 1 to 3 and sentence 2 is not to be applied if otherwise agreed in a contract between contractual parties who are not consumers.

(3) More extensive information obligations resulting from other stipulations of the law remain unaffected.

### **Section 312j**

#### **Special obligations vis-à-vis consumers in electronic commerce**

(1) On the websites used for electronic commerce with consumers, the trader is to indicate clearly and unequivocally at the latest at the beginning of the ordering process, in addition to the information provided pursuant to section 312i (1), whether any delivery restrictions apply and which means of payment are accepted.

(2) In the case of a consumer contract concluded in electronic commerce that has as its subject-matter a for-a-fee service provided by the trader, the trader must provide to the consumer the information required by Article 246a section 1 (1) sentence 1 no. 1, 4, 5, 11, and 12 of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*), and must do so in a clear and comprehensible manner, displaying it prominently, immediately before the consumer places the order.

(3) In case of a contract in accordance with subsection (2), the trader is to arrange the ordering situation such that the consumer explicitly confirms by their order that they enter into obligation to effect a payment. If the order is placed using a button, the obligation of the trader under sentence 1 is deemed to have been met only if this button is marked in an easy-to-read manner with nothing but the words “Order and Pay” (*zahlungspflichtig bestellen*), or with equally unambiguous wording.

(4) A contract in accordance with subsection (2) comes into existence only if the trader meets the obligation under subsection (3).

(5) Subsections (2) to (4) are not to be applied if the contract is concluded exclusively by personal communication. The obligations set out in subsections (1) and (2) apply neither to websites concerning financial services nor to contracts relating to financial services.

### **Chapter 4**

#### **Deviating agreements and burden of proof**

##### **Section 312k**

#### **Deviating agreements and burden of proof**

(1) No agreements deviating from the provisions of this Subtitle may be made, unless otherwise provided, that are to the disadvantage of the consumer or the customer. Unless otherwise provided, the provisions of this Subtitle apply even if they are circumvented by other arrangements.

(2) The burden of providing proof to the consumer that the information obligations provided for under the present Subtitle have been complied with is incumbent on the trader.

##### **Subtitle 3**

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

##### **Section 313**

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

(1) If circumstances that became the basis of a contract have undergone serious change since the contract was concluded and if the parties would not have concluded the contract or

would have concluded it with different contents had they foreseen this change, then 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 required 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 if one party cannot reasonably be required to accept it, then the disadvantaged party may rescind the contract. In the case of continuing obligations, the right to terminate takes the place of the right of rescission.

#### **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. A compelling reason is given if the terminating party, having taken into account all the circumstances of the specific case and having weighed the interests of both parties against each other, cannot reasonably be required to continue the contractual relationship until the agreed end or until the expiry of a notice period.

(2) Where the compelling reason consists of the breach of a duty under the contract, the contract may be terminated only after the expiry without result of a period of time specified for relief or after a warning notice has failed to obtain a result. Section 323 (2) no. 1 and 2 applies accordingly as regards the dispensability of specifying a period of time for such relief and as regards the dispensability of a warning notice. Specifying a period of time for relief and issuing a warning notice also may be dispensed with if special circumstances are given that, having weighed the interests of both parties against each other, justify immediate termination.

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

(4) The termination does not rule out the entitlement to demand compensation of damages.

#### **Subtitle 4**

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

#### **Section 315**

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

(1) If performance is to be specified by one of the contracting parties, 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, then 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 will apply.

### **Section 318**

#### **Avoidance of specification**

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

(2) Only the contracting parties 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 30 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, then the specification made will not be binding on the contracting parties 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 contract**

#### **Section 320**

##### **Defence of unperformed contract**

(1) A person who is a party to a reciprocal contract may refuse their part of the performance until the other party renders consideration, unless the person 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 that person 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 in 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 their performance if, after the contract is concluded, it becomes apparent that that person's 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 provided for it.

(2) The person required to perform in advance may specify a reasonable time limit within which the other party, at their choice, is to render consideration or provide security in return for, and concurrently with, performance. If the period of time lapses without result, the person required to perform in advance may revoke the contract. Section 323 applies accordingly.

#### **Section 322**

##### **Order to perform in return for, and concurrently with, performance**

(1) If a party brings an action for performance due to them on the basis of a reciprocal contract, the assertion by the other party of their right to refuse performance until consideration is rendered merely has the effect that the latter party is to be ordered to meet their obligations in return for, and concurrently with, performance.

(2) If the party bringing the action is to perform in advance, then, if the other party is in default of acceptance, the party's action may seek performance following receiving consideration.

(3) The provision in section 274 (2) applies to compulsory enforcement.

### **Section 323**

#### **Rescission for non-performance or for performance not as contractually agreed**

(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 as contractually agreed, then the obligee may rescind the contract, provided the obligee has specified, without result, an additional period of time for performance or cure.

(2) Specifying a period of time may 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 period of time specified in the contract, in spite of the fact that, according to a notice given by the obligee to the obligor prior to conclusion of the contract or based on other circumstances attending at the time of its conclusion, the performance as per the date specified or within the period of time specified is of essential importance to the obligee, or
3. in the case of work not having been carried out as contractually agreed, special circumstances exist that, having weighed the interests of both parties against each other, justify immediate rescission.

(3) If the nature of the breach of duty is such that setting a period of time is not an available option, a warning notice takes the place of setting the period of time.

(4) The obligee may revoke the contract before performance is due if it is obvious that the prerequisites for rescission will be met.

(5) If the obligor has performed in part, the obligee may revoke the whole contract only if the obligee has no interest in part performance. If the obligor has not performed as contractually agreed, the obligee may not revoke the contract if the breach of duty is trivial.

(6) Rescission is excluded if the obligee is solely or very predominantly responsible for the circumstance that would entitle them to rescind 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.

### **Section 324**

#### **Rescission 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), then the obligee may rescind the contract if the obligee no longer reasonably can be expected to uphold the contract.

### **Section 325**

#### **Damages and revocation**

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

### **Section 326**

#### **Release from consideration and rescission 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 accordingly. Sentence 1 does not apply if the obligor, in the case of failure to perform as contractually agreed, 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 perform, 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, the obligor must allow to be credited against them what they save due to their being released from performance or what they acquire or wilfully fail to acquire from other use of their labour.

(3) If the obligee demands, under section 285, the surrender of the substitute benefit obtained for the object owed or assignment of the claim to reimbursement, the obligee remains obliged to render consideration. However, the consideration 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, then the obligee may rescind the contract; section 323 applies accordingly to the rescission, subject to the proviso that setting a period of time may be dispensed with.

## **Title 2a**

### **Contracts on digital products**

#### **Subtitle 1**

### **Consumer contracts on digital products**

#### **Section 327**

##### **Scope of application**

(1) The provisions of this Subtitle are to be applied to consumer contracts the subject matter of which is the supply by the trader of digital content or digital services (digital products) against payment of a price. A price as defined in this Subtitle also is a digital presentation of a value.

(2) Digital content is data that are created and supplied in digital form. Digital services are services that allow

1. the consumer to create, process, store or access data in digital form, or
2. the sharing of or any other interaction with data in digital form uploaded or created by the consumer or other users of that service.

(3) The provisions of this Subtitle are to be applied also to consumer contracts on the supply of digital products under which the consumer provides or undertakes to provide personal data to the trader, except where the prerequisites stipulated in section 312 (1a) sentence 2 have been met.

(4) The provisions of this Subtitle are to be applied also to consumer contracts that have as their subject matter digital products that are developed in accordance with the consumer's specifications.

(5) To the exception of sections 327b and 327c, the provisions of this Subtitle are to be applied also to consumer contracts that have as their subject matter the supply of tangible media serving exclusively as the carriers of digital content.

(6) The provisions of this Subtitle are not to be applied to:

1. contracts on services other than digital services, regardless of whether digital forms or means are used by the trader to produce the output of the service or to deliver or transmit it to the consumer,
2. contracts on electronic communications services as defined in section 3 no. 61 of the Telecommunications Act (*Telekommunikationsgesetz* – TKG) of 23 June 2021 (BGBl. (Federal Law Gazette I, p. 1858) with the exception of number-independent interpersonal communications services as defined in section 3 no. 40 of the Telecommunications Act,

3. treatment contracts pursuant to section 630a,
4. contracts on gambling services that involve wagering a stake with pecuniary value and that are provided by electronic means or any other technologies for facilitating communication and at the individual request of a recipient of such services,
5. contracts relating to financial services,
6. contracts on the supply of software by the trader under a free and open-source licence, where the consumer does not pay a price and the personal data provided by the consumer exclusively are processed by the trader for the purpose of improving the security, compatibility or interoperability of the software offered by the trader,
7. contracts on the supply of digital content where the digital content is made available to the general public other than by signal transmission as part of a performance or event,
8. contracts on the supply of information as defined in the Act on the Further Use of Information Held by Public Bodies (*Informationsweiterverwendungsgesetz – IWG*) of 13 December 2006 (BGBl. (Federal Law Gazette I, p. 2913), as amended by Article 1 of the Act of 8 July 2015 (BGBl. (Federal Law Gazette I, p. 1162).

#### **Section 327a**

##### **Application to bundle contracts and contracts relating to things with digital elements**

- (1) The provisions of this Subtitle are to be applied also to consumer contracts that, in a contract between the same contractual parties, have as their subject matter the supply of other things or the supply of other services besides the supply of digital products (bundle contract). Unless otherwise provided hereinbelow, the provisions of this Subtitle are to be applied only to those parts of the bundle contract, however, that relate to the digital products.
- (2) The provisions of this Subtitle are to be applied also to consumer contracts concerning things that incorporate or are inter-connected with digital products. Unless otherwise provided hereinbelow, the provisions of this Subtitle are to be applied only to those parts of the contract, however, that relate to the digital products.
- (3) Subsection (2) does not apply to sales contracts concerning goods that incorporate or are inter-connected with digital products in such a way that the absence of those digital products would prevent the goods from performing their functions (goods with digital elements). When a good with digital elements is purchased, it is to be assumed in case of doubt that the seller's obligation includes the supply of the digital content or digital services.

#### **Section 327b**

##### **Supply of digital products**

- (1) Where the trader is obliged under a consumer contract as defined in section 327 or section 327a to supply a digital product to the consumer, the following provisions apply to the specification of the time of performance as well as to the modalities of the supply by the trader.
- (2) If the contractual parties have not agreed a time for the supply of the digital product in accordance with subsection (1), then the consumer may demand that supply be effected without undue delay following the conclusion of contract and the trader may effect it immediately.
- (3) Digital content is supplied as soon as the digital content or the means suitable for accessing or downloading said digital content has/have been supplied or made accessible to the consumer directly or via a facility chosen by the consumer for that purpose.
- (4) A digital service is supplied as soon as the digital service has been made accessible to the consumer directly or via a facility chosen by the consumer for that purpose.
- (5) If the trader is obliged under the contract to perform a series of individual acts of supply, then subsections (2) to (4) apply to each individual act of supply forming part of the series.

(6) In derogation from section 363, the burden of proof for the supply having been effected in accordance with subsections (1) to (4) is on the trader.

### **Section 327c**

#### **Rights in the case of failure to effect supply**

(1) If the trader's obligation to supply the digital product has fallen due and the trader fails to comply with it without undue delay upon the consumer's demand, then the consumer may terminate the contract. Once a demand as per sentence 1 has been made, it is possible to arrange a different time for the supply only by express agreement.

(2) Where the prerequisites for terminating the contract in accordance with subsection (1) sentence 1 have been met, the consumer may demand compensation of damages in accordance with sections 280 and 281 (1) sentence 1 or reimbursement of futile expense in accordance with section 284, provided that the prerequisites stipulated in said provisions have been met. Section 281 (1) sentence 1 is to be applied subject to the proviso that the specification of a reasonable period is replaced by the demand as per subsection (1) sentence 1. Claims of the consumer to compensation of damages as defined in sections 283 and 311a (2) remain unaffected.

(3) The demand as per subsection (1) sentence 1 and (2) sentence 2 may be dispensed with if

1. the trader refuses to effect supply,
2. it is clearly recognisable from the circumstances that the trader will not supply the digital product, or
3. the trader fails to effect supply by a specified date or within a specified period of time despite its having been agreed, or its being evident to the trader from the clearly recognisable circumstances attending the conclusion of the contract that a specific time or period of time for the supply is essential for the consumer.

In the cases governed by sentence 1, the dunning letter defined in section 286 may be dispensed with in all cases.

(4) Sections 327o and 327p are to be applied accordingly the termination of the contract on the basis of subsection (1) sentence 1 and the legal consequences of such termination. The same applies in the event of the consumer demanding, in the cases governed by subsection (2), compensation of damages instead of the entire performance. Section 325 applies accordingly.

(5) Section 218 is to be applied accordingly to the termination of the contract on the basis of subsection (1) sentence 1.

(6) Should the consumer be in a position to terminate the contract on the basis of subsection (1) sentence 1, they may rescind the contract with regard to the entirety of the elements of the bundle contract if they have no interest in the other part of the bundle contract without the digital product that has not been supplied. Sentence 1 is not to be applied to bundle contracts in which the other element is a telecommunications service as defined in section 3 no. 61 of the Telecommunications Act.

(7) Should the consumer be in a position to terminate the contract on the basis of subsection (1) sentence 1, they may rescind the contract with regard to all elements of a contract in accordance with section 327a (2) if, because of the digital product not having been supplied, the thing is not suitable for customary use.

### **Section 327d**

#### **Conformity of digital products**

Where the trader is obliged under a consumer contract as defined in section 327 or section 327a to supply a digital product, the trader is to supply the digital product free of product deficiencies and defects of title within the meaning of sections 327e to 327g.

**Section 327e**  
**Product deficiency**

(1) The digital product is free of product deficiencies if it conforms, at the relevant time under the provisions of this Subtitle, to the subjective requirements, the objective requirements and the requirements regarding integration. Unless otherwise provided hereinbelow, the relevant time is the point in time at which supply is effected in accordance with section 327b. If the trader is obliged under the contract to continuously effect supply over a period of time (continuous supply), then the relevant period is the entire period of supply agreed (supply period).

(2) The digital product conforms to subjective requirements if

1. the digital product
  - a) is of the nature agreed in the contract, including the requirements as to its quantity, its functionality, its compatibility and its interoperability,
  - b) is suitable for the use on which the contract is premised,
2. it is supplied with the accessories, instructions and customer assistance as agreed in the contract and
3. the updates agreed in the contract are supplied during the relevant period stipulated by the contract.

Functionality is the ability of a digital product to perform its functions in keeping with its purpose. Compatibility is the ability of a digital product to function with hardware or software with which, as a rule, digital products of the same type are used without having to be converted. Interoperability is the ability of a digital product to function with hardware or software different from that with which, as a rule, digital products of the same type are used.

(3) The digital product conforms to objective requirements if

1. it is suitable for customary use,
2. it is of a nature, including in relation to quantity, functionality, compatibility, accessibility, continuity and security, that is usual for digital products of the same type and that the consumer may reasonably expect, given the nature of the digital product,
3. it corresponds to the nature of a trial version or preview made available to the consumer by the trader before the conclusion of the contract,
4. it is supplied along with the accessories and instructions that the consumer may expect to receive,
5. updates are supplied to the consumer in accordance with section 327f and the consumer is informed of such updates and,
6. unless the parties have agreed otherwise, if it is supplied in the most recent version available at the time of the conclusion of the contract.

The usual nature as defined in sentence 1 no. 2 also includes requirements that the consumer may reasonably expect to be met based on public statements made by the trader or by other persons in previous links of the distribution chain, either themselves or on their behalf, particularly in advertisement or on labelling. This does not apply if the trader was not, and could not reasonably have been, aware of the public statement in question; if, by the time of conclusion of the contract, the public statement had been corrected in the same way as, or in a way comparable to how, it had been made; or if the decision to acquire the digital product could not have been influenced by the public statement.

(4) Inasmuch as an integration is to be performed, the digital product conforms to integration requirements if



1. the integration has been performed correctly or
2. if, despite the integration having been performed incorrectly, this is based neither on an incorrect integration by the trader nor on a deficiency in the instructions supplied by the trader.

Integration is the linking of a digital product with the components of the consumer's digital environment or its incorporation into same in order to enable the use of the digital product in keeping with the requirements stipulated by the provisions of this Subtitle. Digital environment is hardware, software and network connections of any kind used by the consumer to access or make use of a digital product.

(5) It is equivalent to a product deficiency if the trader supplies a different digital product than the digital product owed under the contract.

### **Section 327f**

#### **Updates**

(1) The trader is to ensure that, over the relevant period of time, the consumer is informed of and supplied with updates that are necessary to keep the digital product in conformity. The necessary updates also include security updates. The relevant period of time as per sentence 1 is,

1. where the contract provides for the continuous supply of a digital product, the supply period,
2. in all other cases, the period that the consumer may reasonably expect, given the type and purpose of the digital product and taking into account the circumstances and nature of the contract.

(2) Where the consumer fails to install, within a reasonable time limit, an update supplied by the trader in accordance with subsection (1), the trader will not be liable for any product deficiency resulting solely from the lack of the relevant update, provided

1. the trader informed the consumer about the availability of the update and the consequences of the failure of the consumer to install it, and
2. the failure of the consumer to install the update or the incorrect installation by the consumer of the update was not due to shortcomings in the installation instructions provided by the trader.

### **Section 327g**

#### **Defect of title**

The digital product is free of defects of title if the consumer is able to use it in accordance with the subjective or objective requirements defined in section 327e (2) and (3) without violating the rights of third parties.

### **Section 327h**

#### **Deviating agreements on product features**

It is possible to deviate from the objective requirements set out in section 327e (3) sentence 1 nos. 1 to 5 and sentence 2, section 327f (1) and section 327g only if it was specially made known to the consumer prior to their making their declaration as to the conclusion of a contract that a certain feature of the digital product deviates from those objective requirements and this deviation was expressly and separately agreed in the contract.

### **Section 327i**

#### **Rights of the consumer in the case of deficiencies**

If the digital product is deficient, then the consumer may, provided the prerequisites set out in the following provisions have been met,

1. demand cure as defined in section 327l,

2. terminate the contract on the basis of section 327m (1), (2), (4) and (5) or abate the price under the terms of section 327n, and
3. demand compensation of damages on the basis of section 280 (1) or section 327m (3) or reimbursement of futile expenses as defined in section 284.

#### **Section 327j Limitation**

- (1) The claims designated in section 327i no. 1 and 3 will become statute-barred after two years. The limitation period commences upon supply.
- (2) In the case of continuous supply, the claims will not become statute-barred prior to the expiry of 12 months following the end of the supply period.
- (3) Claims for a violation of the obligation to provide updates will not become statute-barred prior to the expiry of 12 months following the end of the period of time relevant for the obligation to provide updates.
- (4) Where a deficiency has become apparent in the course of the limitation period, the claims will not become statute-barred prior to the expiry of four months following that point in time at which the deficiency first became apparent.
- (5) Section 218 applies accordingly to the rights designated in section 327i no. 2.

#### **Section 327k Shifting the burden of proof**

- (1) If, within one year since its having been supplied, the lack of conformity of the digital product to the requirements set out in section 327e or section 327g becomes apparent, then the presumption will be that the digital product was deficient already at the time of supply.
- (2) If, in the course of its supply, the lack of conformity of a digital product supplied on a continuous basis to the requirements set out in section 327e or section 327g becomes apparent, then the presumption will be that the digital product was deficient over the course of its supply thus far.
- (3) Subject to subsection (4), the assumptions as per subsections (1) and (2) do not apply if
  1. the consumer's digital environment was incompatible with the technical requirements of the digital product at the relevant time or
  2. the trader is unable to determine whether the prerequisites set out in no. 1 had been met because the consumer fails to perform an act of cooperation necessary for this purpose that would have been possible for it to perform and the trader intended to deploy technical means to make said determination that would have been least invasive for the consumer.
- (4) Subsection (3) is to be applied only if the trader has informed the consumer, prior to the conclusion of contract, in clear and comprehensible terms, of
  1. the technical requirements as to the digital environment of the digital product in the case of subsection (3) no. 1 or
  2. the obligations of the consumer as set out in subsection (3) no. 2.

#### **Section 327l Cure**

- (1) If the consumer demands cure from the trader, the latter is to bring the digital product into conformity while bearing the expenses required for the cure. The trader is to effect the cure within a reasonable time limit from that point in time at which the consumer informed it of the deficiency, without causing any significant inconvenience to the consumer.
- (2) The claim defined in subsection (1) is excluded if cure is impossible or possible for the trader only at disproportionate cost. In this context, regard is to be had in particular to the value of the digital product in a deficiency-free state and the significance of the deficiency. Section 275 (2) and (3) does not apply.

### **Section 327m**

#### **Termination of the contract and compensation of damages**

(1) If the digital product is deficient, the consumer may terminate the contract on the basis of section 327o if

1. the claim to cure is excluded by virtue of section 327l (2)
2. the consumer's claim to cure was not complied with as stipulated in section 327l (1),
3. a deficiency becomes apparent in spite of the trader's attempts to effect cure,
4. the deficiency is so serious that the immediate termination of the contract is justified,
5. the trader has refused to effect the proper cure as defined in section 327l (1) sentence 2, or
6. it is obvious from the circumstances that the trader will not effect the proper cure as defined in section 327l (1) sentence 2.

(2) A termination of the contract on the basis of subsection (1) is excluded if the deficiency is trivial. This does not apply to consumer contracts as defined in section 327 (3).

(3) In the cases governed by subsection (1) nos. 1 to 6, the consumer may demand compensation of damages instead of performance, provided the prerequisites stipulated in section 280 (1) have been met. Section 281 subsection (1) sentence 3 and subsection (4) are to be applied accordingly. Where the consumer demands compensation of damages instead of the full performance, the trader is entitled to claim the return of its performance under the terms of sections 327o and 327p. Section 325 applies accordingly.

(4) Should the consumer be in a position to terminate the contract on the basis of subsection (1), they may rescind the contract with regard to the entirety of the elements of the bundle contract if they have no interest in the other part of the bundle contract without the deficient digital product. Sentence 1 is not to be applied to bundle contracts in which the other element is a telecommunications service as defined in section 3 no. 61 of the Telecommunications Act.

(5) Should the consumer be in a position to terminate the contract on the basis of subsection (1), they may rescind the contract with regard to all elements of a contract in accordance with section 327a (2) if, because of the deficiency of the digital product, the thing is not suitable for customary use.

### **Section 327n**

#### **Abatement**

(1) Instead of terminating the contract on the basis of section 327m (1), the consumer may, by declaration to the trader, abate the price. The ground for exclusion defined in section 327m (2) sentence 1 does not apply. Section 327o (1) is to be applied accordingly.

(2) In abating the price, it is to be reduced in the ratio of the value that the deficiency-free digital product would have had to its actual value at the time it was supplied. In the case of contracts on the continuous supply of a digital product, the price is to be reduced, under corresponding application of sentence 1, only pro-rata for the duration of the deficiency.

(3) If required, the abatement is to be identified by way of an estimate.

(4) Where the consumer has paid more than the abated price, the trader is to reimburse the consumer for the amount overpaid. The amount overpaid is to be reimbursed without undue delay, but in any case within 14 days. The period of time commences upon the declaration as to the abatement being received by the trader. The trader must use the same means of payment for the reimbursement that the consumer used in making the payment, unless expressly agreed otherwise and provided the use of some other means of payment does not

impose any costs on the consumer. The trader may not seek compensation from the consumer for the costs that it incurs for reimbursing the amount overpaid.

#### **Section 327o**

##### **Declaration of termination of contract and its legal consequences**

- (1) The termination of the contract is effected by a declaration being made to the trader in which the consumer's decision to terminate is expressed. Section 351 is to be applied accordingly.
- (2) In the case of the contract being terminated, the trader is to reimburse the consumer for the payments that the consumer has made in performance of the contract. The trader's claim to payment of the agreed price ceases to exist in relation to performance that no longer is to be rendered due the contract's termination.
- (3) In derogation from subsection (2) sentence 2, the trader's claim ceases to exist also for performance already rendered under contracts on the continuous supply of a digital product, but only for that phase of the supply period during which the digital product was deficient. The price paid for the period of time regarding which the claim has ceased to exist as per sentence 1 is to be reimbursed to the consumer.
- (4) Section 327n (4) sentences 2 to 5 is to be applied accordingly to the reimbursements stipulated by subsections (2) and (3).
- (5) The consumer is obliged to return to the trader without undue delay a tangible medium the latter has supplied if the trader so demands, such demand to be made no later than 14 days after termination of the contract. The trader is to bear the costs of the return shipment. Section 348 is to be applied accordingly.

#### **Section 327p**

##### **Continued use following termination of the contract**

- (1) Upon the contract having been terminated, the consumer may not continue to use the digital product, nor may the consumer make it available to third parties. The trader is entitled to prevent the consumer from continuing the use. Subsection (3) remains unaffected hereby.
- (2) Upon the contract having been terminated, the trader may not continue to use the content that does not consist of personal data and that the consumer has supplied or created in using the digital product supplied by the trader. This does not apply if the content
  1. serves no use outside of the context of the digital product supplied by the trader,
  2. is connected exclusively to the consumer's use of the digital product supplied by the trader,
  3. was aggregated by the trader with other data and it is not possible to disaggregate it or only at disproportionate expense or
  4. was created by the consumer together with others, insofar as other consumers are able to continue to use the content.
- (3) Upon demand by the consumer, the trader is to supply to same the content defined in subsection (2) sentence 1. This does not apply to content defined in subsection (2) sentence 2 nos. 1 to 3. The content must be supplied to the consumer free of charge, without any impediments imposed by the trader, within a reasonable time limit and in a customary and machine-readable format.

#### **Section 327q**

##### **Consequences under contract law of declarations governed by data protection law made by the consumer**

- (1) Where, following the conclusion of the contract, the consumer exercises their rights as a data subject under data protection law and where they make declarations governed by data protection law, the effectiveness of the contract remains unaffected.

(2) Where the consumer revokes consent they have previously granted under the rules on the protection of personal data or where they object to the further processing of their personal data, the trader may terminate a contract obligating it to a series of individual acts of supply of digital products or to the continuous supply of a digital product without observing a period of notice if, having regard to the scope of data processing that continues to be permissible and weighing the parties' interests against each other, it cannot reasonably be required of the trader to continue the contractual relationship up until the agreed end of the contract or the expiration of a statutory or contractual period of notice.

(3) Claims of compensation on the part of the trader against the consumer because of a restriction of the permissible data processing caused by the exercise of the rights under data protection law or the fact of declarations governed by data protection law having been made are excluded.

### **Section 327r Modifications of digital products**

(1) In the case of continuous supply, the trader may make modifications to the digital product going beyond the degree required to keep it in conformity as defined in section 327e (2) and (3) and section 327f only if

1. the contract provides for this possibility and sets out a valid reason for doing so,
2. no additional costs are imposed on the consumer by the modification and
3. the consumer is informed in clear and comprehensible terms of the modification.

(2) The trader may make a modification to the digital product that impairs the consumer's ability to access the digital product or the usability of the digital product for the consumer only if the trader informs the consumer thereof via a durable medium within a reasonable time limit prior to the time of the modification. The information must provide the following details:

1. features of the modification and the point in time at which it will be made,
2. the rights of the consumer as defined in subsections (3) and (4).

Sentence 1 does not apply if the impairment of the ability to access the digital product or of its usability is merely trivial.

(3) Where a modification of the digital product impairs the ability to access it or its usability within the meaning of subsection (2) sentence 1, the consumer may terminate the contract within 30 days at no charge. The period of time commences running upon receipt of the information defined in subsection (2). Where the modification is made after the information has been received, the point in time at which the information is received is replaced by the point in time at which the modification is made.

(4) Termination of the contract on the basis of subsection (3) sentence 1 is excluded if

1. impairment of the ability to access the digital product or of its usability is merely trivial or
2. the consumer retains the ability to access the unmodified digital product and the unmodified digital product continues to be usable for the consumer without any additional cost.

(5) Sections 327o and 327p are to be applied accordingly to the termination of the contract on the basis of subsection (3) sentence 1 and to the legal consequences of such termination.

(6) Subsections (1) to (5) are not to be applied to bundle contracts in which the other element of the bundle contract has as its subject matter the supply of an internet access service or of a publicly accessible number-based interpersonal communications service as part of a bundle contract as defined in section 66 (1) of the Telecommunications Act.

### **Section 327s** **Deviating agreements**

- (1) The trader may not rely on an agreement with the consumer that deviates from the provisions of this Subtitle to the disadvantage of the consumer unless the agreement was made only after the consumer notified the trader of the failure to supply the digital product or of the digital product's deficiency.
- (2) The trader may not rely on an agreement with the consumer on a modification of the digital product that deviates from the provisions of this Subtitle to the disadvantage of the consumer unless the agreement was made after the consumer was informed of the modification of the digital product in accordance with section 327r.
- (3) The provisions of this Subtitle apply even if they are circumvented by other arrangements.
- (4) Subsections (1) and (2) do not apply to the exclusion or limitation of the claim to compensation of damages.
- (5) Section 327h remains unaffected.

### **Subtitle 2** **Special provisions on contracts on digital products between traders**

#### **Section 327t** **Scope of application**

By way of supplementation, the provisions of this Subtitle are to be applied to contracts between traders serving the supply of digital products in accordance with the consumer contracts defined in sections 327 and 327a that are included in the scope of application of Subtitle 1.

#### **Section 327u** **Recourse of the trader**

- (1) The trader may demand reimbursement from the trader who has entered into obligation to it to supply a digital product (distribution partner) of the expenses it has incurred in its relationship with a consumer for failure to supply the digital product that was to be supplied to it by the distribution partner, such failure having been caused by the distribution partner, because the consumer exercised their right defined in section 327c (1) sentence 1. The same applies to the expenditures to be borne by the trader as per section 327l (1) if the deficiency asserted by the consumer vis-à-vis the trader was given already at the time of the supply by the distribution partner or if it consists of a violation caused by the distribution partner of the trader's obligation to provide updates as stipulated in section 327f (1).
- (2) The claims to reimbursement of the expenditures defined in subsection (1) will become statute-barred after six months. The limitation period commences running,
  1. in the case governed by subsection (1) sentence 1, at that point in time at which the consumer has exercised their right,
  2. in the case governed by subsection (1) sentence 2, at that point in time at which the trader has satisfied the consumer's claims under section 327l (1).
- (3) Section 327k (1) and (2) is to be applied accordingly, subject to the proviso that the period of time commences upon supply to the consumer.
- (4) The distribution partner may not rely on an agreement concluded with the trader prior to the assertion of the claims to reimbursement of the expenditures defined in subsection (1) that deviates, to the disadvantage of the trader, from subsections (1) to (3). Sentence 1 is to be applied even if subsections (1) to (3) are circumvented by other arrangements.
- (5) Section 377 of the Commercial Code (*Handelsgesetzbuch*) remains unaffected.
- (6) The above subsections are to be applied accordingly to the claims of the distribution partner and of the other contracting parties in the distribution chain against the contracting parties respectively obliged to supply if the obligors are traders.

### **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 based on certain prerequisites, and whether the power is to be reserved for the contracting parties to terminate or alter the right of the third party without its 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 is not to be presumed that the obligee is to acquire the right to demand satisfaction from that party directly.

##### **Section 330**

###### **Interpretation rule in the case of life annuity contracts**

Where in a life annuity contract the payment of the life annuity to a third party is agreed, in case of doubt it is to be presumed 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 assets 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 also may 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, then 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 also in relation to the third party.

##### **Section 335**

###### **Right of the promisee to make demands**

Unless a different intention of the contractual parties is to be presumed, the promisee may demand performance for the third party even if the latter is entitled to the right to performance.

#### **Title 4**

#### **Earnest, penalty for breach of contract**

##### **Section 336**

##### **Interpretation of earnest**

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

##### **Section 338**

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

If the performance owed by the giver of the earnest becomes impossible due to a circumstance for which they are responsible, or if the giver of the earnest is at fault for the cancellation of the contract concluded, then the recipient of the earnest may retain it. If the recipient demands damages for non-performance, then, in case of doubt, the earnest is to be credited against it, or if this cannot occur, it is to be returned when compensation for the damage is provided.

##### **Section 339**

##### **Payability of penalty for breach of contract**

Where the obligor promises the obligee, in the event of their failing to perform their obligation or failing to do so properly, payment of an amount of money as a penalty, the penalty is payable upon the obligor being in default. If the performance owed consists of forbearance, the penalty is payable on breach.

##### **Section 340**

##### **Promise to pay a penalty for non-performance**

- (1) If the obligor has promised the penalty in the event of their failing to perform their obligation, then the obligee may demand the penalty that is payable in lieu of fulfilment. Where the obligee declares to the obligor that they are demanding the penalty, the claim for performance is excluded.
- (2) If the obligee is entitled to a claim for damages for non-performance, then they 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 of their failing to perform their obligation properly, including performance at the specified time, the obligee may demand the payable penalty in addition to performance.
- (2) If the obligee has a claim for damages for the improper performance, the provisions of section 340 (2) apply.
- (3) If the obligee accepts performance, they may demand the penalty only if they 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 for 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 be reduced, on application by the obligor, to a reasonable amount by judicial decision. In judging the appropriateness, regard is to be had to every legitimate interest of the obligee, not merely their property interests. Once the penalty is paid, reduction is excluded.

(2) The same also applies, except in the cases governed by sections 339 and 342, if someone promises a penalty in the event of their taking or failing to take 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 likewise is 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 on the basis of their having performed their obligation, they are to prove performance, unless the performance owed consisted in forbearance.

### **Title 5**

#### **Revocation; right of withdrawal in consumer contracts**

##### **Subtitle 1**

##### **Rescission**

#### **Section 346**

##### **Effects of rescission**

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

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

1. restitution or surrender is excluded by the nature of what has been obtained,
2. the obligor has used up, alienated, 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 may be proved 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 revocation 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 likewise would have occurred even if the object had remained with the obligee,

3. if in case of a statutory right of revocation the deterioration or destruction occurred with the person entitled, although the latter exercised the care they customarily exercise in their own affairs.

Any remaining enrichment is to be returned.

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

#### **Section 347**

##### **Emoluments and outlays after rescission**

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

(2) If the obligor returns the object or provides compensation for the value or if their duty to compensate for value under section 346 (3) no. 1 or 2 is excluded, they are to be reimbursed for their necessary outlays. Other expenditures are to be reimbursed to the extent that the obligee is enriched by them.

#### **Section 348**

##### **Satisfaction of obligations in return for, and concurrently with, performance**

The obligations of the parties resulting from rescission are to be satisfied in return for, and concurrently with, performance. The provisions of sections 320 and 322 apply accordingly.

#### **Section 349**

##### **Declaration of rescission**

Rescission is effected by declaration to the other party.

#### **Section 350**

##### **Expiry of the right of rescission 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 rescission, then the other party may specify a reasonable time limit within which the person entitled to rescind is to exercise that right. The right of rescission becomes extinct unless rescission is declared before the end of that period of time.

#### **Section 351**

##### **Indivisibility of the right of rescission**

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

#### **Section 352**

##### **Set-off after non-performance**

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

#### **Section 353**

##### **Rescission in return for forfeit money**

If the right of rescission in return for payment of forfeit money has been reserved, the rescission 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 concluded subject to the reservation that the obligor will lose their rights under the contract if they fail to perform their obligation, the obligee is entitled to rescind the contract if this circumstance occurs.

#### **Subtitle 2**

#### **Right of withdrawal in the case of consumer contracts**

#### **Section 355**

#### **Right of withdrawal in the case of consumer contracts**

(1) If a consumer is given, by statute, a right of withdrawal according to this provision, then the consumer and the trader are no longer bound by their declarations of intent to conclude the contract if the consumer withdraws from the declaration of intent within the period of time specified. The withdrawal is effected by a declaration being made to the trader. The declaration must unambiguously reflect the consumer's decision to withdraw from the contract. The withdrawal does not have to provide any grounds. Dispatch of the withdrawal in good time is sufficient to comply with the time limit.

(2) The withdrawal period is fourteen days. Unless otherwise provided, it begins upon the contract having been concluded.

(3) In the case of the contract being withdrawn from, the performance received is to be returned without undue delay. Where the law has specified a maximum period within which restitution is to be made, this will commence running for the trader upon receipt of the declaration of withdrawal and, for the consumer, upon dispatch of the declaration of withdrawal. A consumer will be complying with this period by dispatching the goods in good time. In the event of withdrawal, the trader bears the risk of the return shipment of the goods.

#### **Section 356**

#### **Right of withdrawal in the case of off-premises contracts and distance contracts**

(1) The trader may provide the consumer with the opportunity to complete and transmit the model withdrawal form pursuant to schedule 2 to Article 246a section 1 (2) sentence 1 no. 1 of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*), or some other unambiguous declaration of withdrawal, on the trader's website. Where the consumer avails himself or herself of this opportunity, the trader must confirm receipt of the withdrawal to the consumer without undue delay on a durable medium.

(2) The withdrawal period commences,

1. in the case of a sale of consumer goods
  - a) that is not governed by letters (b) to (d), as soon as the consumer or a third party named by the consumer, such third party not being a carrier, has received the goods,
  - b) in the context of which the consumer has ordered several goods as part of a single order and the goods are delivered separately, as soon as the consumer or a third party named by the consumer, such third party not being a carrier, has received the last of the goods,
  - c) in the context of which the goods are delivered in several partial shipments or items, as soon as the consumer or a third party named by the consumer, such third party not being a carrier, has received the last partial shipment or the last item,
  - d) that is directed towards the regular delivery of goods over a specified period of time, as soon as the consumer or a third party named by the consumer, such third party not being a carrier, has received the first goods,
2. in the case of a contract that has as its subject matter the supply of water, gas, electricity, district heating or digital content which is not contained in a tangible medium,

without the supply having been offered for sale in a limited volume or set quantity, upon conclusion of the contract.

(3) The withdrawal period does not commence prior to the trader having informed the consumer in accordance with the requirements of Article 246a section 1 (2) sentence 1 no. 1 or of Article 246b section 2 (1) of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*). The right of withdrawal becomes extinct at the latest twelve months and fourteen days following the point in time set out in subsection (2) or section 355 (2) sentence 2. Sentence 2 does not apply to contracts relating to financial services.

(4) In the case of a contract for the provision of services, the right of withdrawal becomes extinct also in those cases in which the trader has completely provided the service and began with the performance of the service only after the consumer had given express consent thereto and concurrently acknowledged that they would lose the right to withdraw from the contract once the trader had fully performed the contract. In the event a contract is negotiated away from business premises, the approval of the consumer must be transmitted on a durable medium. In the case of a contract relating to the provision of financial services, the right of withdrawal becomes extinct, in derogation from sentence 1, if the contract was performed in full by both parties at the express wish of the consumer before the consumer exercises their right of withdrawal.

(5) In the case of a contract for the supply of digital content that is not contained in a tangible medium, the right of withdrawal becomes extinct also if the trader began with the performance of the contract after the consumer

1. had expressly consented to the trader beginning with the performance of the contract prior to expiry of the withdrawal period, and
2. had acknowledged that by their consent, they would lose the right to withdraw from the contract upon the performance of the contract having commenced.

#### **Section 356a**

##### **Right of withdrawal in the case of timeshare contracts, long-term holiday product contracts, brokerage contracts, and exchange system contracts**

(1) The withdrawal is to be declared in text form.

(2) The withdrawal period commences at the time of conclusion of the contract or of the conclusion of a preliminary contract. If the consumer does not receive the contractual document or the copy of the contract until after conclusion of the contract, the withdrawal period commences at the time of receipt.

(3) If the consumer has not been provided with the pre-contractual information designated in section 482 (1) or with the form designated in Article 242 section 1 (2) of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*) prior to conclusion of the contract, not completely or not in the language prescribed in section 483 (1), then the withdrawal period, notwithstanding subsection (2), will not commence until complete receipt of the pre-contractual information and of the form in the prescribed language. The right of withdrawal becomes extinct at the latest three months and fourteen days after the time designated in subsection (2).

(4) If the consumer has not been provided with the instruction regarding withdrawal designated in section 482a before the contract has been concluded, either not completely or not in the language prescribed in section 483 (1), then the withdrawal period, notwithstanding subsection (2), will not commence until the complete the instructions on withdrawal has been received in the prescribed language. Where appropriate, the right of withdrawal expires in derogation subsection (3) sentence 2 at the latest twelve months and fourteen days after the time cited in subsection (2).

(5) If the consumer has concluded a timeshare contract and an exchange system contract, and if these contracts have been offered to them at the same time, the withdrawal period for both contracts commences at the time applicable under subsection (2) to the timeshare contract. Subsections (3) and (4) apply accordingly.

### **Section 356b**

#### **Right of withdrawal in the case of consumer credit agreements**

(1) The withdrawal period does not commence before the lender has provided the borrower with a contract document intended for the latter, with the written application of the borrower or with a copy of the contract document or of their application.

(2) Where, in the case of a general-purpose consumer credit agreement, the contract document provided to the borrower pursuant to subsection (1) does not include the obligatory information regarding the right of withdrawal required by section 492 (2), the withdrawal period will commence only upon this information being provided subsequently in accordance with section 492 (6). Where, in the case of a consumer credit agreement relating to immovable property, the contract document provided to the borrower pursuant to subsection (1) does not include the obligatory information regarding the right of withdrawal required pursuant to section 492 (2) in conjunction with Article 247 section 6 (2) of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*), the withdrawal period commences only upon the subsequent provision of this information pursuant to section 492 (6). In the cases governed by sentences 1 and 2, the withdrawal period amounts to one month. The right of withdrawal from consumer credit agreements relating to immovable property expires no later than twelve months and fourteen days after the time of conclusion of the contract or after the point in time designated in subsection (1), where this is after the time of conclusion of the contract.

(3) In the event provided for by section 494 (7), the period for withdrawing from a general-purpose consumer credit agreement commences only once the borrower has received the copy of the contract designated therein.

### **Section 356c**

#### **Right of withdrawal in the case of contracts for delivery by instalments**

(1) In the case of a contract for delivery by instalments that is neither a distance contract nor an off-premises contract, the withdrawal period does not commence prior to the trader having informed the consumer pursuant to Article 246 (3) of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*) as to the latter's right of withdrawal.

(2) Section 356 (1) applies accordingly. The right of withdrawal expires no later than twelve months and fourteen days following the point in time set out in section 355 (2) sentence 2

### **Section 356d**

#### **Withdrawal right of the consumer in the case of credit agreements for a gratuitous loan and in the case of gratuitous financial accommodation**

In the case of a contract by which a trader grants to a consumer a gratuitous loan or gratuitous financial accommodation, the withdrawal period will not commence, in derogation from section 355 (2) sentence 2, prior to the trader having informed the consumer pursuant to the stipulations of section 514 (2) sentence 3 as to the latter's right of withdrawal. The right of withdrawal expires no later than twelve months and fourteen days after the time of conclusion of the contract or after the point in time designated in sentence 1, where this is after the time of conclusion of the contract.

### **Section 356e**

#### **Right of withdrawal in the case of construction contracts with consumers**

In the case of a construction contract with a consumer (section 650i (1)), the withdrawal period will not commence prior to the trader having informed the consumer pursuant to Article 249 (3) of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*) as to the latter's right of withdrawal. The right of withdrawal expires no later than twelve months and fourteen days after the time set out in section 355 (2) sentence 2.

### **Section 357**

#### **Legal consequences of the withdrawal from off-premises contracts and distance contracts, to the exception of contracts relating to financial services**

- (1) The performance received is to be restituted at the latest after fourteen days.
- (2) The trader must also retribute any payments the consumer may have made for the delivery. This does not apply inasmuch as the consumer has incurred additional costs because they opted for a type of delivery other than the least expensive type of standard delivery offered by the trader.
- (3) In making the repayment, the trader must use the same means of payment that the consumer used in making the payment. Sentence 1 does not apply if the parties expressly have agreed otherwise and the consumer does not incur any costs as a result.
- (4) In the case of a sale of consumer goods, the trader may refuse to make repayment until they have received the returned goods or the consumer has provided proof of having dispatched the goods. This does not apply if the trader has offered to collect the goods.
- (5) The consumer is not obliged to arrange for the return shipment of the goods received if the trader has offered to collect the goods.
- (6) The consumer bears the direct costs of return shipment of the goods if the trader has informed the consumer pursuant to Article 246a section 1 (2) sentence 1 no. 2 of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*) of this obligation. Sentence 1 does not apply if the trader has declared that they are prepared to bear these costs. In the case of off-premises contracts, in the context of which the goods were delivered to the consumer's dwelling at the time the contract was concluded, the trader is obliged to collect the goods at their own costs if, by their nature, these goods cannot be returned by post.
- (7) The consumer is to provide compensation for the diminished value of the goods if
  1. the diminished value results from the handling of the goods in any other manner than that necessary to establish the nature, characteristics, and functioning of the goods, and
  2. the trader has informed the consumer pursuant to Article 246a section 1 (2) sentence 1 no. 1 of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*) of their right of withdrawal.
- (8) Where the consumer withdraws from a contract for the provision of services or the supply of water, gas, or electricity, without their supply having been offered for sale in a limited volume or set quantity, or for the supply of distance heating, the consumer will owe the trader compensation for the value of the performance made until the time of the withdrawal in those cases in which the consumer expressly has demanded that the trader begin with the performance prior to expiry of the withdrawal period. The claim pursuant to sentence 1 exists only in those cases in which the trader has properly informed the consumer pursuant to Article 246a section 1 (2) sentence 1 no. 1 and 3 of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*). For off-premises contracts, the claim pursuant to sentence 1 exists only in those cases in which the consumer has transmitted their request pursuant to sentence 1 on a durable medium. In calculating the compensation for value, the total price agreed upon is to be used as a basis. If the total price agreed upon is excessive, the compensation for value is to be calculated on the basis of the market value of the performance made.
- (9) Where the consumer withdraws from a contract for the supply of digital content that is not contained in a tangible medium, they are not to provide compensation for value.

### **Section 357a**

#### **Legal consequences of the withdrawal from contracts relating to financial services**

- (1) The performance received is to be restituted at the latest after 30 days.

(2) Where off-premises contracts or distance contracts relating to financial services are withdrawn from, the consumer is obliged to pay compensation for the value of the services rendered by the trader until the time of the withdrawal if

1. this legal consequence has been indicated to the consumer prior to their making the declaration as to the conclusion of a contract and
2. the consumer has expressly agreed to the trader commencing performance of the service prior to the withdrawal period having ended.

Where contracts relating to non-gratuitous financial accommodation are withdrawn from that are covered by the exception set out in section 506 (4), section 357 subsections (5) to (8) likewise applies accordingly. Where the contract relating to non-gratuitous financial accommodation has as its subject matter the supply of digital content which is not contained in a tangible medium, the consumer is to compensate for the value of the digital content supplied until the time of the withdrawal if

1. this legal consequence has been indicated to the consumer prior to their making the declaration as to the conclusion of a contract, and
2. the consumer has expressly consented to the trader commencing with the supply of the digital content prior to the withdrawal period having ended.

Where consideration is specified in the contract, this is to serve as the basis for calculating the compensation for value. If the total price agreed upon is excessive, the compensation for value is to be calculated on the basis of the market value of the performance made.

(3) In the case of a withdrawal from a consumer credit agreement, the borrower is to pay the agreed interest for the period lapsing between the disbursement of the loan and its repayment. In the case of a consumer credit agreement relating to immovable property, proof may be submitted as to the value of the benefit of use having been lower than the interest agreed upon. In this case, solely the lower amount is owed. In cases in which contracts relating to non-gratuitous financial accommodation are withdrawn from that are not covered by the exception set out in section 506 (4), subsection (2) likewise applies accordingly, subject to the proviso that the information concerning the right of withdrawal is replaced by the obligatory information under Article 247 section 12 (1) in conjunction with section 6 (2) of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*), each of which provisions concerns the right of withdrawal. Over and above this, the borrower is to refund to the lender solely the expenditure that the lender has incurred vis-à-vis public agencies and for which it cannot demand repayment.

#### **Section 357b**

##### **Legal consequences of the withdrawal from timeshare, long-term holiday product, brokerage contracts, and exchange system contracts**

- (1) The consumer does not incur any costs in the event of a withdrawal. The trader is to reimburse the consumer for the costs of the contract, its implementation, and its winding up. Remuneration for services rendered and for making residential buildings available for use is excluded.
- (2) The consumer is to provide compensation for the diminished value of the accommodation within the meaning of section 481 only insofar as the diminishment in value is the result of the accommodation not being used in accordance with its designated purpose.

#### **Section 357c**

##### **Legal consequences of the withdrawal from contracts for delivery by instalments that are neither distance contracts nor off-premises contracts**

Section 357 subsections (1) to 5 applies accordingly to the restitution of the performance received. The consumer bears the direct costs of the return shipment of the items of property received unless the trader has stated that they are prepared to bear these costs. Section 357 (7) is to be applied accordingly, subject to the proviso that the information pursuant to Article

246a section 1 (2) sentence 1 no. 1 of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*) is replaced by the information pursuant to Article 246 (3) of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*).

#### **Section 357d**

##### **Legal consequences of the withdrawal from a construction contract with a consumer**

Where, by its nature, the restitution of the performance received until the time of withdrawal is excluded, the consumer is to compensate the trader for value. The calculation of the compensation for value is to be based on the remuneration agreed upon. Where the remuneration agreed upon is excessive, the compensation for value is to be calculated on the basis of the market value of the performance made.

#### **Section 358**

##### **Contracts linked to the contract from which the consumer has withdrawn**

(1) If the consumer has effectively withdrawn their declaration of intent to conclude a contract for the supply of goods or for the provision of a service by a trader, they also no longer are bound by their declaration of intent to conclude a credit agreement linked to this contract.

(2) If the consumer has effectively withdrawn their declaration of intent to conclude a credit agreement on the basis of section 495 (1), or on the basis of section 514 (2) sentence 1, then the consumer also is no longer obliged by their declaration of intent to conclude a contract linked to that credit agreement for the supply of goods or for the provision of some other performance.

(3) A contract for the supply of goods or for the provision of some other performance and a credit agreement pursuant to subsections (1) or (2) are linked if the loan fully or partially serves to finance the other contract and both contracts constitute a single economic unit. An economic unit is to be assumed in particular if the trader itself finances the consideration of the consumer or, in the case of financing by a third party, if, in preparation for the credit agreement or in entering into it, the lender avails itself of the trader's cooperation. In the case of a financed acquisition of a plot of land or of an equivalent right, an economic unit is to be assumed only if the lender itself provides the plot of land or the equivalent right to the consumer, or if the lender, beyond the provision of the loan, promotes the acquisition of the plot of land or the equivalent right in cooperation with the trader, by adopting as its own the interest of the trader in alienating the plot, as a whole or in part, by assuming functions of the alienating party in planning, advertising or carrying out the project, or by unilaterally favouring the alienating party.

(4) Section 355 (3) and, depending on the type of the linked contract, sections 357 to 357b are to be applied accordingly to the winding up of the linked contract, independently of the type of sale. Where the linked contract is a contract for the supply of digital content that is not contained in a tangible medium and the trader has provided the consumer with a copy or confirmation of the contract as stipulated by section 312f, the consumer is to pay, in derogation from section 357 (9) and subject to the prerequisites set out in section 356 (5) half-sentences 2 and 3, compensation for the value of the digital content supplied until the time of withdrawal. Where the linked contract is a contract for delivery by instalments that is a distance contract or an off-premises contract, section 357 also is to be applied accordingly, besides section 355 (3); in all other cases, section 355 (3) and section 357c apply accordingly to linked contracts for the delivery by instalments. In the case of subsection (1), however, claims against the consumer for payment of interest and costs arising from the winding up of the credit agreement are excluded. With regard to the legal consequences of withdrawal, the lender assumes the rights and duties of the trader under the linked contract if the loan already has been paid out to the trader when the withdrawal becomes effective.

(5) Subsections (2) and (4) are not to be applied to consumer credit agreements that serve to finance the acquisition of financial instruments.



### **Section 359**

#### **Objections in the case of linked contracts**

(1) The consumer may refuse to repay the loan to the extent that objections under the linked contract would entitle them to refuse performance to the trader with whom they have concluded the linked contract. This does not apply in the case of objections based on a contract amendment that was agreed between this trader and the consumer after the credit agreement had been concluded. If the consumer may demand a cure, then they cannot refuse to repay the loan until the cure has failed.

(2) Subsection (1) is not to be applied to credit agreements that serve to finance the acquisition of financial instruments, or if the financed remuneration is less than 200 euros.

### **Section 360**

#### **Related contracts**

(1) Where the consumer effectively has withdrawn their declaration of intent to conclude a contract and where the prerequisites for a linked contract have not been met, they also no longer will be bound to their declaration of intent to conclude a related contract. Section 358 (4) sentence 1 to 3 is to be applied accordingly to the winding up of the related contract.

Where the consumer withdraws from a timeshare contract or a long-term holiday product contract, they are not to bear any costs for the related contract, either; section 357b (1) sentences 2 and 3 applies accordingly.

(2) A related contract is given wherever it relates to the contract from which the consumer has withdrawn and concerns a performance that is being provided by the trader under the contract from which the consumer has withdrawn, or by a third party on the basis of an agreement concluded by the third party and the trader who is party to the contract from which the consumer has withdrawn. A credit agreement is a related contract also in those cases in which the loan that a trader grants to a consumer exclusively serves to finance the contract from which the consumer has withdrawn and the performance by the trader, which is governed by the contract from which the consumer has withdrawn, has been specified exactly in the credit agreement.

### **Section 361**

#### **Further claims, deviating agreements and burden of proof**

(1) No further claims against the consumer over and above those pursuant to the provisions of this Subtitle exist as a result of the withdrawal.

(2) Unless otherwise provided, there may be no deviation from the provisions of this Subtitle to the disadvantage of the consumer. Unless otherwise provided, the provisions of this Subtitle apply even if they are circumvented by other arrangements.

(3) Where the commencement of the withdrawal period is in dispute, the burden of proof is on the trader.

## **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, then 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 them as performance of contract, then they will bear the burden of proof if they do 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, then in case of doubt it is not to be presumed that they are assuming the obligation in lieu of performance of contract.

#### **Section 365**

##### **Warranty in the case of handover in lieu of performance of contract**

If a thing, a claim against a third party or some other right is given in lieu of performance of contract, the obligor is to provide warranty for a defect of title 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 the obligor pays does not suffice to redeem all debts, that debt is redeemed that the obligor determines when they perform.
- (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 is to 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, the obligee is to issue, on demand, a written acknowledgement of receipt (receipt). Where the obligor has an interest of a legal nature in having the receipt issued in another form, then they may demand issue in that form.

#### **Section 369**

##### **Costs of the receipt**

- (1) The costs of the receipt are to be borne and advanced by the obligor, unless the legal relation existing between them and the obligee leads to a different conclusion.
- (2) If more than one obligee takes the place of the original obligee as the result of a transfer of the claim or by way of inheritance, the increased 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**

Where 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 incapable of returning it, then the obligor may demand a publicly certified acknowledgement that the debt is extinguished.

## **Title 2 Deposit**

### **Section 372 Prerequisites**

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 meet their obligation or cannot do so with certainty for some other cause constituted by the person of the obligee or as the result of uncertainty, not due to negligence, as to the identity of the obligee.

### **Section 373 Concurrent performance**

If the obligor is obliged to perform only in return for performance by the obligee, then they 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 is to be made at the depository institution of the place of performance; if the obligor deposits at any other place, then they are to compensate the obligee for the damage arising therefrom.
- (2) The obligor is to notify the obligee of the deposit without undue delay; in case of failure to do so, they will be liable in damages. The notice may be omitted if it is inadvisable.

### **Section 375 Retroactive effect with dispatch by mail**

Where the deposited thing has been dispatched to the depository institution by mail, the deposit has retroactive effect to the date on which 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 depository institution that they waive the right to take back,
  2. if the obligee declares their acceptance to the depository institution,
  3. if the depository institution is presented with a final and binding judgment handed down in a dispute between the obligee and the obligor that 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, then for the duration of the insolvency proceedings, the right to take back may 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, then the obligor is freed from their obligation by deposit in the same way as if they 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**

Insofar as, according to the provisions in place with the depository institution regarding proof of the entitlement of the obligee to take receipt, a declaration by the obligor acknowledging such entitlement is required or sufficient, the obligee may demand from the obligor the issuance of the declaration based on the same prerequisites as those based on which they 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 unless the obligor takes 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 30 years following receipt of the notice of deposit, unless the obligor reports to the depository institution before then; the obligor is entitled to take the thing back, even if they have 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, then 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 governed by section 372 sentence 2 if there is the concern that the thing will spoil or if safekeeping would entail disproportionate costs.
- (2) If reasonable success is not to be expected from an auction at the place of performance, the thing is to be auctioned at another suitable place.
- (3) The auction is to be performed publicly by a court bailiff appointed for the place of auction or by some other official authorised to conduct auctions or by a publicly employed auctioneer (public auction). Notice of the time and place of the auction, with a general description of the thing, is to be given by publication.
- (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 is to notify the obligee of the auction without undue delay; in the event of failure to do so, the obligor will be liable in damages.
- (3) The warning and the notice may be omitted if they are inadvisable.

### **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 unless the obligor takes back the deposited proceeds.

### **Title 3**

#### **Set-off**

### **Section 387**

#### **Prerequisites**

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

### **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 in the case of different places of performance**

(1) Set-off is not excluded by the fact that the claims concern different places of performance or of delivery. However, the party setting off is to provide compensation for the damage incurred by the other party due to the fact that they do not take receipt 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 excluded only if the obligor acquired their claim after the seizure, or if their 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**

Insofar as 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 the other 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 accordingly.

(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 accordingly.

#### **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 concluded, the new obligee takes the place of the previous obligee.

#### **Section 399**

##### **Exclusion of assignment in case of change of content 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**

##### **Devolution of accessory rights and preferential rights**

(1) Upon the claim being assigned, the mortgages, ship mortgages or security rights attaching to it as well as the rights under a suretyship created for it devolve to the new obligee.

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

#### **Section 402**

##### **Duty to provide information; provision of documents**

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

#### **Section 403**

##### **Duty of notarial recording**

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

#### **Section 404**

##### **Objections by the obligor**

The obligor may raise against the new obligee the objections that they were 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, the obligor may not, in relation to the new obligee, invoke the fact that the entering into or acknowledgement of the obligation is occurring only for the sake of appearance or that the assignment is excluded by agreement with the original obligee, unless the new obligee was aware of the circumstances at the assignment or ought to have known of them.

#### **Section 406**

##### **Set-off in relation to the new obligee**

The obligor may set off a claim against the previous obligee to which they are entitled against the new obligee as well, unless, when acquiring the claim, they were aware of the assignment or the claim only became due after they 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 entered into after assignment between the obligor and the previous obligee in respect of the claim, to be asserted against them, unless the obligor is aware of the assignment upon performance or upon entering into 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 binding judgment on the claim has been rendered, the new obligee must allow the judgment to be asserted against them, unless the obligor was aware of the assignment when legal proceedings became pending.

#### **Section 408**

##### **Multiple assignments**

(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 entered into or a legal dispute becomes pending, then the provisions of section 407 will be applied accordingly to 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 of the claim having been assigned, they must allow the notified assignment to be asserted against them in relation to the obligor, even if it does not

occur or is not effective. It is equivalent to the notification 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 notification may be retracted only 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 obliged to perform to the new obligee only against delivery of a document concerning the assignment issued by the previous obligee. Notice of termination or a dunning letter from the new obligee is 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 member of the clergy or a teacher at a public institution of education assigns the transferable portion of their official income, inactive status pay or retirement pay, the disbursing fund is to 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 devolution of claims**

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

#### **Section 413**

##### **Transfer of other rights**

The provisions relating to transfer of claims apply accordingly 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 takes the place of the previous obligor.

#### **Section 415**

##### **Contract between obligor and transferee**

(1) If the assumption of the debt is agreed between the third party and the obligor, its effectiveness is subject to ratification by the obligee. Ratification may only occur 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 demands, specifying a period of time, that the obligee 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 the obligee 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 takes the place of the previous obligor unless the obligee declares their refusal within that period of six months.

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

#### **Section 417**

##### **Objections of the transferee**

(1) The transferee may raise against the obligee the objections that result from the legal relationship between the obligee and the previous obligor. The transferee 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 their consent.

(2) A preferential right linked to the claim in case of insolvency proceedings may not be asserted in the insolvency proceedings regarding 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 are to 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 entitled to demand the performance only once (joint and several debtors), the obligee may at their 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 also is effective for the other obligors if the contractual parties 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 also is 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 to notice of termination, to default, to fault, to impossibility of performance constituted by the person of a joint and several debtor, to limitation and to the new beginning, tolling and suspension of expiry of a period of limitation, to the merger of the claim with the debt and to a final and binding judgment.

**Section 426**  
**Duty to adjust advancements, devolution of claim**

(1) The joint and several debtors are obliged in equal proportion in relation to one another unless otherwise determined. If the contribution attributable to a joint and several debtor cannot be obtained from that debtor, 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 devolves to that debtor. The devolution of ownership may not be asserted to the disadvantage of the creditor.

**Section 427**  
**Joint contractual duty**

If more than one person jointly bind themselves by contract to render divisible performance then, in case of doubt, they are liable as joint and several debtors.

**Section 428**  
**Joint and several obligees**

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 obligees), the obligor may at their 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 obligee also is effective against the other obligees.

(2) If claim and debt are combined in the person of a joint and several obligees, then the rights of the other obligees against the obligor will expire.

(3) In all other cases, the provisions of sections 422, 423 and 425 apply accordingly. In particular if a joint and several obligee transfers their claim to another party, the rights of the other obligees remain unaffected.

**Section 430**  
**Duty of the joint and several obligees to adjust advancements**

The joint and several obligees 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, then they are liable as joint and several debtors.

#### **Section 432**

##### **More than one obligee of indivisible performance**

(1) If more than one person are to demand indivisible performance, then to the extent that they are not joint and several obligees, 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) In all other cases, a fact occurring on grounds constituted solely by 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**

##### **Subtitle 1**

##### **General provisions**

#### **Section 433**

##### **Contractual duties typical for 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 is to procure the thing for the buyer free from material defects and defects of title.

(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 devolution of the risk, it conforms to the subjective requirements, the objective requirements and the assembly requirements set out in this provision.

(2) The thing conforms to subjective requirements if

1. it is of the nature agreed
2. it is suitable for the use on which the contract is premised, and
3. it is handed over together with the accessories agreed and the instructions agreed, including assembly and installation instructions.

The nature defined in sentence 1 no. 1 relates to, among other things, the type, quantity, quality, functionality, compatibility, interoperability and other features of the thing regarding which the parties have agreed requirements.

(3) Unless effectively agreed otherwise, the thing conforms to objective requirements if

1. it is suitable for customary use,
2. it is of a nature that is usual in things of the same kind and that the buyer may expect, taking account of
  - a) the type of the thing and

b) the public statements made by the seller or by some other link of the distribution chain, either themselves or on their behalf, particularly in advertisement or on labelling,

3. it corresponds to the nature of a sample or model made available to the buyer by the seller before the conclusion of the contract, and

4. it is handed over together with the accessories including packaging, assembly or installation instructions as well as other instructions the buyer may expect to receive.

The usual nature defined in sentence 1 no. 2 relates to, among other things, quantity, quality and other features of the thing, including its durability, functionality, compatibility and security. The seller is not bound by the public statements referred to in sentence 1 no. 2 (b) if the seller was not, and could not reasonably have been, aware of the public statement in question; if, by the time of conclusion of the contract, the public statement had been corrected in the same way as, or in a way comparable to how, it had been made; or if the decision to acquire the thing could not have been influenced by the public statement.

(4) Insofar as an assembly is to be performed, the thing will conform to assembly requirements if the assembly

1. has been performed correctly or

2. if, despite the assembly having been performed incorrectly, this is based neither on an incorrect assembly by the seller nor on a defect given in the instructions supplied by the seller.

(5) Delivery by the seller of a different thing is equivalent to a material defect.

#### **Section 435 Defects of title**

The thing is free of defects of title 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 defect of title if a right that does not exist is entered 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 concluded, irrespective of the point in 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 for entry in the Land Register.

#### **Section 437 Rights of buyer in the case of defects**

If the thing is defective, the buyer may, provided the prerequisites set out in the following provisions are met and unless otherwise specified,

1. demand cure as defined in section 439,

2. rescind the contract on the basis of sections 440, 323 and 326 (5) or abate the price under the terms of section 441, and

3. demand compensation of damages on the basis of sections 440, 280, 281, 283 and 311a or reimbursement of futile expenses as defined in section 284,.

#### **Section 438 Limitation of claims for defects**

(1) The claims cited in section 437 nos. 1 and 3 become statute-barred

1. after 30 years if the defect consists of
    - a) a right in rem of a third party on the basis of which surrender of the object of the purchase may be demanded, or of
    - b) some other right entered in the Land Register,
  2. after 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. in all other cases in two years.
- (2) In the case of a plot of land the limitation period commences upon delivery of possession, in all other cases upon delivery of the thing.
- (3) In derogation from subsection (1) nos. 2 and 3 and subsection (2), claims become statute-barred after the standard limitation period if the seller fraudulently concealed the defect. In the case governed by subsection (1) no. 2, however, claims are not statute-barred before the end of the period specified therein.
- (4) The right of rescission designated in section 437 is subject to section 218. Notwithstanding the fact that a rescission is ineffective under section 218 (1), the buyer may refuse to pay the purchase price to the extent it would be entitled to do so on the basis of rescission. If the buyer makes use of this right, the seller may rescind the agreement.
- (5) Section 218 and subsection (4) sentence 2 apply accordingly to the right to abate the price set out in section 437.

#### **Section 439** **Cure**

- (1) As cure the buyer may, at their choice, demand that the defect be remedied or that a thing free of defects be supplied.
- (2) The seller is to bear all expenses required for the purpose of cure, in particular transport, workers' travel, work and materials costs.
- (3) Where the buyer has installed the defective thing, in keeping with its nature and its purpose, into some other thing or has attached it to some other thing before the defect became apparent, the seller is obliged, in the context of curing the defect, to reimburse the buyer for the expenses required for removing the defective thing and installing or attaching the repaired thing, or the thing free of defects that has been delivered.
- (4) Without prejudice to section 275 subsections (2) and (3), the seller may refuse to provide the type of cure chosen by the buyer if this cure is possible only at disproportionate expense. In this connection, account is to be taken in particular of the value of the thing when free of defects, the significance of the defect and the question as to whether recourse could be had to the alternative type of cure without substantial detriment to the buyer. The claim of the buyer in this case is restricted to the alternative type of cure; the right of the seller to refuse the alternative type of cure as well, subject to the prerequisites set out in sentence 1, remains unaffected.
- (5) The buyer is to make available the thing to the seller for the purpose of cure.
- (6) Where the seller supplies a thing free of defects for the purpose of cure, the seller may demand the return of the defective thing in accordance with sections 346 to 348. The seller is to take back, at its cost, the thing that has been replaced.

#### **Section 440** **Special provisions on rescission and damages**

Except in the cases governed by section 281 (2) and section 323 (2), it is not necessary to specify a period of time even if the seller has refused to carry out both types of cure under section 439 (4) or if the type of cure that the buyer is entitled to receive has failed or cannot

reasonably be required of the buyer. 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 lead to a different conclusion.

**Section 441**  
**Abatement of price**

- (1) Instead of rescinding the agreement, the buyer may, by declaration to the seller, abate the purchase price. The ground for exclusion under section 323 (5) sentence 2 does not apply.
- (2) If the party of the buyer or the seller consists of more than one person, the abatement may be declared only by all or to all of them.
- (3) In abating the purchase price, it is to be reduced in the ratio of the value that the defect-free thing would have had to its actual value at the time of conclusion of the contract. If required, the abatement is to be identified by way of an estimate.
- (4) If the buyer has paid more than the abated purchase price, then the amount overpaid is to be reimbursed by the seller. Section 346 (1) and section 347 (1) apply accordingly.

**Section 442**  
**Knowledge of the buyer**

- (1) The rights of the buyer due to a defect are excluded if the buyer has knowledge of the defect at the time of conclusion of the contract. 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 as to the nature of the thing.
- (2) A right entered in the Land Register is to be removed by the seller even if the buyer is aware of it.

**Section 443**  
**Guarantee**

- (1) If the seller, the producer or some other third party enters into obligation, in addition to their statutory liability for defects, by way of making a declaration or in relevant advertising that was available prior to the purchase contract being concluded or at the time of its conclusion, such obligation being in particular to reimburse the purchase price, to exchange the thing, to repair it or to provide services in this context should the thing not be of the nature as described in the declaration or in the relevant advertisement or should it not conform to other requirements than those concerning its freedom from defects as described in the declaration or in the relevant advertisement (guarantee), then the buyer will be entitled, upon the requirements for asserting the guarantee having been met, and notwithstanding the buyer's statutory claims, to the rights under the guarantee in relation to the person who has given the guarantee (guarantor).
- (2) To the extent that the guarantor gives a guarantee as to the thing being of a specified nature for a specified period (guarantee of durability), the presumption will be that a material defect that becomes apparent during the guarantee period triggers the rights under the guarantee.

**Section 444**  
**Exclusion of liability**

The seller may not rely on 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 as to the nature 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 as to the nature of the thing.

### **Section 445a**

#### **Recourse of the seller**

(1) Where a newly manufactured thing is sold, the seller may demand that the seller who sold the thing to them (supplier) reimburse them for the expenses they had to bear in relation to the buyer under section 439 (2), (3) and (6) sentence 2 as well as under section 475 (4) if the defect asserted by the buyer already existed upon the devolution of the risk to the seller or if the defect is based on a violation of the obligation to provide updates in accordance with section 475b (4).

(2) Where the rights designated in section 437 that the seller enjoys vis-à-vis their supplier are concerned, it is not necessary to fix the period of time regarding the defect asserted by the buyer, which would otherwise be necessary, if the seller was obliged to take back the newly manufactured thing sold by them because it is defective, or if the buyer has abated the purchase price.

(3) Subsections (1) and (2) apply accordingly to the claims of the supplier and of the other buyers in the supply chain vis-à-vis their respective sellers if the obligors are traders.

(4) Section 377 of the Commercial Code (*Handelsgesetzbuch*) remains unaffected.

### **Section 445b**

#### **Limitation of recourse claims**

(1) The claims to reimbursement of expenses specified in section 445a (1) are subject to a two-year limitation period after delivery of the thing.

(2) The claims of the seller against their supplier, as specified in section 437 and section 445a (1), for a defect in a newly manufactured thing sold become statute-barred at the earliest two months after the point in time at which the seller has satisfied the claims of the buyer.

(3) Subsections (1) and (2) apply accordingly to the claims of the supplier and of the other buyers in the supply chain vis-à-vis their respective sellers if the obligors are traders.

### **Section 445c**

#### **Recourse in the case of contracts on digital products**

Where the last contract in the supply chain is a consumer contract on the supply of digital products as defined in sections 327 and 327a, sections 445a, 445b and 478 are not to be applied. The provisions of Division 3 Title 2a Subtitle 2 take the place of the provisions not to be applied in accordance with sentence 1.

### **Section 446**

#### **Devolution of risk and of charges**

The risk of accidental destruction and chance deterioration devolves to the buyer upon delivery of the thing sold. From the time of delivery, the emoluments of the thing accrue to the buyer and the buyer bears the charges on it. If the buyer is in default of acceptance of delivery, this is equivalent to delivery.

### **Section 447**

#### **Devolution 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, then the risk devolves to the buyer as soon as the seller has delivered the thing to the haulage contractor, forwarding agent or other person or body specified for carrying out the shipment.

(2) Where the buyer has given a particular instruction on the method of shipping the thing and the seller, without a pressing reason, does not adhere to this instruction, the seller is liable to the buyer for the damage arising therefrom.

### **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) As a consequence of the retention of title, the seller may demand the return of the thing only if they have rescinded the agreement.

(3) An agreement on retention of title is void to the extent that the devolution of ownership is made subject to the satisfaction by the buyer of third-party claims, in particular 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 compulsory enforcement, the person instructed to carry out or manage the sale and the assistants used by that person, 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) also applies to a sale other than by compulsory enforcement, if the order to sell the object has been given under a statutory provision authorising the mandator to have the object sold for the account of another person, in particular in the cases of a 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. Where the buyer requests a person taking part to make a declaration of ratification, section 177 (2) applies accordingly.

(2) If, as a result of refusal of ratification, a new sale is undertaken, then 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 accordingly to the sale of registered ships and ships under construction.

**Section 453**  
**Purchase of rights, consumer contract on the purchase of digital content**

(1) The provisions governing the purchase of things apply accordingly to the purchase of rights and other objects. The following provisions are not to be applied to a consumer contract on the sale of digital content by a trader:

1. section 433 (1) sentence 1 and section 475 (1) on the delivery of the object of the purchase and the time of performance, as well as

2. section 433 (1) sentence 2, sections 434 to 442, 475 (3) sentence 1, (4) to (6) and sections 476 and 477 on the rights in the case of defects.

The provisions of Division 3 Title 2a Subtitle 1 take the place of the provisions not to be applied in accordance with sentence 1.

(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, then the seller is obliged to deliver the thing to the buyer free of material defects and defects of title.

**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 concluded 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 of time or, if no such period has been agreed, only before the end of a reasonable time limit specified by the seller for the buyer. If the thing was delivered to the buyer for the purpose of approval or examination, the buyer's silence is deemed to constitute approval.

**Chapter 2**  
**Repurchase**

**Section 456**  
**Coming into existence of the repurchase agreement**

(1) If, in the purchase agreement, the seller has reserved the right of repurchase, the repurchase agreement comes into existence when the seller declares to the buyer that they are exercising the right of repurchase. The declaration is not subject to the requirements as to form 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 surrendering it that resulted in another way, or if the reseller materially altered the purchased object, they will be liable for the damage resulting from this. If the object deteriorated without the fault of the reseller or if it is only altered trivially, the reseller may not require the purchase price to be abated.

**Section 458**  
**Removal of third-party rights**

Where the reseller alienated the purchased object before exercising the right of repurchase, the reseller is obliged to remove the third-party rights created by this. A disposition that is made by way of compulsory enforcement or enforcement of a seizure or by the insolvency administrator is equivalent to a disposition by the reseller.

**Section 459**  
**Reimbursement of outlays**

The reseller may demand reimbursement for outlays they made on the purchased object before the resale to the extent that the value of the object is enhanced by the expenses. The reseller may remove an installation that they 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 surrendering 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 jointly are entitled to the right to repurchase, the right may be exercised only in its entirety. If it has expired for one of the persons entitled or if one of them does not exercise their 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 expiry of 30 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 the exercise of the right, this period replaces the statutory period.

### **Chapter 3**

#### **Preemption**

#### **Section 463**

##### **Prerequisites 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 concluded a purchase agreement relating to the object with a third party.

#### **Section 464**

##### **Exercise of the right of preemption**

- (1) The right of preemption is exercised by declaration to the person obliged. The declaration is not subject to the requirements as to form laid down for the purchase agreement.
- (2) When the right of preemption is exercised, the purchase comes into existence 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 rescind 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 that the person entitled to preemption is incapable of performing, the person entitled to preemption is to pay the value of the collateral performance instead of rendering it. If the collateral performance cannot be assessed in money, then the exercise of the right of preemption is excluded; the agreement to render collateral performance is not an available option, however, if the contract with the third party would have been concluded also 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 is to pay a proportionate part of the total price. The person obliged may demand that the preemption be extended to all things that cannot be separated without disadvantage to the person obliged.

#### **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 they provide 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 accordingly 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 is to inform the person entitled to preemption without undue delay of the contents of the contract concluded with the third party. Notice by the third party takes the place of the 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 has been received, and the right of preemption for other objects only before the end of a period of one week after notice has been 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 compulsory enforcement or insolvency**

The right of preemption is excluded if the sale occurs by way of compulsory enforcement or from an insolvency estate.

#### **Section 472**

##### **More than one person with a right of preemption**

If the right of preemption jointly is held by more than one person, it may be exercised only in its entirety. If it has expired with regard to one of the persons entitled or if one of them does not exercise their 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 devolve 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**

##### **Purchase of consumer goods**

(1) Purchases of consumer goods are contracts by which a consumer buys goods (section 241a (1)) from a trader. A contract likewise will constitute a purchase of consumer goods

where its subject matter comprises, in addition to the sale of goods, the provision of a service by the trader.

(2) The following provisions of this Subtitle apply supplementally to the purchase of consumer goods. This does not apply to second-hand goods that are sold at a publicly accessible auction (section 312g (2) no. 10) if clear and comprehensive information was made easily available to the consumer as to the provisions of the present Subtitle not applying.

#### **Section 475** **Applicable provisions**

(1) Where no period of time has been determined for the respective performance to be rendered pursuant to section 433 and none can be inferred from the circumstances given, the obligee may only demand the rendering of such performance, in derogation from section 271 (1), without undue delay. In this case, the trader must deliver the goods at the latest 30 days after the contract has been concluded. The contractual parties may effect the respective performance immediately.

(2) Section 447 (1) applies subject to the proviso that the risk of accidental destruction and chance deterioration devolves to the buyer only if the buyer has instructed the haulage contractor, forwarding agent or other person or body tasked with carrying out the shipment and the trader has not previously named this person or body to the buyer.

(3) Section 439 (6) applies subject to the proviso that emoluments are not to be surrendered or to be substituted by their value. Sections 442, 445 and 447 (2) are not to be applied.

(4) The consumer may demand that the trader make advance payments towards the expenses the consumer will incur in the context of the cure pursuant to section 439 subsections (2) and (3) and that are to be borne by the trader.

(5) The trader is to effect the cure within a reasonable time limit from that point at which the consumer informed the trader of the defect, without causing any significant inconvenience to the consumer, whereby regard is to be had to the type of the goods and the purpose for which the consumer needs the goods.

(6) In the event of rescission or of compensation of damages instead of the full performance being rendered due to a defect of the goods, section 346 is to be applied subject to the proviso that the trader bears the costs of returning the goods. Section 348 is to be applied subject to the proviso that proof provided by the consumer as to the return shipment of the goods is equivalent to their return.

#### **Section 475a**

##### **Contract for the sale of consumer goods relating to digital products**

(1) Section 433 (1) sentence 2, sections 434 to 442, section 475 subsection (3) sentence 1 and subsections (4) to (6), sections 475b to 475e and sections 476 and 477 on the rights in the case of defects are not to be applied to a contract for the sale of consumer goods that has as its subject matter a tangible medium serving exclusively as a carrier of digital content. The provisions of Division 3 Title 2a Subtitle 1 take the place of the provisions not to be applied in accordance with sentence 1.

(2) In the case of a contract for the sale of consumer goods relating to a good that incorporates or is inter-connected with digital products in such a way that the absence of those digital products would not prevent the goods from performing their functions, the following provisions are not to be applied with regard to those elements of the contract that pertain to the digital products:

1. section 433 (1) sentence 1 and section 475 (1) relating to the handover of the object of the purchase and the time of performance, as well as
2. section 433 (1) sentence 2, sections 434 to 442, section 475 subsection (3) sentence 1 and subsections (4) to (6), sections 475b to 475e and sections 476 and 477 on the rights in the case of defects.

The provisions of Division 3 Title 2a Subtitle 1 take the place of the provisions not to be applied in accordance with sentence 1.

### **Section 475b**

#### **Material defect of a good with digital elements**

(1) The stipulations of this provision apply supplementally to the purchase of a good with digital elements (section 327a (3) sentence 1), in the context of which the trader enters into obligation to supply the digital elements or to have them supplied by a third party. Section 327a (3) sentence 2 applies with regard to the question of whether the obligation of the trader comprises the supply of the digital content or of the digital services.

(2) A good with digital elements is free of material defects if, upon devolution of the risk and, with regard to an obligation to provide updates, also during the period defined in subsection (3) no. 2 and subsection (4) no. 2, it conforms to the subjective requirements, the objective requirements, the assembly requirements and the installation requirements.

(3) A good with digital elements conforms to subjective requirements if

1. it conforms to the requirements set out in section 434 (2) and
2. the updates agreed in the purchase agreement for the digital elements are supplied during the period of time relevant in accordance with the contract.

(4) A good with digital elements conforms to objective requirements if

1. it conforms to the requirements set out in section 434 (3) and
2. updates are supplied to the consumer during the period that the consumer may expect based on the nature and the purpose of the good and of its digital elements, taking account of the circumstances and of the nature of the contract, that are necessary to keep the good in conformity, and if the consumer is informed of such updates.

(5) Where the consumer fails to install an update that was supplied to them in accordance with subsection (4) within a reasonable time limit, the trader will not be liable for a material defect that has been caused solely by the lack of this update if

1. the trader has informed the consumer of the update's availability and the consequences of a failure to install it and
2. the fact that the consumer has failed to install the update or has installed it incorrectly is not due to the consumer having been supplied with defective installation instructions.

(6) Insofar as an assembly or an installation is to be performed, a good with digital elements conforms to

1. the assembly requirements if it conforms to the requirements set out in section 434 (4) and
2. the installation requirements if the installation
  - a) of the digital elements was performed correctly or
  - b) if, despite the installation having been performed incorrectly, this is based neither on an incorrect installation by the trader nor on a defect given in the instructions that were handed over by the trader or the party that supplied the digital elements.

### **Section 475c**

#### **Material defect of a good with digital elements where the digital elements are supplied on a continuous basis**

- (1) The stipulations of this provision apply supplementally if, in purchasing a good with digital elements, a continuous supply is agreed for the digital elements. Section 475b (4) no. 2 applies accordingly if the parties have not specified the duration of the supply.
- (2) The trader will be liable, above and beyond what has been stipulated in sections 434 and 475b, also for the digital elements conforming to the requirements of section 475b (2) during the supply period, but at a minimum for a period of time of two years from the delivery of the good.

#### **Section 475d**

##### **Special provisions on rescission and compensation of damages**

(1) In derogation from section 323 (2) and section 440, there is no need, in order to rescind a contract for a defect of a good, to set a period of time for the cure as stipulated in section 323 (1) if

1. the trader has not effected the cure despite expiry of a reasonable time limit from the point in time at which the consumer informed the trader of the defect,
2. a defect becomes apparent in spite of the trader's attempts to effect cure,
3. the defect is so serious that the immediate rescission of the contract is justified,
4. the trader has refused to effect the proper cure as defined in section 439 (1) or (2) or section 475 (5) or
5. it is obvious from the circumstances that the trader will not effect the proper cure as defined in section 439 (1) or (2) or section 475 (5).

(2) There is no need to set the period of time stipulated in section 281 (1) in the cases governed by subsection (1) for a claim to compensation of damages due to a defect of the good. Section 281 (2) and section 440 are not to be applied.

#### **Section 475e**

##### **Special provisions on limitation**

- (1) In the case of a continuous supply of digital elements as defined in section 475c (1) sentence 1, claims for a defect of the digital elements will not become statute-barred before 12 months have lapsed following the end of the supply period.
- (2) Claims for a violation of the obligation to provide updates as defined in section 475b (3) or (4) will not become statute-barred before 12 months have lapsed following the end of the period in which the obligation to provide updates is given.
- (3) Where a defect has become apparent during the limitation period, claims will not become statute-barred before four months have lapsed following the point in time at which the defect first became apparent.
- (4) Where the consumer has handed over the good to the trader or, at the trader's behest, to a third party for purposes of effecting the cure or of satisfying claims under a guarantee, the claims being asserted for the defect will not become statute-barred before two months have lapsed following the point in time at which the repaired or replaced good was handed over to the consumer.

#### **Section 476**

##### **Deviating agreements**

(1) The trader may not rely on an agreement made prior to the trader having been notified of a defect that deviates, to the disadvantage of the consumer, from sections 433 to 435, 437, 439 to 441 and 443 and from the provisions of this Subtitle. The requirements stipulated in section 434 (3) or section 475b (4) may be deviated from by a contract made prior to the trader having been notified of a defect, if

1. it was specially made known to the consumer, prior to their making the declaration as to the conclusion of a contract, that a certain feature of the good deviates from the objective requirements and

2. this deviation within the meaning of no. 1 was expressly and separately agreed in the contract.

(2) The limitation of the claims cited in section 437 may not be eased by a legal transaction entered into prior to the trader having been notified of a defect if the agreement results in a limitation period of less than two years from the statutory commencement of limitation or, in the case of second-hand goods, of less than one year. The agreement is effective only if

1. it was specially made known to the consumer, prior to their making the declaration as to the conclusion of a contract, that the limitation period has been shortened and

2. the shortening of the limitation period was expressly and separately agreed in the contract.

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

#### **Section 477**

##### **Shifting the burden of proof**

(1) If, within one year after the devolution of the risk, the good's lack of conformity to the requirements set out in section 434 or section 475b becomes apparent, the presumption will be that the good was already defective at the devolution of the risk, unless this presumption is incompatible with the nature of the good or of the defective state. This presumption applies for a period of six months after the devolution of the risk for the purchase of a live animal.

(2) Where the continuous supply of the digital elements has been agreed in the purchase contract for goods with digital elements and where the digital elements' lack of conformity to the requirements set out in section 434 or section 475b becomes apparent in the course of the supply or within a period of two years after the devolution of the risk, the presumption will be that the digital elements were deficient over the course of their supply thus far.

#### **Section 478**

##### **Special provisions concerning recourse by the trader**

(1) Where the last contract in the supply chain is for the sale of consumer goods (section 474), then section 477 applies in the cases governed by section 445a (1) and (2), subject to the proviso that the period commences running upon the risk devolving to the consumer.

(2) The supplier may not rely on an agreement made before the supplier was notified of the defect that, to the disadvantage of the trader, deviates from subsection (1) as well as from sections 433 to 435, 437, 439 to 443, 445a (1) and (2) as well as from sections 445b, 475b and 475c if the obligee with the right of recourse is not granted equivalent compensation. Notwithstanding section 307, sentence 1 does not apply to an exclusion or restriction of the claim for damages. The provisions referred to in sentence 1 apply even if they are circumvented by other arrangements.

(3) Subsections (1) and (2) apply accordingly to the claims of the supplier and of the other buyers in the supply chain vis-à-vis their respective sellers where the obligors are traders.

#### **Section 479**

##### **Special provisions for guarantees**

(1) A declaration of guarantee (section 443) must be set out in simple and comprehensible terms. It must contain the following:

1. the reference to the statutory rights of the consumer in the case of defects, the statement that asserting these rights is free of charge, and the statement that these rights are not restricted by the guarantee,

2. the name and the address of the guarantor,
3. the procedure to be followed by the consumer in asserting the guarantee,
4. the good to which the guarantee refers, and
5. the provisions of the guarantee, in particular the duration and the area of territorial application of the guarantee protection.

(2) The declaration of guarantee is to be provided to the consumer on a durable medium no later than at the point in time at which the good is delivered.

(3) Where the producer has guaranteed durability to the consumer, the consumer is entitled, at a minimum, to a claim to cure against the producer over the term of the guarantee such claim is provided for under section 439 (2), (3), (5) and (6) sentence 2 and section 475 subsection (3) sentence 1 and subsection (5).

(4) The effectiveness of the duty under the guarantee is not affected by the fact that one of the above requirements is not satisfied.

#### **Subtitle 4 Exchange**

#### **Section 480 Exchange**

The provisions governing purchase apply accordingly to exchange.

#### **Title 2**

#### **Timeshare contracts, long-term holiday product contracts, brokerage contracts and exchange system contracts**

#### **Section 481**

#### **Time share contracts**

(1) A timeshare contract is a contract by which a trader procures or promises to procure for a consumer the right, in return for the payment of a total price, to use a residential building several times for a period that is specified or to be specified, for the purposes of overnight stays, for the duration of more than one year. All extension possibilities provided for in the contract are to be taken into account when calculating the term of the contract.

(2) The right may be a right in rem or another right, and in particular also may be granted through membership of an association or a share in a company or partnership. The right may also consist of opting to use one of a group of residential buildings.

(3) A part of a residential building is equivalent to a residential building, as is a moveable thing or a part thereof intended as overnight accommodation.

#### **Section 481a**

#### **Long-term holiday product contract**

A long-term holiday product contract is a contract for the duration of more than one year by means of which a trader procures or promises to procure for a consumer the right, in return for the payment of a total price, to receive price reductions or other benefits with regard to accommodation. Section 481 (1) sentence 2 applies accordingly.

#### **Section 481b**

#### **Facilitation contract, exchange system contract**

(1) A brokerage contract is a contract by which a trader has a consumer promise them a fee for a demonstrable referral of the opportunity to conclude a contract or for facilitating a contract by which the rights of the consumer from a timeshare contract or a long-term holiday product contract are to be acquired or sold.

(2) An exchange system contract is a contract by which a trader has a consumer promise them a fee for a demonstrable referral of the opportunity to conclude a contract or for facilitating a contract by which individual rights of the consumer from a timeshare contract or



a long-term holiday product contract are to be exchanged or acquired or sold by other means.

#### **Section 482**

##### **Preliminary contract information, advertising and prohibition of sale as an investment**

(1) In good time prior to the submission of the consumer's declaration as to the conclusion of a timeshare contract, of a long-term holiday product contract, of a brokerage contract or of an exchange system contract, the trader is to provide to the consumer the pre-contractual information under Article 242 section 1 of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*) in text form. The pre-contractual information must be clear and comprehensible.

(2) Any advertising for such contracts is to state that pre-contractual information is available and where such information may be requested. In inviting to promotional or sales events, the trader is to clearly indicate the commercial nature of the event. At such events, the consumer is to be provided with access to the pre-contractual information at any time.

(3) A timeshare right or a right from a long-term holiday product contract may not be advertised or sold as an investment.

#### **Section 482a**

##### **Instructions on the right of withdrawal**

The trader must inform the consumer in text form prior to conclusion of the contract of the right of withdrawal, including of the withdrawal period, as well as of the prohibition of advance payments under section 486. Receipt of the appropriate provisions of the contract is to be confirmed by the consumer in writing. The details have been provided for in Article 242 section 2 of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*).

#### **Section 483**

##### **Language of the contract and of the pre-contractual information**

(1) The timeshare contract, the long-term holiday product contract, the brokerage contract or the exchange system contract 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 that is a Contracting Party to the Agreement on the European Economic Area in which the consumer has their residence. If the consumer is a national of another Member State, then instead of the language of the state in which they have their residence, they may alternatively choose the official language or one of the official languages of the state of which they are a national. Sentences 1 and 2 also apply to the pre-contractual information and to the instructions on the right of withdrawal.

(2) If the agreement is to be recorded by a German notary, sections 5 and 16 of the Law on Attestations (*Beurkundungsgesetz*) apply subject to the proviso that the consumer is to be provided with a certified translation of the agreement in the language chosen by the consumer in accordance subsection (1).

(3) Contracts that do not comply with subsections (1) sentences 1 and 2 or subsection (2) are void.

#### **Section 484**

##### **Form and content of the contract**

(1) The timeshare contract, the long-term holiday product contract, the brokerage contract or the exchange system contract are to be made in writing, unless other provisions contain more stringent requirements as to form.

(2) The pre-contractual information provided to the consumer under section 482 (1) becomes part of the contract's content insofar as it is not amended by mutual agreement of the parties or unilaterally by the trader. The trader unilaterally may amend the pre-contractual information only in order to adapt it to changes caused by force majeure. The amendments

under sentence 1 must be provided to the consumer in text form prior to conclusion of the contract. They become effective only if they are included in the contract documents, indicating that they deviate from the pre-contractual information provided in accordance with section 482 (1). The contract documents are to include the following:

1. the pre-contractual information pursuant to section 482 (1), notwithstanding its validity under sentence 1,
2. the names of both parties and addresses at which documents may be served on them, as well as
3. the date and place the declarations as to the conclusion of a contract were made that are contained in the contract documents.

(3) The trader is to provide the consumer with the contract document or a copy of the contract. In the case of a timeshare contract, if the language of the contract and the official language of the Member State of the European Union or of the Contracting Party to the Agreement on the European Economic Area in which the residential building is situated are different, the trader is to enclose a certified translation of the contract in an official language of the state in which the residential building is situated. The duty to enclose a certified translation does not apply if the timeshare contract relates to a group of residential buildings that are situated in different states.

#### **Section 485**

##### **Right of withdrawal**

In the case of a timeshare contract, a long-term holiday product contract, a brokerage contract, or an exchange system contract, the consumer is entitled to a right of withdrawal under section 355.

#### **Section 486**

##### **Prohibition of down payment**

- (1) The trader may not demand or accept payments by the consumer prior to the expiry of the withdrawal period.
- (2) No payments of the consumer in connection with a brokerage contract may be demanded or accepted until the trader has complied with their obligations under the brokerage contract or this contractual relationship has been terminated.

#### **Section 486a**

##### **Special provisions for long-term holiday product contracts**

(1) In the case of a long-term holiday product contract, the form sheet designated in Article 242 section 1 (2) of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*) includes an instalment plan. The trader may not deviate from the payment methods designated therein. The trader may only demand or accept the annual instalment from the consumer that is due according to the form sheet if the trader previously has requested in text form that the consumer pay this instalment. The payment request must be received by the consumer at least two weeks prior to the due date of the annual instalment.

(2) From the point in time provided for under subsection (1) for the payment of the second instalment, the consumer may terminate the contract within two weeks of receipt of the payment request on the due date defined in subsection (1).

#### **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 arrangements.

### **Title 3**

## **Loan contract; financial accommodation and contracts for delivery by instalments between a trader and a consumer**

### **Subtitle 1 Loan contract**

### **Chapter 1 General provisions**

#### **Section 488**

#### **Contractual duties typical for a credit agreement**

- (1) The credit agreement obliges the lender to make available to the borrower a amount of money in the agreed amount. The borrower is obliged to pay the interest owed and, at the due date, to repay the loan made available.
- (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 a 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 also is entitled to repay without giving notice of termination.

#### **Section 489**

#### **Right of the borrower to give notice of termination in accordance with usual procedure**

- (1) The borrower may terminate a credit agreement with a pegged borrowing rate, as a whole or in part,
  1. if the pegging of the borrowing rate ends prior to the time determined for repayment and no new agreement is reached on the borrowing rate, observing a notice period of one month that is to end at the earliest at midnight of the day on which the pegging of the borrowing rate ends; if an adjustment of the borrowing rate is agreed at certain intervals of up to one year, then the borrower may give notice of termination only as per midnight of the day on which the pegging of the borrowing rate ends;
  2. in any case following the expiry of 10 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 borrowing rate, the date of this agreement takes the place of the date of receipt.
- (2) The borrower may terminate a credit agreement with a variable rate of interest at any time, giving three months' notice of termination.
- (3) Termination by the borrower 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 borrower's right of termination under subsections (1) and (2) 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.
- (5) The borrowing rate is the pegged or variable periodic percentage that is applied per year to the loan that has been taken out. The borrowing rate is pegged if a borrowing rate or several borrowing rates is/are agreed for the entire term of the contract, which is/are expressed as a fixed percentage. If no borrowing rate is agreed for the entire term of the contract, the borrowing rate is deemed to be pegged only for those periods for which it is determined by a fixed percentage.

#### **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 credit agreement with immediate effect; in case of doubt, the notice of termination with immediate effect is an available option under all circumstances before the loan is paid out, while after the loan has been paid out, it is an available option only as a general rule.

(2) The borrower may give early notice of termination of a credit agreement where the borrowing rate is pegged and the loan is secured by a security right in land or a maritime lien, observing the notice periods defined in section 488 (3) sentence 2 if the borrower's legitimate interests require this and six months have expired since the complete receipt of the loan. Such an interest is given in particular if the borrower has the need to otherwise realise the thing pledged to secure the loan. The borrower is to compensate the lender for the damage incurred by the lender as a result of this early termination (compensation for early repayment of the loan).

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

## **Chapter 2** **Special provisions for consumer credit agreements**

### **Section 491** **Consumer credit agreement**

(1) Unless otherwise provided, the provisions of this Chapter apply to consumer credit agreements. Consumer credit agreements are general-purpose consumer credit agreements and consumer credit agreements relating to immovable property.

(2) General-purpose consumer credit agreements are non-gratuitous credit agreements between a trader as lender and a consumer as borrower. The following contracts are not general-purpose consumer credit agreements:

1. contracts in which the net loan amount (Article 247 section 3 (2) of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*)) is less than 200 euros,
2. contracts by which the liability of the borrower is restricted to a thing surrendered to the lender as a pledge,
3. contracts according to which the borrower is to repay the loan within three months and only low costs are agreed,
4. contracts which employers conclude with their employees as an additional benefit to the employment contract at a lower effective annual interest rate than the going market rate (section 6 of the Ordinance on Price Information (*Preisangabenverordnung*)) and which are not offered to other persons,
5. contracts which are only concluded with a limited group of individuals on the basis of legal provisions in the public interest if conditions are agreed in the contract for the borrower that are more favourable to the borrower than the going market rates and a maximum of the going borrowing rate on the market is agreed.
6. contracts which are consumer credit agreements relating to immovable property or equity release credit agreements as defined in subsection (3).

(3) Consumer credit agreements relating to immovable property are non-gratuitous credit agreements between a trader as lender and a consumer as borrower if

1. they are secured by a mortgage or by a charge on land or

2. they are intended to serve the acquisition or the preservation of the property right to plots of land, to existing buildings or buildings yet to be constructed, or the acquisition or preservation of rights equivalent to real property.

Agreements in accordance with subsection (2) sentence 2 no. 4 are not consumer credit agreements relating to immovable property. Solely section 491a (4) is applicable to consumer credit agreements relating to immovable property in accordance with subsection (2) sentence 2 no. 5. Equity release credit agreements are not consumer credit agreements relating to immovable property if the creditor

1. makes lump-sum payments or periodic payments or disburses the credit in other forms and in return receives merely a sum deriving from the future proceeds of the sale of a residential immovable property, or acquires a right to a residential immovable property and
2. demands repayment only after the death of the consumer, unless the consumer violates the provisions of the contract, which will allow the creditor to terminate the contract.

(4) Section 358 subsections (2) and (4), as well as sections 491a to 495 and sections 505a to 505d, do not apply to credit agreements incorporated in a court record drawn up in compliance with the provisions of the Code of Civil Procedure (*Zivilprozessordnung*) or determined by a court order on the establishment and the content of a settlement concluded between the parties if the record or order sets out the borrowing rate, the costs of the loan invoiced when the contract was concluded, and the prerequisites based on which the borrowing rate or the costs may be adjusted.

#### **Section 491a**

##### **Preliminary contract information obligations with consumer credit agreements**

- (1) The lender is obliged to inform the borrower in accordance with the provisions of Article 247 of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*).
- (2) The borrower may require from the lender a draft of the consumer credit agreement. This does not apply for as long as the lender is not willing to conclude the contract. Where, in the case of a consumer credit agreement relating to immovable property, the lender submits to the borrower an offer or a binding suggestion for certain provisions of the contract, the lender must offer to the borrower to hand over or to transmit to the borrower a draft of the agreement; where no right of withdrawal pursuant to section 495 exists, the lender is under obligation to hand over or to transmit to the borrower a draft of the agreement.
- (3) The lender is obliged to provide suitable explanations to the borrower prior to conclusion of a consumer credit agreement so that the borrower is enabled to judge whether the contract does justice to the purpose pursued by hem and is in keeping with their assets. To this end, where appropriate the pre-contractual information under subsection (1), the main features of the contracts offered by the lender, as well as the effects such contracts typically have on the borrower, including the consequences of payment default, are to be explained. Where financial products or financial services are offered as a package with a consumer credit agreement relating to immovable property, it must be explained to the borrower whether or not it is possible to terminate them separately and what the consequences of a termination will be.
- (4) In the case of a consumer credit agreement relating to immovable property as defined in section 491 (2) sentence 2 no. 5, the lender is under obligation to inform the borrower on a durable medium, in due time prior to the latter making their declaration as to the conclusion of a contract, of the features pursuant to Chapters 3, 4 and 13 of the template set out in Article 247 section 1 (2) sentence 2 of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*). Article 247 section 1 (2) sentence 6 of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*) applies.

## **Section 492**

### **Written form, contents of the contract**

(1) Consumer credit agreements are to be concluded in writing unless a more stringent form is required. The requirement as to the written form is satisfied if the offer and the acceptance are declared in writing by the contractual parties in separate documents. The statement of the lender need not be signed if it is made using automatic equipment.

(2) The contract must contain the information stipulated for the consumer credit agreement in Article 247 sections 6 to 13 of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*).

(3) After the contract has been concluded, the lender provides to the borrower a copy of the contract. Where a time has been determined for the repayment of the loan, the borrower may demand from the lender at any time a repayment plan under Article 247 section 14 of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*).

(4) Subsections (1) and (2) apply also to the power of attorney granted by a borrower for purposes of concluding a consumer credit agreement. Sentence 1 does not apply to a power of attorney for legal proceedings or to a power of attorney recorded by a notary.

(5) Declarations on the part of the lender to be submitted to the borrower after the contract has been concluded must be made on a durable medium.

(6) If the contract does not contain the information under subsection (2), or not all of it, it may be provided subsequently on a durable medium after the contract has been effectively concluded, or, in the cases governed by section 494 (2) sentence 1, after the contract has become valid. If the lack of information under subsection (2) has led to amendments in the contractual conditions in accordance with section 494 (2) sentence 2 to subsection (6), the information may be subsequently provided only by the borrower receiving the copy of the contract that is required under section 494 (7). In the other cases, at the latest at the time of subsequently providing the information, the borrower must receive one of the documents designated in section 356b (1). In subsequently providing the information under subsection (2), the borrower is to be informed on a durable medium that the withdrawal period of one month commences following receipt of the subsequently-provided information.

(7) The agreement of a variable borrowing rate oriented by an index or a reference interest rate is effective only if the index or the reference interest rate is objective, has been specified unambiguously, and is available to the lender and the borrower and verifiable by them.

## **Section 492a**

### **Tying practices in the case of consumer credit agreements relating to immovable property**

(1) Notwithstanding the provisions of section 492b, the lender may not make the conclusion of a consumer credit agreement relating to immovable property subject to the borrower or a third party acquiring further financial products or financial services (tying practice). Where the lender is willing to conclude the consumer credit agreement relating to immovable property without the consumer acquiring further financial products or financial services, even those cases will not constitute a tying practice in which the terms of the consumer credit agreement relating to immovable property deviate from those at which the said agreement is being offered together with the further financial products or financial services.

(2) Insofar as a tying practice is impermissible, the transactions linked to the consumer credit agreement relating to immovable property are void; the effectiveness of the consumer credit agreement relating to immovable property remains unaffected.

## **Section 492b**

### **Permissible tying practices**

(1) A tying practice is permissible if the lender makes the conclusion of a consumer credit agreement relating to immovable property subject to the borrower, a member of the borrower's family or both together

1. opening a Payment account or savings account, the sole purpose of which is to accumulate capital in order to
    - a) repay or service the consumer credit agreement relating to immovable property,
    - b) make available the funds required for the loan to be granted, or
    - c) provide additional security to the lender in the event of default;
  2. acquiring or maintaining an investment product or a private pension product that
    - a) primarily serves to provide income during retirement and
    - b) provides additional security to the lender in the event of default, or that serves the accumulation of capital in order to repay or service the consumer credit agreement relating to immovable property, or in order to in this way make available the funds required for the loan to be granted;
  3. concluding a further credit agreement under which the capital repayable is based on a contractually set percentage of the value of the immovable property at the time of the capital repayment or repayments (shared equity credit agreement).
- (2) A tying practice is permissible if the lender makes the conclusion of a consumer credit agreement relating to immovable property subject to the borrower taking out, in the context of the consumer credit agreement relating to immovable property, a relevant insurance policy and if the borrower is permitted to take out such insurance also from a supplier other than the lender's preferred supplier.
- (3) A tying practice is permissible if the supervisory authority responsible for the lender has approved the further financial products or financial services as well as their being tied to the consumer credit agreement relating to immovable property under the terms of section 18a (8a) of the Banking Act (*Kreditwesengesetz*).

### **Section 493**

#### **Information during the contractual relationship**

- (1) If the borrowing rate in a consumer credit agreement is pegged, and if the pegging of the borrowing rate ends prior to the time determined for repayment, the lender informs the borrower at the latest three months prior to the end of the pegging of the borrowing rate whether they are willing to reach a new agreement as regards the borrowing rate. If the lender declares their willingness thereto, the notification must set out the borrowing rate offered by the lender at the time of notification.
- (2) The lender notifies the borrower at the latest three months prior to termination of a consumer credit agreement whether they are willing to continue the loan relationship. Where the lender declares that they are willing to continue, the notification must set out the obligatory information under section 491a (1) applicable at the time of notification.
- (3) The adjustment of the borrowing rate of a consumer credit agreement with a variable borrowing rate is not effective until the lender has informed the borrower of the details resulting from Article 247 section 15 of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*). Deviating agreements on effectiveness are permissible within the framework of Article 247 section 15 (2) and (3) of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*).
- (4) In the case of a contract for a consumer credit agreement relating to immovable property that denominates in a foreign currency as defined in section 503 (1) sentence 1, also in conjunction with sentence 3, the lender is to inform the borrower without undue delay should the value of the amount remaining to be paid, or the value of the regular instalments, increase by more than 20 per cent, expressed in the national currency of the borrower, as compared to the value it/they would have based on the exchange rate at the time of the conclusion of the contract. Said information

1. is to be transmitted on a durable medium,
2. is to include the statement as to the amount remaining to be paid having changed, citing the amount in the national currency of the borrower,
3. is to indicate the option of converting the credit agreement to an alternative currency based on section 503 and the conditions applying thereto, and, if applicable, is to explain further mechanisms for limiting the exchange rate risk, and
4. is to be provided at regular intervals until such time as the difference has fallen below 20 per cent again.

Sentences 1 and 2 are to be applied accordingly if a consumer credit agreement relating to immovable property was concluded in the currency of that Member State of the European Union in which the borrower is resident at the time of the conclusion of the contract, and if, at the time of the relevant creditworthiness assessment, the borrower primarily receives income, or holds assets from which the loan is to be repaid, in a different currency.

(5) If the borrower of a consumer credit agreement relating to immovable property notifies the lender that they intend to repay the loan early, the lender is obliged to provide the lender, without undue delay and on a durable medium, with the information necessary to consider that option. This information must include the following in particular:

1. information regarding the permissibility of early repayment,
2. in the event of permissibility, the amount to be repaid, and,
3. the amount of the compensation for early repayment of the loan, if any.

Inasmuch as the information is based on assumptions, these must be logically understandable and objectively justified and must be disclosed as such to the borrower.

(6) Where claims under the credit agreement were assigned, the obligations under subsections (1) to (5) also affect the new creditor unless the previous lender has agreed with the new creditor that only the previous lender is to be identified in the relationship with the borrower.

#### **Section 494**

##### **Legal consequences of defects of form**

(1) The consumer credit agreement and the power of attorney given by the consumer for purposes of concluding such a contract are void if the requirement as to written form is not complied with at all or if any of the items of information stipulated for the consumer credit agreement in Article 247 section 6 and sections 10 to 13 of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*) is lacking.

(2) Irrespective of a defect under subsection (1), the consumer credit agreement is valid to the extent that the borrower receives the loan or draws on it. However, the borrowing rate on which the consumer credit agreement is based is reduced to the statutory rate of interest if there is no information on the borrowing rate, on the effective annual rate of interest or on the total amount.

(3) If the effective rate of interest is stated at a rate that is too low, the borrowing rate on which the consumer credit agreement is based is reduced by that percentage by which the effective rate of interest is too low.

(4) Costs not stated are not owed by the borrower. If the contract does not state the prerequisites based on which costs or interest may be adjusted, the possibility to adjust these to the disadvantage of the borrower ceases to apply.

(5) If instalments have been agreed, then their amount is to be re-calculated by the lender, taking account of the reduced interest or costs.

(6) If the contract does not contain information on the term or on the right of termination, then the borrower is entitled to terminate at any time. If information on securities is missing, these securities cannot be demanded; this does not apply in the case of general-purpose



consumer credit agreements if the net loan amount is greater than 75,000 euros. If a consumer credit agreement relating to immovable property in a foreign currency does not contain information on the right to convert the currency of the loan, then such a right to convert the currency may be exercised at any time.

(7) The lender provides to the borrower a copy of the contract in which the contractual amendments are taken into account that result from subsections (2) to (6).

#### **Section 495**

##### **Right of withdrawal; reflection period**

(1) In the case of a consumer credit agreement, the borrower has a right of withdrawal under section 355.

(2) There is no right of withdrawal in the case of credit agreements

1. that replace or supplement, by means of repayment agreements, a credit agreement which the lender is entitled to terminate because of payment default on the part of the borrower, if this serves to prevent court proceedings and if the total amount (Article 247 section 3 of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*)) is lower than the residual debt of the original contract,

2. that are to be recorded by a notary if the notary confirms that the rights of the borrower under sections 491a and 492 are safeguarded, or

3. that correspond to section 504 (2) or to section 505.

(3) In the case of consumer credit agreements relating to immovable property, the borrower is to be granted, in the cases governed by subsection (2), a reflection period of at least seven days prior to the conclusion of the contract. For the duration of that period, the lender is bound by their offer. The reflection period commences upon the offer of contract being handed over to the borrower.

#### **Section 496**

##### **Waiver of objections, prohibition of bills of exchange and cheques**

(1) An agreement by which the borrower waives their right under section 404 to raise objections against an assignee of the obligation that they are entitled to raise against the lender, or their right under section 406 to set off also against an assignee of the obligation a claim they have against the lender, is ineffective.

(2) Where a claim of the lender under a consumer credit agreement is assigned to a third party, or if the identity of the lender is changed, the borrower is to be notified of this without undue delay, as well as of the contact data of the new creditor in accordance with Article 246b section 1 (1) nos. 1, 3, and 4 of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*). The notification may be dispensed with in the case of assignments if the previous lender has agreed with the new creditor that only the previous lender is identified in the relationship with the borrower. If the prerequisites of sentence 2 cease to exist, the notification is to be effected subsequently without undue delay.

(3) The borrower may not be obliged to incur a bill of exchange commitment for the claims of the lender under the consumer credit agreement. The lender may not take receipt of a cheque from the borrower to secure their claims under the consumer credit agreement. The borrower may require the lender at any time to surrender a bill of exchange or cheque that has been issued in violation of sentence 1 or 2. The lender is liable for all damage incurred by the borrower as a result of the issuance of such a bill of exchange or cheque.

#### **Section 497**

##### **Default of the borrower**

(1) To the extent that the borrower is in default in making payments owed on the basis of the consumer credit agreement, the borrower is to pay interest as stipulated in section 288 (1)

on the amount owed. 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 is to 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. Section 289 sentence 2 applies with regard to such interest, subject to 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 that are insufficient to repay the entire debt due are credited, in derogation from 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 partial payments. Limitation of the claims to repayment of the loan and interest is suspended from the date on which default begins under subsection (1) until they are established in a manner described in section 197 (1) nos. 3 to 5, but not for longer than 10 years from the date on which they come into existence. Section 197 (2) does not apply to claims to interest. Sentences 1 to 4 do not apply insofar as payments are made in response to judicially enforceable instruments the main claim of which is for interest.

(4) In the case of consumer credit agreements relating to immovable property, the default rate of interest for the year is, in derogation from subsection (1), 2.5 percentage points above the basic rate of interest. Subsections (2) and (3) sentences 1, 2, 4 and 5 are not to be applied to consumer credit agreements relating to immovable property.

#### **Section 498**

##### **Calling in entire loan in the case of loans repayable in instalments**

(1) The lender may terminate a consumer credit agreement on account of the default in payment by the borrower with regard to a loan that is to be repaid in instalments only if

1. the borrower
  - a) is in default in the payment of at least two consecutive instalments as a whole or in part
  - b) is in default, in the case of a contract term of up to three years, by at least 10 per cent, or, in the case of a contract term running for more than three years, by at least five per cent of the nominal amount of the loan, and
2. the lender has set the borrower a period of two weeks for payment of the amount in arrears, declaring that in the case of failure to pay within that period of time, the lender will demand the entire residual debt, and this period has expired without result.

At the latest in specifying a period of time, the lender is to offer to the borrower the opportunity to discuss the possibility of an arrangement by mutual consent.

(2) In the case of a consumer credit agreement relating to immovable property, the borrower must be in default, in derogation from subsection (1) sentence 1 no. 1 (b), by at least 2.5 per cent of the nominal amount of the loan.

#### **Section 499**

##### **Right of the lender to terminate; right to refuse performance**

(1) In a general-purpose consumer credit agreement, an agreement on a right of termination by the lender is ineffective if a specific contract term was agreed or the termination period is less than two months.

(2) In the event of a corresponding agreement having been made, the lender is entitled to refuse to disburse a general-purpose consumer credit agreement, for an objective reason, where no time is determined for repayment. If the lender intends to exercise this right, they are to notify the borrower of this promptly and inform the borrower of the reasons, where possible prior to, but at the latest promptly after, the exercise of the right. Information with regard to the reasons is not provided insofar this would jeopardise public security or order.

(3) The lender may not terminate a consumer credit agreement, otherwise end it, or demand that it be amended solely by reason of the information provided by the borrower prior to conclusion of the contract having been incomplete, or because the assessment of the borrower's creditworthiness was not performed properly. Sentence 1 does not apply should the defect of the creditworthiness assessment have been caused by the borrower having knowingly withheld from the lender information relevant to the creditworthiness assessment or having falsified such information.

### **Section 500**

#### **Termination right of the borrower; early repayment**

- (1) The borrower may terminate a general-purpose consumer credit agreement, regarding which no time for repayment has been determined, as a whole or in part without observing a period of notice. An agreement on a notice period of more than one month is ineffective.
- (2) The borrower may discharge their obligations under a consumer credit agreement early, and may do so at any time and as a whole or in part. In derogation from sentence 1, the borrower of a consumer credit agreement relating to immovable property, for which a pegged borrowing rate was agreed, may discharge their obligations early, whether as a whole or in part, in the course of the period in which the borrowing rate is pegged only if there is a legitimate interest on the part of the borrower to do so.

### **Section 501**

#### **Cost reduction in the case of early repayment and in the case of termination**

- (1) Insofar as the borrower discharges their obligations under a consumer credit agreement early under section 500 (2), the overall costs of the credit are reduced by the interest and the costs to correspond to the remaining term of the contract.
- (2) Insofar as the residual debt of a consumer credit agreement falls due prior to the agreed period by notice being given, the overall costs of the credit are reduced by the interest and the other term-linked charges which, if graduated calculation is used, apply to the period after the due date.

### **Section 502**

#### **Compensation for early repayment of a loan**

- (1) In the case of early repayment, the lender may require suitable compensation for early repayment of the loan to cover the damage directly related to early repayment if the borrower at the time of repayment owes interest at a pegged borrowing rate. In the case of general-purpose consumer credit agreements, sentence 1 applies only if the pegged borrowing rate was agreed at conclusion of the contract.
- (2) The claim to compensation for early repayment of the loan is excluded if
1. the repayment is effected from funds from an insurance policy concluded on the basis of a corresponding obligation in the credit agreement in order to ensure repayment, or
  2. the information contained in the contract on the term of the contract, the right of termination of the borrower or the calculation of the compensation for early repayment of the loan is inadequate.
- (3) In the case of general-purpose consumer credit agreements, the compensation for early repayment of a loan may not exceed the following amounts in each case:
1. 1 per cent of the amount repaid early, or, if the period between the early and the agreed repayment is not more than one year, 0.5 per cent of the amount repaid early,
  2. the amount of the interest that the borrower would have paid in the period between early and agreed repayment.

### **Section 503**

#### **Conversion to an alternative currency of a foreign-currency consumer credit agreement relating to immovable property**

(1) In the case of a consumer credit agreement relating to immovable property that is not denominated in the currency of the Member State of the European Union in which the borrower is resident at the conclusion of the contract (national currency of the borrower) (consumer credit agreement relating to immovable property and denominating in a foreign currency), the borrower may demand that the foreign-currency loan be converted to their national currency. The right to such conversion is given in those cases in which the value of the amount remaining to be paid or the value of the regular instalments increases as a result of the change of the exchange rate by more than 20 per cent, expressed in the national currency of the borrower, as compared to the value it/they would have had based on the exchange rate at the conclusion of the contract. In derogation from sentence 1, it may be agreed in the credit agreement that the national currency of the borrower will be exclusively or supplementally that currency in which, at the time of the relevant creditworthiness assessment, the borrower primarily receives income or holds assets from which the loan is to be repaid.

(2) The conversion to an alternative currency is to be carried out at the exchange rate corresponding to the market exchange rate valid on the day of the application for conversion. Sentence 1 applies only if nothing has been agreed otherwise in the credit agreement.

### **Section 504**

#### **Granted overdraft**

(1) Where a consumer loan is granted such that, in a contractual relationship concerning a current account, the lender grants to the borrower the right to overdraw their account up to a specific amount (overdraft facility), the lender is to provide to the borrower, at regular intervals, the information evident from Article 247 section 16 of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*). A right to compensation for early repayment of the loan under section 502 is excluded. Section 493 (3) is to be applied only in case of an increase in the borrowing rate and applies accordingly to an increase in the other costs that have been agreed. Section 499 (1) is not to be applied.

(2) If it is agreed in an overdraft facility taking the form of a general-purpose consumer credit agreement that, after disbursement, the term is at most three months or the lender may terminate without observing a period of notice, sections 491a (3), sections 495, 499 (2) and section 500 (1) sentence 2 are not to be applied. Section 492 (1) is not to be applied if apart from the interest no further ongoing costs are agreed, the interest is not due at intervals of less than three months, and the lender informs the borrower of the contract's content on a durable medium no later than without undue delay after conclusion of the contract.

### **Section 504a**

#### **Obligation to provide advisory services where the overdraft facility is used**

(1) The lender is to offer to the borrower advisory services within the meaning of subsection (2) if the borrower has made use of the overdraft facility made available to them continuously for a period of six months and, on average, in an amount in excess of 75 per cent of the maximum amount agreed upon. If the account statement for the current account is issued on a quarterly basis, then the point in time relevant for the prerequisites set out in sentence 1 to be given is the respective account statement. The offer to provide advisory services is to be made to the borrower in text form using that channel of communications that is customarily used in contacting the borrower. The offer to provide advisory services is to be documented.

(2) If the borrower accepts the offer, then they are to be advised on the low-cost alternatives to using the overdraft facility that are potentially available, as well as on the potential consequences of continuing the overdraft of the current account, and, depending on the circumstances, the borrower is to be made aware of suitable advisory agencies. The advisory services are to be provided in the form of a personal conversation. Means of

distance communication also may be used for this purpose. The place and the date of the advisory conversation are to be documented.

(3) If the borrower does not accept the offer of advisory services, or if no agreement is concluded for a suitable financial product at lower cost, the lender is to repeat the offer to provide advisory services if the prerequisites set out in subsection (1) are met once again. This does not apply if the borrower expressly declares that they do not wish to receive any further corresponding offers of advisory services.

### **Section 505 Tolerated overdraft**

(1) If a trader agrees in a contract with a consumer on a current account for which no overdraft facility has been granted that a fee will be payable in the event of the trader tolerating the overdrawing of the account, then this contract must contain the information under Article 247 section 17 (1) of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*) on a durable medium, and the consumer must be notified of such information at regular intervals on a durable medium. Sentence 1 applies accordingly if a lender agrees with a borrower in a contract on a current account for which an overdraft facility has been granted that a fee will be payable in the event of the trader tolerating the overdrawing of the account beyond the amount agreed by contract.

(2) Where, in the case governed by subsection (1), there is a considerable overdraft for a period longer than one month, the lender will inform the borrower promptly on a durable medium of the details evident from Article 247 section 17 (2) of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*). If, in the case governed by subsection (1), there is a continuous overdraft lasting longer than three months and the average overdraft amount is in excess of half of the average amount credited monthly to this account within the last three months, then section 504a applies accordingly. If the account statement for the current account is issued on a quarterly basis, then the point in time relevant for the prerequisites set out in sentence 1 to be met is the respective account statement.

(3) If the trader acts in breach of subsection (1) or subsection (2), then the lender may not demand costs and interest beyond the repayment of the loan.

(4) Sections 491a to 496 and 499 to 502 are not to be applied to general-purpose consumer credit agreements that come into existence subject to the prerequisites set out in subsection (1).

### **Section 505a**

#### **Obligation to perform a creditworthiness assessment for consumer credit agreements**

(1) Prior to concluding a consumer credit agreement, the lender is to assess the creditworthiness of the borrower. The lender may conclude the consumer credit agreement only if the creditworthiness assessment shows that no significant doubts exist, where a general-purpose consumer credit agreement is concerned, and that it is likely, where a consumer credit agreement relating to immovable property is concerned, that the borrower will comply with their obligations in connection with the credit agreement as stipulated by the contract.

(2) If the net loan amount is significantly increased following conclusion of the credit agreement, the creditworthiness is to be newly assessed on an updated basis, unless the amount by which the net loan was increased already had been included in the original creditworthiness assessment.

(3) In the case of consumer credit agreements relating to immovable property that

1. grant, following a credit agreement concluded between the contractual parties, a new right to utilise capital in order to achieve the purpose pursued by the borrower with the preceding credit agreement, or

2. replace or supplement some other credit agreement between the contractual parties in order to avoid terminations for default on the part of the borrower or in order to avoid measures by way of compulsory enforcement against the borrower,  
a new assessment of the creditworthiness will be required only if the prerequisites set out in subsection (2) have been met. Where no creditworthiness assessment is necessary according to this provision, the lender may not conclude the new consumer credit agreement relating to immovable property if the lender already is aware that the borrower permanently will not be able to comply with the obligations connected to that credit agreement. Section 505d applies accordingly in the event of breaches.

#### **Section 505b**

##### **Basis of the creditworthiness assessment in the case of consumer credit agreements**

- (1) In the case of general-purpose consumer credit agreements, information provided by the borrower may serve as the basis for a creditworthiness assessment and, where necessary, information from agencies that, for the purpose of transmission, commercially collect, store, alter or use personal data which may be used to evaluate consumers' credit worthiness.
- (2) In the case of consumer credit agreements relating to immovable property, the lender is to assess in detail the creditworthiness of the borrower on the basis of information on the borrower's income and expenses and other financial and economic circumstances which is necessary, sufficient, and proportionate. In so doing, the lender is to have due regard to factors that are relevant for estimating whether or not the borrower likely will be able to comply with their obligations under the credit agreement. The assessment of creditworthiness may not rely predominantly on the value of the residential immovable property exceeding the amount of the loan, or on the assumption that the residential immovable property will increase in value, unless the purpose of the credit agreement is to construct or renovate the residential immovable property.
- (3) The lender obtains the information required under subsection (2) from relevant internal or external sources, including the borrower. The lender also takes account of information provided to a credit intermediary. The lender is under obligation appropriately to confirm the information, to the extent necessary also by inspecting independently verifiable documentation.
- (4) In the case of consumer credit agreements relating to immovable property, the lender is under obligation to determine and document the processes and information on which the creditworthiness assessment relies, and to keep a record of such documentation.
- (5) The provisions regarding the protection of personal data remain unaffected.

#### **Section 505c**

##### **Further obligations in the case of consumer credit agreements relating to immovable property secured by a mortgage or by a charge on land**

Lenders granting consumer credit agreements relating to immovable property secured by a mortgage or by a charge on land are to

1. apply reliable standards in appraising the residential immovable property, and are to
2. ensure that the internal and external appraisers conducting property valuations on their behalf are professionally competent and sufficiently independent from the credit underwriting process that they can provide an objective valuation, and are to
3. document on a durable medium and keep a record of the appraisals of immovable property serving as security for consumer credit agreements relating to immovable property.

#### **Section 505d**

##### **Breach of the obligation to conduct an assessment of creditworthiness**

(1) Where the lender has breached their obligation to conduct a creditworthiness assessment, this will have the following effects:

1. any pegged borrowing rate agreed upon in the credit agreement will be reduced to the interest rate prevailing on the capital market for investments in mortgage bonds and public-sector debenture bonds (*öffentliche Pfandbriefe*), the term of which corresponds to the term for which the borrowing rate has been pegged, and
2. any variable borrowing rate agreed upon in the credit agreement will be reduced to the interest rate prevailing on the market at which European banks grant each other bonds denominating in euros having a term of three months.

The point in time relevant for determining the interest rate prevailing on the market pursuant to sentence 1 is the time of conclusion of the contract and, as the case may be, the respective point in time at which adjustments of the interest rate are contractually agreed. The borrower may terminate the credit agreement without notice at any time; no claim to compensation for early repayment of a loan exists. The lender makes available to the borrower a copy of the contract in which the amendments to the contract have been taken into account that result from sentences 1 to 3. If the credit agreement could have been concluded had the assessment of creditworthiness been duly conducted, sentences 1 to 4 do not apply.

(2) If the borrower is unable to comply with their obligations in connection with the credit agreement as contractually agreed, then the lender cannot assert claims due to breach of duty if such breach of duty is based on a circumstance that would have led to the conclusion of the credit agreement not being permitted had the assessment of creditworthiness been conducted duly and properly.

(3) Subsections (1) and (2) do not apply inasmuch as the deficiency of the creditworthiness assessment is based on the fact that the borrower intentionally or grossly negligently provided to the lender information in the sense of section 505b subsections (1) to (3) that was false or that the borrower withheld such information.

### **Section 505e**

#### **Authorisation to issue statutory instruments**

The Federal Ministry of Finance and the Federal Ministry of Justice and Consumer Protection are authorised to determine, by a joint statutory instrument that is not subject to approval by the Bundesrat, guidelines for the criteria and methods to be applied in conducting assessments of creditworthiness for consumer credit agreements relating to immovable property pursuant to sections 505a and 505b subsections (2) to (4). The statutory instrument particularly may determine guidelines

1. concerning the factors relevant for the assessment of whether or not the borrower likely will be able to comply with their obligations under the credit agreement,
2. concerning the procedures to be applied and the collection of information and its verification.

### **Subtitle 2**

#### **Financial accommodation between a trader and a consumer**

### **Section 506**

#### **Deferment of payment, other financial accommodation**

(1) The provisions of sections 358 to 360 and sections 491a to 502 as well as sections 505a to 505d applying to general-purpose consumer credit agreements are to be applied accordingly, to the exception of section 492 (4) and subject to subsections (3) and (4), to contracts by which a trader grants a consumer a non-gratuitous deferment of payment or grants the consumer some other non-gratuitous financial accommodation. Where the non-gratuitous deferment of payment or the other non-gratuitous financial accommodation relates

to the acquisition or preservation of the property right to plots of land, to existing buildings or buildings yet to be constructed, or where it relates to the acquisition or preservation of rights equivalent to real property, or where the claim of the trader is secured by a mortgage or a charge on land, the provisions applying to consumer credit agreements relating to immovable property set out in sentence 1 as well as section 503 apply accordingly. A gratuitous deferment of payment is considered a non-gratuitous deferment of payment in accordance with sentence 2 if it is made subject to the claim being secured by a mortgage or a charge on land.

(2) Contracts between a trader and a consumer on the non-gratuitous use of an object are deemed to constitute non-gratuitous financial accommodation if it is agreed that

1. the consumer is obliged to acquire the object,
2. the trader may demand that the consumer acquire the object, or
3. the consumer is to pay for a specific value of the object on termination of the contract.

Section 500 (2), section 501 (1) and section 502 are not to be applied to contracts under sentence 1 no. 3.

(3) Subject to subsection (4), the special provisions contained in sections 507 and 508 apply additionally to contracts for the supply of a specified thing or the provision of a specified other service in return for instalment payments (instalment payment transactions).

(4) The provisions of this Subtitle are not to be applied in the scope determined in section 491 (2) sentence 2 nos. 1 to 5, subsection (3) sentence 2 and subsection (4). Insofar as in accordance with the type of contract there is no net loan amount (section 491 (2) sentence 2 no. 1), it is replaced by the cash payment price or, if the trader has acquired the object for the consumer, by the acquisition price.

### **Section 507** **Instalment payment transactions**

(1) Section 494 subsections (1) to (3) and subsection (6) sentence 2 second half-sentence, is not to be applied to instalment payment transactions. If the consumer submits their offer to conclude a contract in distance selling on the basis of a sales prospectus or of a comparable electronic medium, from which the cash payment price, the borrowing rate, the effective annual interest rate, a redemption plan based on example total amounts, as well as the securities to be provided and insurance are evident, section 492 (1) also is not to be applied if the trader informs the consumer of the content of the contract on a durable medium at the latest without undue delay following conclusion of the contract.

(2) The instalment payment transaction is void if the requirement as to written form in section 492 (1) is not observed or if one of the items of information required by Article 247 sections 6, 12, and 13 of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*) is omitted in the contract. Notwithstanding a defect under sentence 1, the instalment payment transaction becomes valid if the thing is delivered to the consumer or the performance is rendered. However, the maximum rate of interest on the cash payment price is the statutory rate of interest if the information on the total amount 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. If information on the effective annual rate of interest states a rate that is too low, the total amount is reduced by the percentage by which the effective annual rate of interest is too low.

(3) In derogation from sections 491a and 492 (2) of the present Code, and in derogation from Article 247 sections 3, 6, and 12 of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*), the cash payment price and the effective annual interest rate do not need to be stated in the pre-contractual information or in the contract if the trader delivers things or renders performance only against payments in instalments. In cases covered by section 501, the calculation of the cost reduction is to be based on the statutory



interest rate (section 246). A right to compensation for early repayment of the loan is excluded.

### **Section 508**

#### **Revocation with regard to instalment payment transactions**

The trader may revoke an instalment payment transaction by reason of default in payment by the consumer only if the prerequisites designated in section 498 (1) sentence 1 are met. The total amount corresponds to the nominal amount. The consumer also is to compensate the trader for the expenses incurred as a result of the contract. The reduction in value that has since occurred is to be taken into account in the calculation of remuneration for the emoluments of a thing to be returned. If the trader takes back the thing supplied under the instalment payment transaction, this is deemed an exercise of the right of revocation, unless the trader agrees with the consumer to pay the latter the usual market value of the thing at the time of its removal. Sentence 5 applies accordingly if a contract for the supply of a thing is linked to a consumer credit agreement (section 358 (3)) and if the lender takes the thing; in the case of rescission, the legal relationship between the lender and the consumer is governed by sentences 3 and 4.

### **Section 509**

**(repealed)**

#### **Subtitle 3**

#### **Contracts for delivery by instalments between a trader and a consumer**

### **Section 510**

#### **Contracts for delivery by instalments**

(1) The written form is required for the contract between a consumer and a trader if the contract

1. has as its subject matter the supply of more than one thing sold as belonging together by way of performance in instalments and remuneration is to be paid for the totality of the things in instalments,
2. has as its subject matter the periodic supply of things of the same kind, or
3. has as its subject matter the duty of recurrent acquisition or procurement of things.

This does not apply if the consumer is given the opportunity to retrieve the terms of the contract, including the standard business terms, at conclusion of the contract, and to store them in a reproducible form. The trader is to provide the consumer with the contents of the contract in text form.

(2) Subject to subsection (3), the consumer is entitled to a right of withdrawal as defined in section 355 in the case of contracts under subsection (1) that are neither distance contracts nor off-premises contracts.

(3) The right of withdrawal under subsection (2) does not apply to the extent specified in section 491 subsection (2) sentence 2 nos. 1 to 5, subsection (3) sentence 2 and subsection

(4). The net loan amount referred to in section 491 (2) sentence 2 no. 1 is equal to the sum of all instalments to be paid by the consumer prior to the earliest termination date.

#### **Subtitle 4**

#### **Advisory services provided in the case of consumer credit agreements relating to immovable property**

### **Section 511**

#### **Advisory services provided in the case of consumer credit agreements relating to immovable property**

(1) Before the lender issues to the borrower individual recommendations regarding one or several transactions that are connected to a consumer credit agreement relating to immovable property (advisory services), the lender is to inform the borrower of the details evident from Article 247 section 18 of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*) in the form provided for therein.

(2) Prior to providing the advisory services, the lender is to obtain information regarding the borrower's needs, their personal and financial situation, and their preferences and objectives insofar as this is necessary for the recommendation of a suitable credit agreement. On the basis of this current information, and relying on reasonable assumptions about the risks to the borrower's situation that are to be expected over the term of the credit agreement, the lender is to consider a sufficiently large number of credit agreements, at a minimum from among its product range, in terms of their suitability.

(3) Based on the review in accordance with subsection (2), the lender is to recommend one suitable product or several suitable products to the borrower, or the lender is to indicate to the borrower that the lender is unable to recommend a product. The recommendation or the indication is to be made available to the borrower on a durable medium.

#### **Subtitle 5**

### **Mandatory nature, application to founders of new businesses**

#### **Section 512**

#### **Deviating agreements**

A deviation from the provisions of sections 491 to 511, sections 514 and 515 to the disadvantage of the consumer is not permissible unless otherwise provided for. These provisions apply even if they are circumvented by other arrangements.

#### **Section 513**

#### **Application to founders of new businesses**

Sections 491 to 512 also apply to natural persons who are granted a loan, deferment of payment or other financial accommodation to take up a trade or self-employed professional occupation or who conclude a contract for delivery by instalments for this purpose, unless the net loan amount or the cash price exceeds 75,000 euros or the Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937 (OJ L 347 of 20 October 2020, p. 1) is applicable.

#### **Subtitle 6**

### **Gratuitous credit agreements and gratuitous financial accommodation between a trader and a consumer**

#### **Section 514**

#### **Gratuitous credit agreements**

(1) Section 497 (1) and (3) as well as section 498, and sections 505a to 505c as well as section 505d (2) and (3) as well as section 505e are to be applied accordingly to agreements by which a trader grants a gratuitous loan to a consumer. This does not apply in the scope specified in section 491 (2) sentence 2 no. 1.

(2) In the case of credit agreements for a gratuitous loan in accordance with subsection (1), the consumer is entitled to a right of withdrawal pursuant to section 355. This does not apply if a right of withdrawal pursuant to section 312g (1) already exists, nor does it apply in the case of agreements corresponding to section 495 (2), no. 1. The trader is to inform the consumer of their right of withdrawal in due time prior to the latter making their declaration of intent in accordance with Article 246 (3) of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*). The trader may comply with this obligation by transmitting to the consumer the template provided for in Annex 9 to the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*) for the notification of revocation, duly completed, in text form.

## **Section 515**

### **Gratuitous financial accommodation**

Section 514 as well as sections 358 to 360 apply accordingly where a trader grants to a consumer a gratuitous deferment of payment or some other gratuitous financial accommodation.

## **Title 4**

### **Donation**

## **Section 516**

### **Concept of donation**

- (1) A disposition by means of which someone, using their own assets, enriches another person is a donation if both parties are in agreement that the disposition occurs gratuitously.
- (2) If the disposition has occurred without the intention of the other party, then the donor may, specifying a reasonable time limit, request the other party to make a declaration as to acceptance. Upon expiry of the period of time, the donation is deemed to be accepted unless the other party has previously rejected it. In the case of rejection, surrender of what has been bestowed may be demanded in accordance with the provisions on the surrender of unjust enrichment.

## **Section 516a**

### **Consumer contract on the donation of digital products**

(1) Sections 523 and 524 governing the liability of the donor for defects of title or material defects are not to be applied to a consumer contract under which the trader gives to the consumer, by way of donation,

1. digital products or
2. a tangible medium serving exclusively as a carrier of digital content,

and the consumer supplies to the trader personal data under the terms of section 327 (3) or enters into obligation to do so. The provisions of Division 3 Title 2a take the place of the provisions not to be applied in accordance with sentence 1.

(2) The exclusion of application under subsection (1) applies accordingly, in the case of a consumer contract under which the trader gives to the consumer, by way of donation, a thing that incorporates or is inter-connected with digital products, to those elements of the contract that relate to the digital products.

## **Section 517**

### **Failure to acquire assets**

It is not a donation if someone, to the advantage of another person, does not 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 to be valid by which performance is promised as a donation, 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 designated 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 a promise given by way of making a donation to the extent that the donor, taking account of their other duties, is incapable of fulfilling the promise without jeopardising their reasonable maintenance or the performance of duties of maintenance incumbent upon them 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 the donor's 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 defects of title**

(1) If the donor fraudulently conceals a defect of title, they are obliged to compensate the donee for the resulting damage.

(2) If the donor promised to provide an object that they had to acquire first, the donee may demand damages for non-performance for a defect of title if the defect was known to the donor upon acquisition of the thing or remained unknown as a result of gross negligence. The provisions of section 433 (1) and sections 435, 436, 444, 452 and 453 on the liability of the seller for defects of title apply accordingly.

#### **Section 524**

##### **Liability for material defects**

(1) If the donor fraudulently conceals a defect in the donated thing, they are obliged to compensate the donee for the resulting damage.

(2) If the donor promised to provide a thing designated only by class that the donor was still to acquire, 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 accordingly.

#### **Section 525**

##### **Donation subject to conditions**

(1) Anyone who makes a donation subject to a condition may demand that the condition is fulfilled if they themselves have 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 defect of title 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 the donee 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 surrender of the gift based on the prerequisites specified for the right of revocation of reciprocal contracts under

the provisions on surrender 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 incapable of maintaining themselves reasonably and to meet the maintenance obligation incumbent upon them by law in relation to their relatives, spouse, life partner or previous spouse or life partner, they may demand surrender of the gift from the donee in accordance with the provisions on the surrender of unjust enrichment. The donee may avoid surrender 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 accordingly to the duty of the donee.

(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 have the gift returned is excluded if the donor has brought about their indigence by intent or gross negligence or if, at the time of onset of their indigence, 10 years have passed since the donated object was provided.

(2) The same applies to the extent that the donee, taking into account their other duties, is incapable of returning the gift without jeopardising the maintenance suitable to their station in life or the discharging of the duties of maintenance incumbent upon them by operation of law.

#### **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 intentionally and unlawfully has killed the donor or prevented the donor 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 in accordance with the provisions on the surrender 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 prerequisites for them to have the right had been met. Revocation is no longer permissible after the death of the donee.

#### **Section 533**

##### **Waiver of the right of revocation**

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

#### **Section 534**

##### **Donations for duty and decency**

Donations made in order to comply with a moral duty or out of 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 is to make available the leased property to the lessee in a condition suitable for use as contractually agreed and maintain it in this condition for the lease period. The lessor is to bear all costs to which the leased property is subject.
- (2) The lessee is obliged to pay the lessor the agreed rent.

**Section 536**  
**Abatement of the rent for material defects and defects of title**

- (1) If the leased property at the time it is made available to the lessee for their use 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 from paying the rent for the period during which suitability is removed. For the period of reduced suitability, the lessee need only pay reasonably reduced rent. A trivial reduction of suitability is not taken into account.
- (1a) For the duration of three months, a reduction of suitability will not be taken into account insofar as it occurs because of a measure which serves the purpose of energy efficiency modernisation under section 555b no. 1.
- (2) Subsection (1) sentences 1 and 2 also applies if a warranted characteristic is lacking or later ceases to exist.
- (3) If the lessee is fully or partially deprived by a third-party right of the use of the leased property, then subsections (1) and (2) apply accordingly.
- (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 at conclusion of the lease agreement, or if such a defect arises subsequently due to a circumstance for which the lessor is responsible, 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 themselves 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 at conclusion of the contract or upon acceptance**

If the lessee knows of the defect when concluding the contract, then they do not have the rights under sections 536 and 536a. If the lessee remains unaware of the defect due to gross negligence, then they have these rights only if the lessor fraudulently concealed the defect. If the lessee accepts a defective thing despite being aware of the defect, then they may only assert the rights under sections 536 and 536a if they reserved their 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 becomes apparent during the lease period or if action to protect the leased property from an unforeseen hazard becomes necessary, then the lessee is to report this, without undue delay, to the lessor. The same applies if a third party arrogates to themselves a right to the thing.

(2) If the lessee fails to report this, then they are liable to the lessor for damage resulting therefrom. 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 rely on an agreement by which the rights of the lessee are excluded or restricted with regard to a defect in the leased property if they 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 the obligation to pay rent due to the fact that, for a reason relating to their person, they are unable to exercise their right of use. However, the lessor must allow to be credited against them the value of the expenses saved and of the advantages they enjoy from exploiting the use in another way.

(2) As long as the lessor is incapable of granting 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 contractually agreed use**

The lessee is not responsible for modifications to or deterioration of the leased property brought about by use as contractually agreed.

#### **Section 539**

##### **Reimbursement of other expenses and right of removal of the lessee**

(1) The lessee may, under the provisions on voluntary agency without specific authorisation, demand reimbursement from the lessor for expenses on the leased property for which the lessor need not compensate them under section 536a (2).

(2) The lessee is entitled to remove an installation with which they have furnished the leased property.

#### **Section 540**

##### **Making available the leased property for use by third parties**

(1) Without the permission of the lessor, the lessee is not entitled to make available the leased property to a third party for the latter's use, in particular not to sublet it. If the lessor refuses permission, then the lessee may terminate the lease for cause, observing the statutory period of notice, unless the person of the third party constitutes cause.

(2) If the lessee makes the property available to a third party for the latter's use, then the lessee is responsible for the culpability in the use of the property attributable to that third party even if the lessor has given permission for the property to be made available.

#### **Section 541**

##### **Application for prohibitory injunction in the case of use in breach of contract**

If the lessee persists with the use of the leased property in breach of contract despite a warning notice having been issued 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 contractual parties 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 the cases permissible under law, or
  2. is extended.

**Section 543**  
**Termination for cause without notice for a compelling reason**

(1) Each contractual party may terminate the lease for cause without notice for a compelling reason. A compelling reason is given if the party giving notice, with all circumstances of the individual case having been taken into account, in particular fault of the contractual parties, and having weighed the interests of the parties against each other, cannot reasonably be required to continue the lease until the end of the notice period or until the lease ends in another way.

(2) A compelling reason is given in particular in cases in which

1. the lessee is not permitted in good time the use of the leased property as contractually agreed, as a whole or in part, or is deprived of such 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 them or by making available, without authorisation, the leased property to a third party for the latter's use, or
3. the lessee
  - a) is in default, on two successive dates, in payment of the rent or of a portion of the rent that is not insignificant, or
  - b) over 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 governed by sentence 1 no. 3, termination is excluded if the lessor has by then obtained satisfaction. It becomes ineffective if the lessee obtains release from their debt by set-off and declares set-off without undue delay after notice of termination is given.

(3) If the compelling reason consists of the violation of an obligation under the lease, then the notice of termination is permissible only after the expiry without result of a reasonable period specified for the purpose of obtaining relief or after a warning notice has failed to obtain a result. This does not apply if

1. a notice period or a warning notice obviously shows no chance of succeeding,
2. immediate termination is justified, having weighed the interests of both parties against each other, for special reasons or
3. the lessee is in default in payment of rent within the meaning of subsection (2) no. 3.

(4) Sections 536b and 536d are to be applied accordingly to the right to notice of termination to which the lessee is entitled under subsection (2) no. 1. Where it is in dispute whether the lessor granted use of the leased property in good time or provided relief prior to expiry of the period specified for this purpose, the lessor bears the burden of proof.



#### **Section 544**

##### **Lease for more than 30 years**

If a lease agreement is signed for a period longer than 30 years, then each of the contractual parties may terminate the lease for cause, observing the statutory notice period, after 30 years have lapsed since the leased property was made available for use. 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 lessee 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 contractual parties has declared their 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 in time at which they become aware 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 made the leased property available to a third party for the latter to use, 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, then the lessor may for the duration of retention demand as compensation the agreed rent or the rent that is customarily paid for comparable properties 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 is to reimburse it with interest accrued since receiving it. If the lessor is not responsible for termination of the lease, then they are to reimburse their gains in accordance with the provisions on the surrender 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 of the 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 the leased property is returned to the lessor. Upon the claim of the lessor to return of the leased property becoming statute-barred, the compensation claims of the lessor likewise become 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)

#### **Section 548a**

##### **Lease of digital products**

The provisions governing the lease of things are to be applied accordingly to the lease of digital products.

**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 that sections 549 to 577a do not lead to a different conclusion.  
(2) The provisions regarding the rent amount at commencement of the lease in areas in which the housing market is under pressure (sections 556d to 556g), relating to rent increases (sections 557 to 561) and to lessee protection upon termination of the lease as well as when title to residential premises is created (section 568 (2), sections 573, 573a and 573d (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 themselves and that largely is to be furnished with furniture and fixtures by the lessor, provided that the residential space has not been made available for permanent use to the lessee with their family or with persons with whom the lessee maintains a joint household set up on a long-term basis,
3. residential space that a legal person under public law or a recognised welfare organisation under private sponsorship has leased in order to make it available to persons in urgent need of accommodation if, when the lease was concluded, said legal person 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 556d 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 concluded in written form, then it is valid for an indefinite period of time. However, termination is permissible only at the earliest at the end of one year after the residential space has been made available for use.

**Section 551**  
**Restriction and investment of rent security deposits**

(1) If the lessee is to provide to the lessor a security deposit for the performance of their 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. The further instalments are due together with the immediately ensuing rent payments.

(3) The lessor is to invest a sum of money made available to them as a deposit with a banking institution at the usual rate of interest for savings deposits to which a withdrawal notice of three months applies. The contractual parties 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 legitimate interest in removal.

(2) An agreement excluding the right of removal is only effective if reasonable compensation is provided for.

#### **Section 553**

##### **Making residential space available for use by third parties**

(1) If the lessee, after entering into the lease agreement, acquires a legitimate interest in making available the residential space to a third party for the latter's use, then the lessee may demand permission to do so from the lessor. This does not apply if the person of the third party constitutes compelling cause, if the residential space would be overcrowded or if the lessor cannot reasonably be required for other reasons to permit third-party use.

(2) If the lessor reasonably can be required to permit third-party use only in return for a reasonable increase of the rent, then they 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**

##### **Improved accessibility, e-mobility and burglary protection**

(1) The lessee may demand that the lessor permit them to make structural changes to the leased property that enable use by people with disabilities, the charging of electrically powered vehicles or protection against burglary. The claim does not exist if the lessor cannot reasonably be required to accept the structural changes also taking into account the lessee's interests. The lessee may enter into obligation in connection with the structural change to provide a special security deposit; section 551 (3) applies accordingly.

(2) An agreement deviating to the disadvantage of the lessee is ineffective.

#### **Section 555**

##### **Ineffectiveness of a penalty for breach of contract**

An agreement by which the lessor has the lessee promise a penalty for breach of contract is ineffective.

### **Chapter 1a**

#### **Structural maintenance and modernisation measures**

##### **Section 555a**

###### **Structural maintenance measures**

(1) The lessee is to tolerate measures that are necessary for the structural maintenance or repair of the leased property (structural maintenance measures).

(2) The lessee is to be given notice of structural maintenance measures in good time unless they only entail an insignificant impact on the leased property or it is imperative for them to be implemented immediately.

(3) The lessor is to reimburse expenses the lessee must incur as a result of a structural maintenance measure in a reasonable scope. On demand, the lessor is to make an advance payment.

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

##### **Section 555b**

###### **Modernisation measures**

Modernisation measures are building alterations

1. by means of which final energy is saved with lasting effect in relation to the leased property (energy efficiency modernisation),
2. by means of which non-renewable primary energy is saved with lasting effect or the climate is protected with lasting effect, unless energy efficiency modernisation has already been carried out in accordance with no. 1,
3. by means of which water consumption is reduced with lasting effect,
4. by means of which the utility value of the leased property is increased with lasting effect,
- 4a. by means of which the leased property is connected, for the first time, by an optical fibre cable, to a public network with a very high capacity as defined in section 3 no. 33 of the Telecommunications Act (*Telekommunikationsgesetz*),
5. by means of which the general living conditions are permanently improved,
6. which are carried out due to circumstances for which the lessor is not responsible, and which do not constitute structural maintenance measures in accordance with section 555a, or
7. by means of which new residential space is created.

#### **Section 555c**

##### **Announcement of modernisation measures**

(1) The lessor is to announce a modernisation measure to the lessee at the latest three months prior to its commencement in text form (modernisation notice). The modernisation notice must include information on:

1. the nature and the likely extent of the modernisation measure in its essentials,
2. the likely commencement and the likely duration of the modernisation measure,
3. the amount of the anticipated rent increase where it is intended to demand an increase in accordance with section 559 or section 559c, as well as the anticipated future operating costs.

(2) As a rule, the lessor is to notify the lessee in the modernisation notice of the form and the time limit of the hardship objection defined in section 555d (3) sentence 1.

(3) The lessor may refer, in the modernisation notice concerning a modernisation measure under section 555b nos. 1 and 2, to generally-recognised standard values, in particular with regard to the quality of construction components in terms of energy efficiency.

(4) Subsections (1) to (3) do not apply to modernisation measures that only entail an insignificant impact on the leased property and merely will lead to an insignificant rent increase.

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

#### **Section 555d**

##### **Toleration of modernisation measures, time limit**

(1) The lessee is to tolerate a modernisation measure.

(2) There is no obligation of toleration in accordance with subsection (1) if the modernisation measure would constitute a hardship for the lessor, their family or a member of their household that is not justifiable even considering the legitimate interests of both the lessor and other lessees in the building, as well as energy saving and climate protection concerns. The anticipated rent increase, as well as the anticipated future operating costs, are not included in weighing the parties' interests against each other as regards the obligation of toleration; they are to be taken into account only in accordance with section 559 (4) and (5)

in case of a rent increase.

(3) The lessee is to inform the lessor, in text form, of circumstances constituting a hardship with regard to the toleration or to the rent increase by the end of the month following receipt of the modernisation notice. The time limit will commence running only if the modernisation notice complies with the stipulations of section 555c.

(4) Once the time limit has expired, circumstances constituting hardship with regard to the toleration or to the rent increase still are to be taken into account if the lessee was prevented without their being at fault from meeting the deadline and if they inform the lessor without undue delay of the circumstances as well as of the reasons for the delay in text form. Circumstances which constitute a hardship with regard to the rent increase are to be taken into account only if they are notified at the latest by the time of commencement of the modernisation measure.

(5) If the lessor has not referred in the modernisation notice to the requirements as to form and the time limit applying to the hardship objection (section 555c (2)), the notice of the lessee in accordance with subsection (3) sentence 1 does not have to be submitted in the form and time limit specified therein. Subsection (4) sentence 2 applies accordingly.

(6) Section 555a subsection (3) applies accordingly.

(7) A deviating agreement to the disadvantage of the lessee is ineffective.

#### **Section 555e**

##### **Special right of termination of the lessee in case of modernisation measures**

(1) On receipt of the modernisation notice, the lessee may give extraordinary notice with regard to the tenancy with effect for the end of the month after next. Notice of termination must be given by the end of the month following receipt of the modernisation notice.

(2) Section 555c (4) applies accordingly.

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

#### **Section 555f**

##### **Agreements on structural maintenance or modernisation measures**

Where structural maintenance or modernisation measures are to be carried out, the contracting parties may reach agreements following conclusion of the tenancy agreement, in particular with regard to

1. the time and technical implementation of the measures,
2. the lessee's guarantee rights and rights to compensation for expenditure,
3. the future rent amount.

## **Chapter 2**

### **Rent**

#### **Subchapter 1**

##### **Agreements on rent**

#### **Section 556**

##### **Agreements on operating costs**

(1) The contractual parties may agree that the lessee is to bear the operating costs. Operating costs are the costs that are incurred on an ongoing basis 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 use of the building, the outbuildings, facilities, installations and the land in accordance with the purpose for which they are intended. The drawing up of the statement of operating costs continues to be governed by the Ordinance on Operating Costs (*Betriebskostenverordnung*) of 25 November 2003 (Federal Law Gazette I pp. 2346, 2347). The Federal Government is authorised to enact provisions on the drawing

up of the statement of operating costs by statutory instrument without the approval of the Bundesrat.

(2) The contractual parties 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) Accounts for advance payments for operating costs are to be settled once per year; in this context, the principle of economic efficiency is to be observed. The lessee is to be notified of the settlement of accounts 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 settlements of accounts. The lessee is to raise any objections against the settlement of accounts with the lessor no later than by the end of the twelfth month following receipt of the settlement of accounts. After expiry of this period, objections may no longer be asserted unless the lessee is not responsible for the lateness of the assertion.

(3a) The lessee is to bear an optical fibre provision fee as defined in section 72 (1) of the Telecommunications Act (*Telekommunikationsgesetz*) only if the measure constitutes an economic application of this technology. Where the measure is complex as defined in section 72 (2) sentence 4 of the Telecommunications Act, the lessee is to bear the costs only if the lessor, prior to agreeing the provision of optical fibre, has obtained three proposals, insofar as possible, and has selected the most economical one.

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

#### **Section 556a**

##### **Accounting criterion for operating costs**

(1) If the contractual parties have not agreed otherwise, and subject to other provisions, operating costs are to be apportioned in proportion to the residential floor space. Operating costs that depend 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 contractual parties have agreed otherwise, the lessor may by declaration in text form specify that, contrary to the agreement reached, the operating costs in future may be apportioned as a whole or in part according to a criterion that takes into account the recorded differing consumption or the recorded differing causation. The declaration is permissible only prior to commencement of an accounting period. If the costs previously have been included in the rent, the rent is to be reduced accordingly.

(3) If premises for which title is held by an owner are let on a lease and the contractual parties have not agreed otherwise, then in derogation from subsection (1) the operating costs are to be apportioned in accordance with the criterion applying to the allocation scheme in place between the owners of residential properties. Where this criterion is not in keeping with the principle of equitably exercising discretion, the apportionment is to be performed in accordance with subsection (1)

(4) An agreement deviating from subsection (2) to the disadvantage of the lessee 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 individual 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 they have notified the lessor in text form of their 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.

### **Section 556c**

#### **Costs of heat supply as operating costs, authorisation to issue statutory instruments**

(1) If the lessee is to bear the operating costs for heating or hot water, and if the lessor converts the supply from internal supply to an independent commercial supply from a heat supplier (heat supply), then the lessee is to bear the costs of heat supply as operational costs if

1. the heat is supplied more efficiently, either from a new system constructed by the heat supplier or from a heat network, and
2. the costs of heat supply do not exceed the operating costs for the previous internal supply of heat or hot water.

Where the annual utilisation rate of the existing system prior to conversion is at least 80 per cent, the heat supplier may restrict itself to improving the operation of the system instead of the measures in accordance with no. 1.

(2) The lessor is to announce the conversion at the latest three months in advance and in text form (conversion notice).

(3) The Federal Government is authorised to enact provisions, by statutory instrument without the approval of the Bundesrat, for heat supply contracts that are concluded in the case of conversion under subsection (1), as well as for the requirements in accordance with subsections (1) and (2). In this context, the concerns of lessors, lessees and heat suppliers are to be adequately taken into account.

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

### **Subchapter 1a**

#### **Agreements on the rent amount at commencement of the lease in areas in which the housing market is under pressure**

### **Section 556d**

#### **Permissible rent amount at commencement of the lease; authorisation to issue statutory instruments**

(1) Where a lease agreement is concluded for residential space that is located in an area in which the housing market is under pressure, as determined by a statutory instrument in accordance with subsection (2), the rent charged at commencement of the lease may be in excess of the reference rent customary in the locality (section 558 (2)) by no more than 10 per cent.

(2) The *Land* Governments are authorised to determine areas in which the housing market is under pressure by means of a statutory instrument for a maximum duration of five years in each case. Areas in which the housing market is under pressure are given if the adequate supply of the population with rented dwellings at appropriate terms is particularly at risk in a municipality or a part of a municipality. This may be the case especially if

1. the rents are increasing by a significantly higher rate than they are, on average, throughout the Federal Republic of Germany,
2. the rent accounts for a significantly higher portion of household expenses, on average, than is the average throughout the Federal Republic of Germany,
3. the residential population is growing without the housing required in this regard being created by new construction, or
4. a low vacancy rate is faced with high demand.

A statutory instrument in accordance with sentence 1 must cease to be in force no later than on midnight of 31 December 2025. The reasoning for it must be provided. The reasoning must show the facts based on which an area in which the housing market is under pressure is given in the individual case. Furthermore, it must be evident from the reasoning which

measures the *Land* Government will take in the area and in the period of time respectively determined by the statutory instrument pursuant to sentence 1 in order to remedy the situation.

### **Section 556e**

#### **Consideration of the rent paid previously, or of modernisation work done**

(1) Where the rent last owed by the previous lessee (rent paid previously) is higher than the rent permissible pursuant to section 556d (1), a rent may be agreed in an amount up to the amount of the rent paid previously. Abatements of the rent as well as those rent increases that were agreed upon with the previous lessee in the course of the last year prior to termination of the lease are not taken into account in determining the rent paid previously.

(2) Where the lessor has taken modernisation measures in the sense of section 555b in the course of the last three years prior to commencement of the lease, the rent permissible under section 556d (1) may be exceeded by that amount that would result in the event of a rent increase pursuant to section 559 subsections (1) to (3a) and section 559a subsections (1) to (4). In performing the calculation pursuant to sentence 1, the reference rent customary in the locality (section 558 (2)) is to be used as a basis that would be charged at the commencement of the lease without taking account of the modernisation.

### **Section 556f**

#### **Exceptions**

Section 556d is not to be applied to a dwelling that is being used and let on a lease for the first time at a point in time after 1 October 2014. Sections 556d and 556e are not to be applied to the first-time lease of a dwelling following comprehensive modernisation.

### **Section 556g**

#### **Legal consequences; information on the rent**

(1) An agreement deviating to the disadvantage of the lessee from the provisions of the present Subchapter is ineffective. This applies to agreements on the rent amount at commencement of the lease only insofar as the permissible rent is exceeded. The lessor is to surrender to the lessee the rent that has been paid in excess in accordance with the provisions on the surrender of unjust enrichment. Section 814 and section 817 sentence 2 are not to be applied.

(1a) To the extent the permissibility of the rent is based on section 556e or section 556f, the lessor is under obligation to inform the lessee, without this needing to be requested, of the following prior to the lessee making their declaration as to the conclusion of a contract:

1. in the case governed by section 556e (1), the amount of the rent paid previously,
2. in the case governed by section 556e (2), that modernisation measures were performed in the last three years prior to commencement of the lease,
3. in the case governed by section 556f sentence 1, that the dwelling was used and let on a lease for the first time after 1 October 2014,
4. in the case governed by section 556f sentence 2, that the lease is the first-time lease following comprehensive modernisation.

Insofar as the lessor has not provided the information, they may not rely on a rent that is permissible under the terms of section 556e or section 556f. Where the lessor has not provided the information and has done so subsequently in the form required, they may rely on a rent that is permissible under the terms of section 556e or section 556f only two years after having provided the information subsequently. Where the lessor has not provided the information in the form required, they may rely on a rent that is permissible under the terms of section 556e or section 556f only once they have subsequently provided the information in the form required.



(2) The lessee may demand that the lessor repay rent that is not owed pursuant to sections 556d and 556e only if the lessor has objected to a breach of the provisions of this Subchapter. Where the lessor has provided information in accordance with subsection (1a) sentence 1, the objection must refer to the information so provided. Where the lessee objects to the violation more than 30 months after commencement of the lease or where the lease already had come to an end at the time the objection is received, the lessee may demand repayment only of the rent that fell due after receipt of the objection.

(3) Upon the lessee's demand, the lessor is obliged to provide information regarding those facts that are relevant to the permissibility of the agreed rent under the provisions of this Subchapter, inasmuch as these facts are not generally accessible and it is easily possible for the lessor to provide information in this regard. Section 559b (1) sentences 2 and 3 applies accordingly to information regarding modernisation measures (section 556e (2)).

(4) All declarations pursuant to subsections (1a) to (3) require text form.

## **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 contractual parties as stepped rent under section 557a or as indexed rent under section 557b.

(3) In all other cases, 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 is evident 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 is to be indicated as an amount of money (stepped rent).

(2) The rent must remain unchanged in each case for at least one year. During the term agreed for stepped rent, an increase under sections 558 to 559b is excluded.

(3) The right of the lessee to give notice of termination may be excluded for a maximum of four years after the stepped rent agreement is concluded. Termination is permissible at the earliest with effect for the end of this period at.

(4) Sections 556d to 556g are to be applied to any stage of the stepped rent. Instead of the commencement of the lease, that point in time is relevant for the calculation of the amount of the second stage of the stepped rent and all further stages permissible pursuant to section 556d (1) at which the first rent of the respective stage of the stepped rent falls due. The rent amount effectively established in a previous stage of the stepped rent continues in force.

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

### **Section 557b Indexed rent**

(1) The contractual parties 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 in each case. 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 they are not responsible. An increase under section 558 is excluded.

(3) A change in rent under subsection (1) must be asserted 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 are to be indicated as an amount of money. The revised rent is to be paid at the commencement of the second month beginning after receipt of the declaration.

(4) Sections 556d to 556g are to be applied only to the initial rent of an agreement providing for an indexed rent

(5) 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 at which the increase is to occur, the rent has remained unchanged for 15 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 six years in the municipality or in a comparable municipality for residential space that is comparable in type, size, furnishings, nature and location, including the energy systems and its characteristic features. Residential space for which the amount of rent has been stipulated by law or in connection with a promise of sponsorship is exempt.

(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 20 per cent (capping limit). The percentage in accordance with sentence 1 is 15 per cent if the adequate supply of the population with rented dwellings at appropriate terms in a municipality or a part of a municipality is particularly jeopardised and these areas have been specified in accordance with the sentence 3. The *Land* Governments are authorised to determine these areas by means of a statutory instrument for a maximum duration of five years in each case.

(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 rent-control scheme has ceased to apply, and

2. to the extent that the increase does not exceed the amount of the most recently payable compensation payment.

The lessor may demand, at the earliest four months prior to the rent-control scheme ceasing to apply, that the lessee inform them within one month of the duty to pay compensation and of its amount. Sentence 1 applies accordingly 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 because the rent-control scheme has ceased to apply.

(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 governed by section 559a (1) in the amount of eight 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) The demand for a rent increase under section 558 is to be declared and justified to the lessee in text form.

(2) In justification, reference may be made in particular 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 the corresponding rent for individual comparable dwellings; in this context, it is sufficient to name three dwellings.
- (3) If an expert list of representative rents (section 558d (1)) that complies with the stipulations of section 558d (2) contains information for the dwelling, then the lessor is to communicate this information in their demand for a rent increase even if they are basing their demand for a rent increase on some other means of justification under subsection (2).
- (4) In making reference to a list of representative rents setting out ranges, it is sufficient if the rent demanded lies within the range. If, at the time at which the lessor makes their declaration, no list of representative rents is available that complies with sections 558c (3) or 558d (2), 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, they will owe the increased rent from the beginning of the third calendar month following receipt of the demand for an increase.
- (2) Insofar as the lessee does not consent to the rent increase by the end of the second calendar month following receipt of the demand, the lessor may sue for grant of consent. The action must be brought within three additional months.
- (3) If the action is preceded by a demand for increase that does not conform to 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 as well, the lessee is entitled to the period of time allowed for consent 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, insofar as 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) As a rule, lists of representative rents are to be adjusted for market trends at intervals of two years.
- (4) Municipalities as a rule are to produce lists of representative rents if there is a need for this and if this is possible at a reasonable expenditure of time and effort. As a rule, the lists of representative rents and the changes to them are to be published.
- (5) The Federal Government is authorised to enact provisions, by statutory instrument issued with the approval of the Bundesrat, on the detailed contents of lists of representative rents and on the procedure for drawing up and adjusting them, including their documentation and publication.

#### **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 is to 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 jointly is maintained or recognised by the municipality or by representatives of lessors and lessees, and information is issued on the basis of this database that allows a conclusion to be drawn as to the reference rent customary in the locality with regard to individual dwellings.

### **Section 559**

#### **Rent increase after modernisation measures**

(1) If the lessor has carried out modernisation measures within the meaning of section 555b no. 1, 3, 4, 5 or 6, then they may increase the annual rent by eight per cent of the costs spent on the dwelling. In the case governed by section 555b no. 4a, the increase is permissible only if the lessee is able freely to select the provider of publicly accessible telecommunications services via the service connection installed and the lessor does not apportion or has not apportioned as operating costs a provision fee under section 72 of the Telecommunications Act (*Telekommunikationsgesetz*).

(2) Costs which would have been necessary for structural maintenance measures do not belong among the costs expended in accordance with subsection (1); where necessary, they are to be ascertained by way of an estimate.

(3) If modernisation measures are carried out for more than one dwelling, the costs are to be apportioned reasonably among the individual dwellings.

(3a) If increases of the annual rent as defined in subsection (1) are effected, then, leaving aside the increases in accordance with section 558 or section 560, the monthly rent may not increase, over the course of six years, by more than three euros per square meter of residential space. Where the monthly rent amounts, prior to the rent increase, is less than seven euros per square meter of residential space, it may not increase, in derogation from sentence 1, by more than two euros per square meter of residential space.

(4) The rent increase is excluded where, also taking account of the likely future operating costs for the lessee, it would constitute a hardship that is not justifiable even taking the legitimate interests of the lessor into account. The interests are not weighed against each other in accordance with sentence 1 if

1. the property merely was restored to a customary condition, or
2. the modernisation measure was carried out as a result of circumstances for which the lessor was not responsible.

(5) Circumstances that constitute a hardship in accordance with subsection (4) sentence 1 are to be taken into account only if they have been notified in good time in accordance with section 555d (3) to (5). The provisions on the cut-off period defined in sentence 1 are not to be applied if the de facto rent increase exceeds that which had been announced by more than 10 per cent.

(6) 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 the costs spent within the meaning of section 559.

(2) If the costs of the modernisation 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 obtained by computing 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 modernisation measures ended is the relevant interest rate. If subsidies or loans are used to cover ongoing expenses, 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 modernisation 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 are to 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 is to be declared to the lessee in text form. The declaration is only effective if the increase is calculated in it on the basis of the costs incurred and if an explanation is provided in accordance with the prerequisites set out in sections 559 and 559a. Section 555c (3) applies accordingly.

(2) The lessee owes the increased rent from the beginning of the third month following receipt of the declaration. The period is extended by six months

1. if the lessor has failed to notify the lessee of the modernisation measure as required in accordance with the provisions of section 555c subsections (1) and (3) to (5),  
or

2. if the de facto rent increase is higher by more than 10 per cent than the increase notified.

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

#### **Section 559c**

##### **Simplified procedure**

(1) Where the costs being claimed for the modernisation measure of the dwelling, after deduction of the lump sum defined in sentence 2, do not exceed 10,000 euros, the lessor may calculate the rent increase by way of applying a simplified procedure. A lump-sum deduction of 30 per cent of the costs claimed in accordance with sentence 1 is made for costs that would have been required for structural maintenance measures (section 559 (2)). Section 559 (4) and section 559a (2) sentences 1 to 3 do not apply.

(2) If the lessor already has increased the rent in the past five years in accordance with subsection (1) or pursuant to section 559, then the costs that may be claimed under subsection (1) sentence 1 for the further modernisation measure will be reduced by those costs that have been claimed in said earlier procedures for modernisation measures.

(3) Section 559b applies accordingly to the simplified procedure. The lessor must state in the declaration as to the rent increase that they have calculated the rent increase by way of applying the simplified procedure.

(4) Where the lessor has claimed a rent increase by way of applying the simplified procedure, they may not claim from the lessee any rent increases under section 559 for a period of five years following receipt of the declaration as to the rent increase. This does not apply

1. to the extent the lessor is to implement modernisation measures in the course of that period of time due to a statutory obligation and the lessor neither was aware of this

obligation at the time they claimed the rent increase by way of applying the simplified procedure nor ought to have been aware of it,

2. insofar as a modernisation measure is implemented based on a resolution of the owners of residential properties that was adopted at the earliest two years following receipt by the lessee of the declaration as to the rent increase.

(5) Section 555c applies to the modernisation notice that is intended to result in a rent increase by way of applying the simplified procedure subject to the following provisos:

1. the lessor must state in the modernisation notice that they are applying the simplified procedure,

2. it is not necessary to provide the information on the anticipated future operating costs stipulated in section 555c (1) sentence 2 no. 3.

#### **Section 559d**

##### **Breaches of duty in announcing or implementing structural changes**

The presumption will be that the lessor has acted in breach of their duties under the obligation if

1. the structural change is not commenced within twelve months of the date announced as the commencement date or, if no information was provided in this regard, twelve months following receipt of the announcement of the structural change,

2. a rent increase is stated in the notice defined in section 555c (1) by which the monthly rent at a minimum would double,

3. the structural change is implemented in a manner that is suited to lead to significant inconvenience for the lessee without this objectively being necessary, or if,

4. after commencement of the structural change, the work is put on hold for longer than twelve months.

This presumption does not apply if the lessor demonstrates that a logically understandable, objective reason is given for their conduct in the individual case.

#### **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 making 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 allocated to them 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 with retroactive effect, the declaration has a retroactive effect from the date on which the operating costs rose, but no earlier than the beginning of the calendar year preceding the year of the declaration, provided the lessor makes the declaration within three months after they first had knowledge of the increase.

(3) If operating costs are reduced, then the lump sum for operating costs is to be reduced accordingly from the date of such reduction. The lessee is to be informed of the reduction without undue delay.

(4) If advance payments of operating costs have been agreed, then, after a settlement of accounts, each of the contractual parties 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 is to 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 following receipt of the declaration of the lessor, the lessee may terminate the lease for cause with effect for 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 their 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 expires 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 life circumstances or if the things left behind evidently suffice to give the lessor security.

### **Section 562b**

#### **Self-help; claim to surrender**

- (1) The lessor may prevent the removal of the things that are subject to the lessor's security right, even without having recourse to the court, to the extent that the lessor is entitled to object to the 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 the lessor may demand surrender of the things for the purpose of returning them to the plot of land and, if the lessee has moved out, the lessor may demand that possession of the things be relinquished to them. The security right expires at the end of one month after the lessor has obtained knowledge of the removal of the things, unless the lessor previously has asserted this claim in court.

### **Section 562c**

#### **Warding off the security right by provision of security**

The lessee may ward off the assertion of the security right of the lessor by providing security. They 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 regarding the rent for an earlier period than the last year prior to the attachment.

### **Chapter 4**

#### **Change of contractual parties**

### **Section 563**

#### **Right of accession upon death of the lessee**

- (1) A spouse or a life partner who maintains a joint household with the lessee accedes to the lease upon the death of the lessee.

(2) If children of the lessee live in the joint household of the lessee, then these children accede to the lease on the death of the lessee if the spouse or life partner does not succeed. Other family members who maintain a joint household with the lessee accede to the lease on the death of the lessee if the spouse or the life partner does not accede to it. The same applies to persons who maintain a joint household set up on a long-term basis with the lessee.

(3) If persons who have acceded 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 accession is deemed not to have occurred. For persons without capacity to contract or having limited capacity to contract, section 210 applies accordingly. If more than one person accedes to the lease, then each may make the declaration on their own behalf.

(4) The lessor may terminate the lease for cause observing the statutory notice period within one month after obtaining knowledge of the definitive accession to the lease if the person of the party acceding to it constitutes compelling cause.

(5) A deviating agreement to the disadvantage of the lessee or of such persons as are entitled to accede to the lease under subsection (1) or (2) is ineffective.

#### **Section 563a**

##### **Continuation with surviving lessees**

(1) If more than one persons 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 observing the statutory notice period.

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

#### **Section 563b**

##### **Liability in the case of accession or continuation**

(1) The persons who accede 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. Unless otherwise provided, the heir has sole liability in relation to these persons.

(2) If the lessee paid rent in advance for a period of time subsequent to their death, the persons who accede 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 accede 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 accede 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, observing the statutory period of notice, within one month of their having obtained knowledge of the death of the lessee and of the fact that there has been no accession to the lease and no continuation thereof.

#### **Section 565**

##### **Commercial subletting**

(1) If under the lease agreement the lessee is intended 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 accedes to 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 contractual party, accedes to the rights and duties under the lease agreement with the third party.

(2) Sections 566 to 566e apply accordingly.

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

### **Section 566**

#### **Purchase is subject to existing leases**

(1) If, after the leased residential space has been made available to the lessee for the latter's use, it is alienated by the lessor to a third party, then the acquirer, in place of the lessor, accedes to the rights and duties that arise under the lease agreement during the period of their ownership.

(2) If the acquirer does not perform their duties, then the lessor is liable in the same way as a surety who has waived the defence of failure to pursue remedies for the damage for which the acquirer is to provide compensation. If the lessee obtains knowledge of the devolution of ownership by notification from the lessor, then the lessor is released from liability unless the lessee terminates the lease as per the earliest date at which termination is permissible.

### **Section 566a**

#### **Rent security deposit**

If the lessee of the residential space that has been alienated has provided security to the lessor for the performance of their duties, then the acquirer accedes to 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 over the rent**

(1) If the lessor, prior to the devolution of ownership, disposes over the rent attributable to the period in which 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 devolved. If ownership devolves after the fifteenth day of the month, then the disposition also is effective to the extent that it relates to the rent for the following calendar month.

(2) The acquirer must allow a disposition over the rent for a later period to apply against them if they had knowledge of it at the time of the devolution of ownership.

### **Section 566c**

#### **Agreement between lessee and lessor on the rent**

A legal transaction entered into between the lessee and the lessor regarding the claim to rent, in particular the 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 devolution of ownership. If the lessee obtains knowledge of this after the fifteenth day of the month, then the legal transaction also is effective to the extent that it relates to the rent for the next calendar month. A legal transaction entered into after the devolution of ownership is ineffective, however, if the lessee had knowledge of the devolution 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 may set off against the claim to rent of the acquirer a claim to which they are entitled against the lessor. Set-off is excluded if the lessee acquires the counterclaim after obtaining knowledge of the devolution of ownership, or if the counterclaim becomes due only after the lessee obtains knowledge and after the rent falls due.

### **Section 566e**

#### **Notification by the lessor of the devolution of ownership**

(1) If the lessor notifies the lessee that they have transferred ownership of the leased residential space to a third party, then the lessor must, with regard to the claim to rent, allow the notification of the transfer to be applied against them 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 the leased residential space being made available to the lessee for the latter's use, the lessor encumbers it by a third-party right, then sections 566 to 566e are to be applied accordingly if, by exercise of the right, the lessee is deprived of the contractually agreed use of the leased residential space. If the lessee is restricted by the exercise of this right in their contractually agreed use, 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 the contractually agreed use.

#### **Section 567a**

##### **Alienation or encumbrance prior to residential space being made available for use**

If, prior to the leased residential space being made available to the lessee for the latter's use, the lessor has alienated the residential space to a third party or has encumbered it by a right by the exercise of which the lessee is deprived of or restricted in the use contractually agreed for it, then the same applies as in the cases governed by sections 566 (1) and 567 if the acquirer has agreed with the lessor to assume the performance of the duties arising from the lease agreement.

#### **Section 567b**

##### **Onward alienation or encumbrance by the acquirer**

If the acquirer alienates the leased residential space acquired or encumbers it, then sections 566 (1) and sections 566a to 567a are to be applied accordingly. 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 requires the written form.

(2) As a rule, the lessor is to draw the attention of the lessee, in good time, to the possibility of an objection and the requirements as to form and the period of time governing the objection stipulated in 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) exists for the lessee also if the leased residential space is in such a condition that its use constitutes a significant health hazard. This also applies if the lessee knew of the hazardous nature at conclusion of the contract or waived their rights arising from this nature.

(2) A compelling reason within the meaning of section 543 (1) furthermore exists if one contractual party permanently disturbs the domestic peace in such a way that the party giving notice, having taken all circumstances of the specific case into account, in particular a fault of the contractual parties, and having weighed the interests of both parties against each

other, cannot reasonably be required to continue the lease until the end of the notice period or until the lease is terminated in some other way.

(2a) A compelling reason within the meaning of section 543 (1) furthermore is deemed to exist if the lessee is in arrears in providing security under section 551 in the amount of a sum corresponding to twice the monthly rent. Operating costs to be shown as a flat-rate or advance payment are not to be taken into account in the calculation of the monthly rent in accordance with sentence 1. A grace period or a warning notice in accordance with section 543 (3) sentence 1 is not required. Subsection (3) no. 2 sentence 1 as well as section 543 (2) sentence 2 are to be applied accordingly.

(3) By way of supplementing section 543 (2) sentence 1 no. 3, the following applies:

1. In the case governed by section 543 (2) sentence 1 no. 3 (a), the part of the rent in arrears may be considered as not insignificant only 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 has become 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, at a time no longer than two years earlier, the notice of termination was preceded by a notice of termination that became ineffective under sentence 1.

3. If the lessee has been finally and bindingly sentenced to pay an increased rent under sections 558 to 560, then the lessor may not terminate the lease due to the lessee's default in payment before the end of two months after the final and binding conviction unless the prerequisites for termination for cause without notice already have been met for the rent owed previously.

(4) The compelling reason leading to termination is to be stated in the notice of termination.

(5) An agreement deviating 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 compensation of 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 claim further damages within the meaning of section 546a (2) only if the return failed to occur for reasons for which the lessee is responsible. Damage is to be compensated only 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 they are 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 rescission; lease subject to condition subsequent**

(1) The lessor may not rely on an agreement by which the lessor is intended to be entitled to rescind the lease agreement after the leased residential space has been made available to the lessee for the latter's use.

(2) In addition, the lessor may not rely on 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 in accordance with usual procedure**

(1) The lessor may only give notice if they have a legitimate interest in the termination of the lease. Notice of termination for the purpose of increasing the rent is excluded.

(2) A legitimate interest of the lessor in the termination of the lease exists in particular in cases where

1. the lessee culpably has violated their contractual duties to a greater than insignificant degree,
2. the lessor needs the premises as a dwelling for themselves, their relatives or members of their household, or
3. the lessor, by continuing the lease, would be prevented from making appropriate economic use of the plot of land and as a result would suffer substantial disadvantages; the possibility of attaining a higher rent by leasing the residential space to others is not an option to be considered in this context; the lessor likewise may not invoke the fact that they wish to alienate the residential premises in connection with the intended creation of title to the residential premises, or in connection with a creation of title to the residential premises that was effected after the leased residential space was made available to the lessee for the latter's use.

(3) The reasons for a legitimate interest of the lessor are to be stated 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**

#### **Eased termination by the lessor**

(1) The lessor may also terminate a lease of a dwelling in a building inhabited by the lessor themselves and having no more than two dwellings without this requiring a legitimate interest as defined in section 573. The notice period in this case is extended by three months.

(2) Subsection (1) applies accordingly to residential space inside the dwelling inhabited by the lessor themselves to the extent that the residential space is not exempt from lessee protection under section 549 (2) no. 2.

(3) The letter giving notice of termination is to state that the termination is based on the prerequisites set out in 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 support spaces or parts of a plot of land that are not intended to serve residential purposes without a legitimate interest within the meaning of section 573 needing to be given if they limit the notice of termination to these spaces or parts of the plot of land and if they intend to use them

1. to create residential space for the purpose of leasing, or
2. to provide the intended or existing residential space with support spaces or parts of a plot of land.

(2) Notice of termination is permissible at the latest on the third working day of a calendar month with effect for 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**

##### **Periods of time to be observed in giving notice of termination in accordance with usual procedure**

- (1) Notice of termination is permissible at the latest on the third working day of a calendar month with effect for 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 residential space has been made available to the lessee for the latter's use.
- (2) For residential space that is leased only for temporary use, a shorter notice period may be agreed.
- (3) For residential space under section 549 (2) no. 2, notice of termination is permissible at the latest on the fifteenth day of a month with effect for 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 observing the statutory notice period**

- (1) If a lease may be terminated for cause observing the statutory notice period, then sections 573 and 573a apply accordingly, with the exception of notice of termination to the heirs of the lessee under section 564.
- (2) Notice of termination is permissible at the latest on the third working day of a calendar month with effect for 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 with effect for 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 issued by the lessor and may demand of the latter that they continue the lease if termination of the lease would constitute a hardship for the lessee, their family or another member of their household that is not justifiable even considering the legitimate 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 is given also if appropriate substitute residential space cannot be procured on reasonable terms.
- (3) In considering the legitimate interests of the lessor, only the reasons stated in the letter giving 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 governed by section 574, the lessee may demand that the lease be continued as long as is appropriate having regard to all circumstances. If the lessor cannot reasonably be required to continue the lease under the previously applicable contract terms, then the lessee may only demand that it be continued with an appropriate modification 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**

#### **Requirements as to form and period of time for objection**

- (1) An objection by the lessee against termination is to be declared in writing. Upon demand by the lessor, the lessee as a rule is to provide information without undue delay on the reasons for the objection.
- (2) The lessor may refuse to continue the lease if the lessee has failed to raise the objection with them by no later than two months prior to termination of the lease. If the lessor has not referred to the possibility of objection and to the requirements as to form and the period of time applying to it, in good time before the end of the period for filing an objection, then the lessee may declare their 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 the lease in the case of unforeseen circumstances**

- (1) If it has been established, based on sections 574 to 574b, by arrangement of the parties or by judicial decision that the lease is to be continued for a specified 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 the foreseen occurrence of which was decisive for the period of time for which the lease was to continue.
- (2) If the lessor terminates a lease regarding which a 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 specified period of time**

### **Section 575**

#### **Fixed-term lease**

- (1) A lease may be entered into for a specified period of time if the lessor upon termination of the lease period
  1. wishes to use the premises as a dwelling for themselves, their relatives or members of their household, or
  2. wishes to eliminate the premises or change or repair them in permissible fashion to such a substantial degree that the measures would be significantly more difficult were the lease to be continued, or
  3. wishes to lease the premises to a person obliged to perform servicesand the lessor notifies the lessee in writing of the reasons for the fixed term at conclusion of the lease agreement. Otherwise the lease is deemed to have been concluded for an indefinite period of time.
- (2) At the earliest four months prior to expiry of the fixed term, the lessee may demand of the lessor that the latter notify them 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 to exist, then the lessee may demand an extension for an indefinite period of time. The burden of proof as to the reason for setting a fixed term having arisen 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 observing the statutory notice period**

- (1) If a lease entered into for a fixed term may be terminated for cause observing the statutory notice period, then sections 573 and 573a apply accordingly, to the exception of notice of termination to the heirs of the lessee under section 564.
- (2) Sections 574 to 574c apply accordingly 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 permissible at the latest on the third working day of a calendar month with effect for 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 with effect for 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 of time to be observed in giving notice of termination in accordance with usual procedure in the case of tied leased dwellings**

- (1) If residential space is let on a lease in view of the existence of a service relationship, then the lessor may upon termination of the employment and in derogation from section 573c (1) sentence 2 terminate the lease observing the following notice periods:

1. for residential space that has been made available to the lessee for the latter's use for less than 10 years, at the latest on the third working day of a calendar month with effect for 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 with effect for the end of that month if the service relationship by its nature required residential space to be made available for use that is directly related to the place of work or is located in its immediate vicinity 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 to raise an objection in the case of tied leased dwellings**

- (1) In applying sections 574 to 574c to tied leased dwellings, the interests of the person entitled to services likewise are to 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 performance of service having given them any legally justified reason for doing so, or the lessee, by their conduct, has provided the person entitled to performance of 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 accordingly in connection with tied dwellings**

- (1) If residential space has been made available for use in connection with a service relationship, then the termination of the legal relationship with regard to the residential space is governed accordingly by the provisions on leases if the furniture and fixtures with which the residential space has been equipped mostly belong to the person obliged to perform

services or if that person lives in the residential space with their family or persons with whom they maintain a joint household set up on a long-term basis.

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

## **Chapter 6** **Special features when creating title to leased residences**

### **Section 577** **Lessee's right of preemption**

(1) If leased residential premises regarding which title has been created or is intended to be created after they have been made available to the lessee for the latter's use, are sold to a third party, then the lessee has a right of preemption. This does not apply if the lessor sells the residential premises to a family member or a member of their 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 information of the seller or of the third party regarding the contents of the purchase agreement is to be combined with a notification of the lessee on their 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 devolves to the persons who accede to the lease under section 563 (1) or (2).

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

### **Section 577a** **Restriction of termination in connection with conversion of the dwelling**

(1) If title is created regarding leased residential premises after they were made available to the lessee for the latter's use and the title to the residential premises has been alienated, then an acquirer may only rely on a legitimate interest within the meaning of section 573 (2) nos. 2 or 3 after the end of three years after the alienation.

(1a) The restriction of termination in accordance with subsection (1) applies accordingly if the leased residential space, after having been made available to the lessee for the latter's use,

1. has been alienated to a partnership or to several purchasers, or
2. has been encumbered to the benefit of a partnership or several purchasers with a right through the exercise of which the lessee is deprived of the contractually agreed use.

Sentence 1 is not to be applied if the shareholders or purchasers belong to the same family or to the same household, or if title to the residential premises had been created prior to the residential space having been made available to the lessee for the latter's use.

(2) The period under subsection (1) or under subsection (1a) is up to 10 years if the 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 instrument, which is to have a duration of 10 years at most in each case.

(2a) If title to residential premises has been created subsequent to an alienation or encumbrance within the meaning of subsection (1a), the period within which termination has been ruled out in accordance with section 573 (2) no. 2 or 3 begins running already at the time of the alienation or encumbrance in accordance with subsection (1a).

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

## **Subtitle 3** **Leases of other things and digital products**

### **Section 578** **Leases of plots of land and premises**



(1) The provisions of sections 550, 554, 562 to 562d, 566 to 567b as well as 570 are to be applied accordingly to leases of plots of land.

(2) The provisions cited in subsection (1) as well as section 552 (1), section 555a (1) to (3), sections 555b and 555c (1) to (4), section 555d (1) to (6), section 555e (1) and (2), section 555f and section 569 (2) are to be applied accordingly to leases for spaces not constituting residential premises. Section 556c subsections (1) and (2), as well as the statutory instrument issued on the basis of section 556c (3), are to be applied accordingly; deviating agreements are permissible. If the premises are intended for human occupancy, section 569 (2) likewise applies accordingly.

(3) The provisions set out in subsections (1) and (2) as well as sections 557, 557a (1) to (3) and (5), section 557b (1) to (3) and (5), sections 558 to 559d, 561, 568 (1), section 569 (3) to (5), sections 573 to 573d, 575, 575a (1), (3) and (4), sections 577 and 577a are to be applied accordingly to leases for spaces that were concluded by a legal person under public law or a recognised welfare organisation under private sponsorship for the purpose of making the spaces available to persons in urgent need of accommodation. In addition to the grounds set out in section 575 (1) sentence 1, such leases may be concluded for a fixed term, also if the lessor intends to use the spaces, following expiry of the lease period, for public tasks in its remit or which are assigned to it.

#### **Section 578a**

##### **Lease of registered ships**

(1) The provisions of sections 566, 566a, 566e to 567d apply accordingly in the case of alienation or encumbrance of a ship entered in the ship register.

(2) A disposition over the rent made by the lessor prior to the devolution of ownership and relating to the period of time during which 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 claim to rent, in particular regarding the payment of the rent; however, a legal transaction entered into after the devolution of ownership is ineffective if the lessee, when entering into the transaction, is aware of the devolution of ownership. Section 566d applies accordingly.

#### **Section 578b**

##### **Contracts on the lease of digital products**

(1) The following provisions are not to be applied to a consumer contract under which the trader enters into obligation to lease digital products to the consumer:

1. section 535 (1) sentence 2 and sections 536 to 536d, on the rights in the case of defects and

2. section 543 subsection (2) sentence 1 no. 1 and subsection (4), on the rights in the case of failure to effect supply.

The provisions of Division 3 Title 2a take the place of the provisions not to be applied in accordance with sentence 1. The exclusion of application under sentence 1 no. 2 does not apply if the contract has as its subject matter a tangible medium serving exclusively as a carrier of digital content.

(2) Where the consumer terminates a consumer contract in accordance with subsection (1) for failure to effect supply (section 327c), deficiency (section 327m) or modification (section 327r (3) and 4) of the digital product, sections 546 to 548 are not to be applied. The provisions of Division 3 Title 2a take the place of sections 546 to 548 that are not to be applied in accordance with sentence 1.

(3) In the case of a consumer contract under which the trader enters into obligation to lease to the consumer a thing that incorporates a digital product or is inter-connected with it, the exclusions of application under subsections (1) and (2) apply accordingly to those elements of the contract that relate to the digital product.

(4) Section 536a (2) on the trader's claim against the distribution partner to reimbursement of those expenses that the trader incurred in its relationship with the consumer under section 327I is not to be applied to an agreement between traders serving the supply of digital products in accordance with a consumer contract under subsection (1) or (3). The provisions of Division 3 Title 2a Subtitle 2 take the place of section 536a (2) that is not to be applied in accordance with sentence 1.

#### **Section 579**

##### **Due date of the rent**

(1) The rent for a plot of land 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, in each case is to be paid following expiry of a calendar quarter on the first working day of the next month.

(2) Section 566b (1) applies accordingly 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 the heir and the lessor are entitled, within a month of obtaining knowledge of the death of the lessee, to terminate the lease for cause observing 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, giving notice of termination in accordance with usual procedure is permissible

1. if the rent is assessed by days, on any day with effect for 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 with effect for 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 with effect for the end of the second month thereafter; in the case of a lease of commercially used undeveloped plots of land, however, only to the end of a calendar quarter.

(2) In the case of a lease of business premises, giving notice of termination in accordance with usual procedure is permissible at the latest on the third working day of a calendar quarter with effect for the end of the next calendar quarter.

(3) In the case of a lease of movable things or of digital products, giving notice of termination in accordance with usual procedure is permissible

1. if the rent is assessed by days, on any day with effect for 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.

The provisions on the termination of consumer contracts on digital products remain unaffected.

(4) Subsection (1) no. 3, subsections (2) and (3) no. 2 also are to be applied if a lease may be terminated for cause observing the statutory notice period.

#### **Subtitle 4**

##### **Usufructuary lease**

### **Section 581**

#### **Contractual duties typical for a usufructuary lease**

- (1) A usufructuary lease imposes on the usufructuary lessor the duty to allow the usufructuary 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 the yield under the rules of proper management. The usufructuary lessee is obliged to pay the lessor the agreed rent.
- (2) The provisions on leases are to be applied accordingly to usufructuary leases with the exception of farm leases, to the extent sections 582 to 584b do not 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 maintenance of the individual inventory items is incumbent on the usufructuary lessee.
- (2) The usufructuary lessor is obliged to replace inventory items no longer forming part of the inventory due to a circumstance for which the lessee is not responsible. However, the usufructuary lessee is to make up for usual cases in which animals no longer form part of the inventory to the extent that this complies with proper management.

### **Section 582a**

#### **Assumption of inventory at its estimated value**

- (1) If the usufructuary lessee of a plot of land assumes the inventory at its estimated value with the duty of returning it at its estimated value upon termination of the lease, then they will bear the risk of accidental loss and chance deterioration of such inventory. Within the bounds of proper management, the usufructuary lessee may dispose over the individual inventory items.
- (2) The usufructuary lessee is to maintain the inventory in that condition and replace it to an extent that complies with the rules of proper management. The items purchased by the usufructuary lessee devolve into the ownership of the usufructuary lessor upon being incorporated into the inventory.
- (3) Upon the termination of the usufructuary lease, the usufructuary lessee is to return the existing inventory to the usufructuary lessor. The usufructuary lessor may refuse to assume those of the inventory items purchased by the usufructuary 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 devolves to the usufructuary lessee. If there is a difference between the total estimated value of the inventory assumed 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 is entitled to a security right over the inventory items in their possession for claims against the usufructuary 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 usufructuary lessee by providing security. They may release every single inventory item from the security right by providing security in the amount of the value.

### **Section 583a**

#### **Restrictions on disposition over inventory**

Terms of the contract that oblige the usufructuary lessee of a business not to dispose over inventory items or not to dispose over them without prior consent by the usufructuary lessor or to alienate inventory items to the usufructuary lessor are effective only if the usufructuary lessor agrees to acquire the inventory at its estimated value upon termination of the lease.

**Section 584**  
**Period of notice**

(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 allowed only with effect for the end of a lease year; it is to be given 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 observing 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 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 usufructuary 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 together with the residential and utility buildings that serve its cultivation (business), or a plot of land without such buildings, is leased largely for purposes of 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, as well as 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 concluded 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) As a rule, the usufructuary lessor and the usufructuary lessee are to jointly prepare, at the beginning of the usufructuary lease, a description of the leased property in which its extent and the condition in which it is when made available for use are established. This applies accordingly to the termination of the usufructuary lease. The description as a rule is to state the date of its preparation and is to 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 be prepared by an expert, unless more than nine months have passed since the leased property was made available for use or more than three months have passed since the termination of the usufructuary 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 lease is that it is correct.

#### **Section 586**

##### **Contractual duties typical for a farm lease**

(1) The usufructuary lessor is to make available the leased property to the usufructuary lessee in a condition suitable for use as contractually agreed and is to maintain it in this condition for the lease period. However, the lessee is to carry out the customary improvements of the leased property at their own expense, in particular improvements of the residential and utility buildings, the paths, ditches, drains and fences. The usufructuary lessee is obliged properly to manage the leased property.

(2) The provisions of sections 536 (1) to (3) and of 536a to 536d apply to the liability of the usufructuary lessor for material defects and defects of title 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 is to 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 following the expiry of the individual time periods.

(2) The usufructuary lessee is not released from payment of the rent due to the fact that they are unable to exercise the right of use to which they are entitled for a reason given in their person. Section 537 subsection (1) sentence 2 and subsection (2) apply accordingly.

#### **Section 588**

##### **Measures of maintenance or improvement**

(1) The usufructuary lessee is to tolerate impacts on the leased property necessary to maintain it.

(2) Measures to improve the leased property are to be tolerated by the usufructuary lessee, unless the measure would constitute a hardship for them that is not justifiable even taking the legitimate interests of the usufructuary lessor into account. The usufructuary lessor is to reimburse the usufructuary lessee the expenses incurred and yield lost as a result of the measure in a scope reasonable under the circumstances. On demand, the usufructuary lessor is to make an advance payment.

(3) To the extent that the usufructuary lessee, due to measures under subsection (2) sentence 1 obtains a higher yield or could obtain it with proper management, the usufructuary lessor may demand that the usufructuary lessee consent to a reasonable increase in rent unless the usufructuary lessee cannot reasonably be required to accept an increase in rent in view of the circumstances of the business.

(4) Upon application, the Agricultural Court (*Landwirtschaftsgericht*) decides on disputes under subsections (1) and (2). If the usufructuary lessee fails to give consent in the cases governed by subsection (3), then the Agricultural Court may give substitute consent on application by the usufructuary lessor.

#### **Section 589**

##### **Making available the leased property to third parties for their use**

(1) Without the permission of the usufructuary lessor, the usufructuary lessee is not entitled to

1. make available the leased property to a third party for the latter's use, in particular to sublet the property,
2. make available the leased property, as a whole or in part, to an agricultural association for the purpose of joint use.

(2) If the usufructuary lessee makes available the leased property to a third party for the latter's use, then the usufructuary lessee is responsible for any culpability for which the third party is responsible in its use, even if the usufructuary lessor has given permission for this third-party use.

### **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 usufructuary lessor.

(2) For a change of the use to which the leased property had been put thus far, the prior permission of the usufructuary lessor is required only if the nature of the use will be influenced by the change also after the lease period has ended. The usufructuary lessee may only construct buildings with the prior permission of the usufructuary lessor. If the usufructuary lessor refuses permission, then substitute permission may be given by the Agricultural Court (*Landwirtschaftsgericht*) upon application by the usufructuary lessee to the extent that the change appears to be appropriate for the maintenance or permanent improvement of the business's profitability and the usufructuary lessor reasonably can be required to accept it, taking account of their legitimate interests. This does not apply if the lease has been terminated or the lease ends in less than three years. The Agricultural Court may make its substitute permission subject to requirements and conditions, in particular by ordering that security be provided, and may specify the nature and extent of the security. If the reason for providing security has ceased to exist, then the Agricultural Court, upon application, decides with regard to the return of the security; section 109 of the Code of Civil Procedure (*Zivilprozessordnung*) applies accordingly.

(3) If, in connection with a change of use of the leased property, the usufructuary lessee has substantially reduced the inventory assumed under section 582a at its estimated value, then the usufructuary lessor may demand compensation in money, applying section 582a (3) accordingly, even during the lease period, unless the proceeds of the inventory items alienated 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 they continue such use in breach of contract notwithstanding a warning notice from the usufructuary lessor, then the usufructuary lessor may seek a prohibitory injunction.

### **Section 590b**

#### **Necessary outlays**

The usufructuary lessor is obliged to compensate the usufructuary lessee for necessary outlays on the leased property.

### **Section 591**

#### **Outlays that increase value**

(1) The usufructuary lessor is to reimburse the usufructuary lessee on the termination of the lease for outlays other than necessary outlays that they have approved, to the extent that the outlays increase the value of the leased property beyond the end of 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 insofar as the outlays appear to be appropriate for the maintenance or permanent

improvement of the profitability of the business and the usufructuary lessor, taking into account their legitimate interests, reasonably can be required to accept them. This does not apply if the lease has been terminated or the lease ends in less than three years. The Agricultural Court may make its substitute approval subject to requirements and conditions. (3) The Agricultural Court (*Landwirtschaftsgericht*) may upon application also rule on the added value and may establish it. It may determine that the usufructuary lessor is to reimburse the added value only in instalments and may impose conditions for granting such instalments. If the usufructuary lessor cannot reasonably be required to accept reimbursement of the added value upon the termination of the lease, even in instalments, then the usufructuary lessee may demand only that the lease be continued at the terms applying thus far until the added value of the leased property has been paid for. If no agreement can be reached, then the Agricultural Court 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 they have furnished the thing. The usufructuary lessor may ward off exercise of the right of removal by paying appropriate compensation, unless the usufructuary lessee has a legitimate interest in removal. Any agreement excluding the right of removal of the usufructuary lessee is effective only if it provides for appropriate compensation.

#### **Section 591b**

##### **Limitation of compensation claims**

- (1) The compensation claims of the usufructuary lessor for changes to or deterioration of the leased thing as well as the claims of the usufructuary 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 on which they receive the returned thing. The limitation period for the usufructuary lessee commences upon termination of the lease.
- (3) Upon limitation of the usufructuary lessor's claim to return of the thing, the compensation claims of the usufructuary lessor likewise become statute-barred.

#### **Section 592**

##### **Security right of the usufructuary lessor**

For their claims under the usufructuary lease, the usufructuary lessor has a security right over the things contributed by the usufructuary lessee and over the fruits of the leased property. The security right may not be asserted with regard to future compensation claims. The security right extends to cover only things that are subject to pledge; where the usufructuary lessee operates an agricultural business, the security right extends to cover things within the meaning of section 811 (1) no. 1 (b) and animals within the meaning of section 811 (1) no. 8 (b) of the Code of Civil Procedure (*Zivilprozessordnung*). The provisions of sections 562a to 562c apply accordingly.

#### **Section 593**

##### **Amendment of farm leases**

- (1) If, after the usufructuary lease is concluded, the circumstances that were relevant for the determination of the performance under the lease change with lasting effect in such a way that the reciprocal duties of the parties are grossly disparate, then each party to the lease may demand an amendment of the lease, to the exception of the duration of the usufructuary lease. If, as a result of the cultivation of the leased property by the usufructuary lessee, its yield 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 fundamentally and permanently have changed the balance between 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 they exercise or fail 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 an anticipated inheritance, a plot of land leased for the business that serves agricultural purposes is included in the transfer, then the transferee succeeds to the usufructuary lease in place of the lessee. However, the usufructuary lessor is to be promptly notified of the transfer of business. If it is not warranted that the transferee will properly manage the leased property, then the usufructuary lessor is entitled to terminate the lease for cause observing the statutory notice period.

### **Section 593b**

#### **Alienation or encumbrance of the leased property**

If the leased property is alienated or encumbered by a third-party right, then sections 566 to 567b apply accordingly.

### **Section 594**

#### **Termination and extension of the lease**

The usufructuary lease ends upon expiry of the period for which the lease had been entered into. In the case of usufructuary leases concluded 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 inquiry and the refusal require the written form. The inquiry is without effect if no explicit reference is made in it to the consequences of disregarding it and if it is not made in the course of 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 with effect for 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 requires the written form.

(2) In those cases in which the lease may be terminated for cause observing the statutory notice period, termination is only allowed with effect for the end of a lease year; it is to be declared no later than the third working day of the half-year at the end of which the lease is to terminate.

### **Section 594b**

#### **Lease for more than 30 years**

If a usufructuary lease is concluded for a period of more than 30 years, then after 30 years each party to the lease may terminate the lease at the latest on the third working day of a lease year with effect for the end of the next subsequent lease year. Termination is not permissible if the lease has been concluded for the lifetime of the usufructuary lessor or usufructuary 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 the usufructuary lessee may terminate the lease for cause observing the statutory notice period if the usufructuary lessor objects to the leased property being made available 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 in the course of one month after having become aware of the death of the usufructuary lessee, both their heirs and the usufructuary lessor are entitled to terminate the lease observing a notice period of six months with effect for 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 warranted by them or by a co-heir commissioned by them or by a third party. The usufructuary lessor may refuse to continue the lease if the heirs have not declared their objection at the latest three months prior to expiry of the lease and have not notified the usufructuary lessor of the circumstances by reason of which further proper management of the leased property appears ensured. The inquiry and the refusal require the written form. 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 demand by the heir seeking continuation 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 permissible, applying sections 543, and 569 subsections (1) and (2) accordingly.

(2) In derogation from section 543 (2) no. 3 (a) and (b), a compelling reason is given in particular if the usufructuary lessee is in default in payment of the rent or of a portion of the rent that is not insignificant for longer than three months. Where the lease is assessed by time periods of less than one year, termination is permissible only if the usufructuary lessee is in default, for two successive dates, in payment of the rent or of a substantial portion of the rent.

#### **Section 594f**

##### **Written form of termination**

Notice of termination requires the 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 their 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 their business, which is the economic basis of their existence, and termination of the lease as contractually agreed would constitute a hardship for the lessee or their family that would not be justifiable even if the legitimate interests of the lessor were taken into account. Subject to these prerequisites, continuation may be demanded repeatedly.

(2) In the case governed by subsection (1), the usufructuary lessee may demand that the lease be continued as long as is appropriate considering all circumstances. If the

usufructuary lessor cannot reasonably be required 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. they have terminated the lease,
2. the usufructuary lessor is entitled to terminate the lease for cause without notice, or, in the case governed by section 593a, to terminate the lease for cause observing 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 usufructuary lessee, has been agreed for at least 18 years, or in the case of the lease of other plots of land for at least 12 years,
4. in the case of property leased only temporarily under a usufructuary lease, the usufructuary lessor wishes to repossess it for their 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 requires the written form. Upon demand by the usufructuary lessor, the usufructuary lessee as a rule is to provide information without undue delay on their reasons for demanding continuation.

(5) The usufructuary lessor may refuse continuation of the lease if the usufructuary lessee failed to demand continuation from the usufructuary lessor at least one year prior to termination of the lease or if, upon an inquiry by the usufructuary lessor under section 594, they rejected the continuation. If a period of notice of 12 months or less has been agreed, then it suffices if the demand is declared within one 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 is to file the application for a court decision with the Agricultural Court (*Landwirtschaftsgericht*) at the latest nine months prior to termination of the lease and, in the case of a period of notice of 12 months or less, two months following 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 by way of settling a lease dispute heard in a court of law or by a professional lease conciliation board. An agreement that one party to the lease 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 contractual parties are entitled to terminate a farm lease for cause observing the statutory notice period, they are entitled to do so 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 may determine the rent for this portion.

(3) The contents of orders issued by the Agricultural Court (*Landwirtschaftsgericht*) are deemed to be part of the lease agreement as between the parties to the lease. The Agricultural Court 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 to that obtained by proper management continued up until its return.

(2) The usufructuary lessee has no right of retention of the plot of land for their claims on the lessor.

(3) If the usufructuary lessee has made available the leased property to a third party for the latter's use, then 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) Where the lease terminates in the course of a lease year, the usufructuary lessor is to 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. In so doing, the harvesting risks is to be given appropriate consideration.

(2) If the value referred to in subsection (1) cannot be determined for seasonal reasons, then the usufructuary lessor is to compensate the usufructuary lessee for expenses 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 they are to compensate the usufructuary lessor for the quantity of timber that exceeds normal use. Assertion of additional damage is not excluded.

#### **Section 596b**

##### **Duty to leave behind**

(1) The usufructuary lessee of a business is to leave behind, prior to termination of the lease, as much of the available agricultural produce as is needed for continuation of the farm until the next harvest, even if they had not assumed such produce at commencement of the lease.

(2) To the extent that the usufructuary lessee is obliged under subsection (1) to leave behind produce in a greater quantity or of a better nature than they assumed at commencement of the lease, they 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 for the duration of such withholding, the usufructuary lessor may demand the agreed rent as compensation. Assertion of additional damage is not excluded.

### **Title 6**

#### **Gratuitous loan**

#### **Section 598**

##### **Contractual duties typical for the case of a gratuitous loan**

By the agreement for a gratuitous loan, the lender of a thing is obliged to permit the borrower to use the thing at no charge.

**Section 599**  
**Liability of the lender**

The lender is responsible only for intent and gross negligence.

**Section 600**  
**Liability for defects**

If the lender fraudulently conceals a defect of title or a defect in the thing lent, then they are liable to compensate the borrower for any damage arising therefrom.

**Section 601**  
**Reimbursement of outlays**

(1) The borrower is to bear the customary costs of maintaining the thing lent, which, in the case of the gratuitous loan of an animal, in particular are the costs of feeding it.

(2) The duty of the lender to reimburse other outlays is governed by the provisions on voluntary agency without specific authorisation. The borrower is entitled to remove an installation with which they have furnished 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 brought about by the contractually agreed use.

**Section 603**  
**Contractually agreed use**

The borrower may not make any other use of the thing lent than the use as contractually agreed. The borrower is not entitled without permission from the lender to make the thing available to a third party for the latter's use.

**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 is to be returned after the borrower has made the use of it that is evident from the purpose of the loan. The lender may demand the thing back already 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 evident from the purpose of the loan, then the lender may demand the thing back at any time.

(4) If the borrower makes available the use of the thing to a third party, then upon termination of the loan, the lender may demand it back also from the third party.

(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 the lender requires the thing lent due to an unforeseen circumstance,
2. if the borrower makes use of the thing in breach of contract, in particular by making it available, without authorisation, to a third party for the latter's use, or if the borrower significantly jeopardises the thing by neglecting the care they owe,
3. if the borrower dies.

**Section 606**  
**Short limitation period**

(1) The lender's claim to compensation 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 subsection (1) sentences 2 and 3 and subsection (2) apply accordingly.

## **Title 7**

### **Contract for the loan of a thing**

#### **Section 607**

##### **Contractual duties typical for a contract for the loan of a thing**

(1) By a contract for the loan of a thing, the lender agrees to make available to the borrower an agreed fungible thing. The borrower is obliged to pay a fee for the loan and, when the loan falls due, to return what they have received in things of the same kind, quality and amount.

(2) The provisions of this title do not apply when what is made available is money.

#### **Section 608**

##### **Termination**

(1) If no time is specified for the return of the thing made available for use, then the due date depends on the termination of the loan by the lender or the borrower.

(2) Unless agreed otherwise, a contract for the loan of a thing concluded for an indefinite period of time may be terminated as a whole or in part by the lender or the borrower at any time.

#### **Section 609**

##### **Payment**

The borrower is to pay a fee at the latest upon return of the thing made available for use.

#### **Section 610**

##### **(repealed)**

## **Title 8**

### **Service contract and similar contracts**

#### **Subtitle 1**

##### **Service contract**

#### **Section 611**

##### **Contractual duties typical for a service contract**

(1) By means of a service contract, a person who promises services is obliged to perform the services promised, and the other party is obliged to pay the agreed remuneration.

(2) Service contracts may have as their subject matter any type of services.

#### **Section 611a**

##### **Employment contract**

(1) By the employment contract, the employee is obliged to perform work in the service of another, such work being tied to instructions and determined by others, and to do so in a relationship of personal dependency. The right to issue instructions may concern the substance, implementation, time and place at which the activities are pursued. Anyone who is not able to essentially determine their activities freely and to determine the times at which they work is tied to instructions. In this context, the degree of personal dependency will be subject also to the specific nature of the activity concerned. In determining whether or not an employment contract exists, all circumstances are to be given overall consideration. Where the factual implementation of the contractual relationship shows that the relationship is an employment relationship, the designation used in the contract is irrelevant.

(2) The employer is obliged to pay the remuneration agreed upon.

#### **Section 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 service is 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 their rights in a permissible way.

**Section 613**  
**Non-transferability**

The party under a duty of service in case of doubt is to 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 is transferred 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 one year following the date of transfer. Sentence 2 does not apply if the rights and duties given 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 neither party is under the collective bargaining coverage of 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 following that date. If such duties are due after the date of transfer, however, the previous employer is only liable for them in that scope 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 by way of 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 remains unaffected.
- (5) The previous employer or the new owner is to 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 the 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 following receipt of notification under subsection (5). The objection may be declared 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, the obligor must allow to be credited against them the value of what they save due to their being released from performance or what they acquire or wilfully fail to acquire from other use of their labour. Sentences 1 and 2 apply accordingly 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 their claim to remuneration by the fact that they are prevented from performing services for a relatively trivial period of time for a reason constituted by their person without their being at fault. However, they must allow to be credited against them the amount they receive, for the period in which they are prevented from performing their services, 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 pursued by the person obliged to perform services, the person obliged is integrated into the joint household, then the person entitled to services is to grant the person obliged, in the event of illness, the necessary food and medical treatment up to a duration of six weeks, but not beyond termination of their service relationship, unless the illness was brought about by the person obliged by intent or gross negligence. The provision of food and medical treatment may be granted by way of having the person obliged admitted 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 brought about 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 take protective measures**

(1) The person entitled to services is to furnish and maintain premises, devices and equipment that they are to provide for performance of the services in such a way and is to arrange for services that are to be performed on their orders or under their supervision in such a way that the person obliged to perform services is protected against danger to life and limb in the scope 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 is to 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 comply with their duties with regard to the life and the health of the person obliged, then the provisions of sections 842 to 846 governing torts apply accordingly to their duty to provide compensation for damages.

### **Section 619**

#### **Absolute nature of welfare duties**

It is not possible to cancel or restrict the duties incumbent upon the person entitled to services under sections 617 and 618 in advance by contract.

### **Section 619a**

#### **Burden of proof when the employee is liable**

In derogation from section 280 (1), the employee is to provide the employer with compensation for damages resulting from the breach of a duty under the employment relationship only if they are responsible for the breach of duty.

### **Section 620**

#### **End of services relationship**

(1) The service relationship ends upon expiry 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 concluded for a specified period of time.

(4) A consumer contract on a digital service also may be terminated in accordance with the stipulations of sections 327c, 327m and 327r (3) and (4).

### **Section 621**

#### **Periods of notice for service relationships**

In the case of a service relationship that is not an employment relationship within the meaning of section 622, termination is permissible

1. if the remuneration is assessed by days, on any day with effect for 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 with effect for the end of the following Saturday;
3. if the remuneration is assessed by months, at the latest by the fifteenth of one month with effect for 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, with effect for 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 pursued by the person obliged; however, a notice period of two weeks is to 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 observing a notice period of four weeks with effect for the fifteenth day of a month or with effect for the end of a calendar month.

(2) For notice of termination by the employer, the period of notice is as follows if the employment relationship in the business or the enterprise

1. has lasted for two years: one month with effect for the end of a calendar month,



2. has lasted for five years: two months with effect for the end of a calendar month,
3. has lasted for eight years: three months with effect for the end of a calendar month,
4. has lasted for ten years: four months with effect for the end of a calendar month,
5. has lasted for twelve years: five months with effect for the end of a calendar month,
6. has lasted for fifteen years: six months with effect for the end of a calendar month,
7. has lasted for twenty years: seven months with effect for the end of a calendar month.

(3) During an agreed probationary period, but at the longest for the duration of six months, the employment relationship may be terminated observing a notice period of two weeks.

(4) Provisions in derogation 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 under collective bargaining coverage 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.

In determining the number of employees employed, part-time employees with regular weekly working hours of not more than 20 hours are counted as 0.5 employees. While those working fewer than 30 weekly working 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) remains unaffected hereby.

(6) For notice of termination of employment by the employee, no periods of notice may be agreed that are longer than those agreed for notice of termination by the employer.

### **Section 623**

#### **Written form of termination**

The termination of employment by notice of termination or separation agreement requires the written form to be effective; electronic form is excluded.

### **Section 624**

#### **Notice period in the case of contracts lasting longer 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 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 observing a period of notice if facts are given on the basis of which, having considered all circumstances of the individual case and weighed the interests of both parties to the contract against each other, the party giving notice cannot reasonably be required to continue the service relationship until the end of the notice period or the agreed end of the service relationship.

(2) Notice of termination may only be given within two weeks. The period of time commences upon the point in time at which the person entitled to give notice obtains knowledge of the facts relevant for the notice of termination. On demand, the party giving notice must notify the other party, without undue delay in writing, of the reason for terminating the service relationship.

### **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 permissible, even without the prerequisite designated in section 626 being met, if the person obliged to perform services, without being in a permanent service relationship with fixed earnings, is to 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 is able to obtain the services elsewhere, unless there is a compelling reason for untimely notice of termination. If they give notice in untimely fashion without such cause, then they are to compensate the person entitled to services for the damage arising therefrom.

### **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 basis of section 626 or 627, then the person obliged to perform services may demand a part of their remuneration that corresponds to the services they have performed thus far. If they give notice without any conduct in breach of contract of the other party having prompted this, or if they prompt termination by the other party by their own conduct in breach of contract, then they have no claim to the remuneration to the extent that their 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 is to reimburse it under the provisions of section 346 or, if notice of termination is given by reason of a circumstance for which they are not responsible, in accordance with the provisions on the surrender of unjust enrichment.

(2) If notice of termination is prompted by conduct in breach of contract of the other party, 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 is to grant to 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. On demand, the reference is to cover 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 Regulation Code (*Gewerbeordnung*) applies.

**Subtitle 2**  
**Treatment contract**

**Section 630a**  
**Contractual duties typical for a treatment contract**

- (1) The treatment contract obliges the party agreeing to provide a patient with medical treatment (treating party) to provide the promised treatment, and the other party (patient) to pay the agreed remuneration unless a third party is obliged to effect payment.
- (2) Unless agreed otherwise, the treatment is to take place according to the generally recognised standards of medical care applying at the time of the treatment.

**Section 630b**  
**Applicable provisions**

The provisions on the service relationship that is not an employment relationship within the meaning of section 622 are to be applied to the treatment relationship unless determined otherwise in this Subtitle.

**Section 630c**  
**Cooperation between the contracting parties; obligations to provide information**

- (1) As a rule, the treating party and the patient are to work together to implement the treatment.
- (2) The treating party is obliged to explain to the patient in comprehensible terms at the beginning of the treatment, and where necessary in the course of the treatment, the entirety of all circumstances that are relevant to the treatment, in particular the diagnosis, the anticipated health development, the therapy and the measures to be taken in addition the therapy and subsequent to it. If circumstances are recognisable to the treating party which give rise to the presumption of malpractice, they are to inform the patient thereof upon the patient making inquiries or in order to avert health hazards. If the treating party or one of their relatives designated in section 52 (1) of the Code of Criminal Procedure (*Strafprozessordnung*) has committed malpractice, then the information in accordance with sentence 2 may be used for evidential purposes in criminal proceedings or proceedings for an administrative fine pursued against the treating party or against a member of their family only with the consent of the treating party.
- (3) If the treating party knows that the complete assumption of the treatment costs by a third party is not secured, or if sufficient indications of this emerge under the circumstances, they must inform the patient in text form prior to commencing the treatment of the likely costs of the treatment. More extensive requirements as to form stipulated in other provisions remain unaffected.
- (4) The patient need not be provided with information where, as an exception, this may be dispensed with because of special circumstances, in particular if the treatment cannot be postponed or the patient expressly has waived being informed.

**Section 630d**  
**Consent**

- (1) Prior to implementing medical treatment, in particular an intervention into the body or health, the treating party is obliged to obtain consent from the patient. If the patient is unable to consent, the consent of a party authorised to do so is to be obtained unless a living will in accordance with section 1901a (1) sentence 1 permits or prohibits the measure. More extensive requirements with regard to consent ensuing from other provisions remain unaffected. If it is impossible to obtain consent to a measure that cannot be delayed in good time, it may be implemented without consent if this is in line with the putative intent of the patient.
- (2) The effectiveness of the consent is contingent on the patient, or, in the case governed by

subsection (1) sentence 2, on the party entitled to give consent, having been informed in accordance with section 630e (1) to (4) prior to giving consent.

(3) Consent may be revoked at any time, without having to comply with requirements as to its form, and without stating reasons.

### **Section 630e**

#### **Obligations to provide information**

(1) The treating party is obliged to inform the patient of the entirety of all circumstances that are relevant to consent. This includes in particular the nature, extent, implementation, anticipated consequences and risks involved in the measure, as well as its necessity, urgency, suitability and prospects for success with regard to the diagnosis or the therapy. Alternatives to the measure also are to be indicated in providing the information if several methods that are medically indicated and customary in like measure may place strain on the patient to significantly different degrees or entail significantly different risks or chances of recovery.

(2) The information must

1. be provided orally by the treating party or by a person who has the requisite training to carry out the measure; additionally, documents also may be referred to which the patient receives in text form,
2. be provided in such good time so that the patient is able to take their decision on consent in a well-considered manner,
3. be understandable for the patient.

The patient is to be provided with duplicates of the documents they have signed in connection with the information or consent.

(3) The patient need not be provided with information where, as an exception, this may be dispensed with because of special circumstances, in particular if the treatment cannot be postponed or the patient expressly has waived being informed.

(4) If, in accordance with section 630d (1) sentence 2, the consent of a party entitled to so grant consent is to be obtained, that party is to be informed in accordance with subsections (1) to (3).

(5) In the case governed by section 630d (1) sentence 2, the major circumstances in accordance with subsection (1) also are to be explained to the patient in a manner that they are able to understand, inasmuch as they are capable of absorbing the explanation based on their state of development and ability to understand and unless it is inconsistent with their well-being. Subsection (3) applies accordingly.

### **Section 630f**

#### **Documentation of the treatment**

(1) For the purpose of documentation, the treating party is obliged to keep medical records in paper form or as electronic documentation in close time with the treatment. Corrections and alterations of entries in the medical records are permissible only if, in addition to the original content, the point in time at which they were carried out remains recognisable. This is also to be ensured for medical records that are kept electronically.

(2) The treating party is obliged to record all measures in the medical records that are relevant in medical terms for the current and future treatment and its results, in particular the establishment of the medical history, diagnoses, examinations, results of examinations, findings, therapies and their effects, procedures and their impact, consent and information. Physicians' letters are to be included in the medical records.

(3) The treating party is to keep medical records for a period of 10 years following the conclusion of the treatment unless other periods for their retention govern in accordance with other provisions.

### **Section 630g**

#### **Inspection of the medical records**

- (1) On request, the patient is to be permitted to inspect the complete medical records concerning them without undue delay to the extent there are no significant therapeutic grounds or third-party rights at stake to warrant objections to inspection. The reasons for a refusal to permit inspection are to be provided. Section 811 is to be applied accordingly.
- (2) The patient also may request electronic duplicates of the medical records. The patient is to reimburse the treating party for the costs incurred.
- (3) In the event of the death of the patient, their heirs are entitled to the rights under subsections (1) and (2) to exercise the interests under property law. The same applies to the closest relatives of the patient where they assert immaterial interests. The rights are ruled out where inspection runs counter to the explicit or putative intent of the patient.

### **Section 630h**

#### **Burden of proof in case of liability for malpractice and errors in providing information**

- (1) An error is to be presumed to have been committed by the treating party if a general treatment risk has materialised that was fully manageable for the treating party and that led to injury to the life, limb or health of the patient.
- (2) The treating party is to prove that they obtained consent in accordance with section 630d and provided information in accordance with the requirements of section 630e. If the information does not comply with the requirements of section 630e, then the treating party may assert that the patient would have consented to the measure also if proper information had been provided.
- (3) Where the treating party has not recorded a medically required major measure and its result in the medical records, contrary to what is stipulated in section 630f (1) or (2), or where, contrary to section 630f (3), they have not retained the medical records, it is to be presumed that they have not carried out this measure.
- (4) If a treating party was not qualified to carry out the treatment they performed, it is presumed that the lack of qualification was the cause of the occurrence of the injury to life, limb or health.
- (5) If gross malpractice has been committed, and if this is susceptible as a matter of principle to cause an injury to life, limb or health of the nature that in fact took place, it is to be presumed that the malpractice was the cause of this injury. This applies also if the treating party failed to gain, in good time, an understanding of a condition as medically required, or to record the findings obtained, insofar as there is a sufficient degree of probability that the finding would have led to a result which would have given rise to further measures, and if failure to take such measures would have constituted gross malpractice.

## **Title 9**

### **Contract to produce a work and similar contracts**

#### **Subtitle 1**

#### **Contract to produce a work**

#### **Chapter 1**

#### **General provisions**

### **Section 631**

#### **Contractual duties typical for a contract to produce a work**

- (1) By a contract to produce a work, a contractor is obliged to produce the promised work and the customer is obliged to pay the agreed remuneration.
- (2) The subject matter of a contract to produce a work may be either the production or alteration of a thing or another result to be achieved by work or by a service.

### **Section 632**

#### **Remuneration**

- (1) Remuneration for work is deemed to be tacitly agreed if the production of the work, in the circumstances, is to be expected only in return for remuneration.
- (2) If the amount of remuneration is not specified, then if a tariff exists, the tariff remuneration is deemed to be agreed; if no tariff exists, the usual remuneration is deemed to be agreed.
- (3) In case of doubt, remuneration is not to be paid for a cost estimate.

#### **Section 632a**

##### **Part payments**

- (1) The contractor may demand a part payment from the customer in the amount of the value of the work they have performed and which they owe under the contract. Where the work has not been performed as contractually agreed, the customer may refuse to pay a reasonable portion of the part payment. The burden of proof as to the work corresponding to what has been contractually agreed continues to be incumbent on the contractor until acceptance. Section 641 (3) applies accordingly. The work is to be documented by a list that must facilitate a rapid and reliable evaluation of the work. Sentences 1 to 5 also apply to required materials or building components that are supplied or specially prepared and made available if, at the customer's option, ownership of the materials or building components is transferred to them or an appropriate security is provided in this regard.
- (2) The security under subsection (1) sentence 6 also may be provided by means of a guarantee or other payment undertaking by a financial institution or credit insurer authorised to operate its business in the territorial extent of this Code.

#### **Section 633**

##### **Material defects and defects of title**

- (1) The contractor is to procure the work for the customer free of material defects and defects of title.
- (2) The work is free of material defects if it is of the agreed nature. To the extent that the nature 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 nature that is usual 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 a quantity of the work that is too small.

- (3) The work is free of defects of title 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 prerequisites of the following provisions are met and to the extent not otherwise specified, may

1. demand cure as defined in section 635,
2. remedy the defect themselves and demand reimbursement for required expenses as provided for in section 637,
3. rescind the contract on the basis of sections 636, 323 and 326 (5), or abate the price under the terms of section 638, and
4. demand compensation of damages in accordance with sections 636, 280, 281, 283 and 311a, or reimbursement of futile expenses as defined in section 284.

#### **Section 634a**

##### **Limitation of claims for defects**

- (1) The claims designated in section 634 nos. 1, 2 and 4 become statute-barred
1. subject to no. 2, after two years in the case of a work the result of which consists of the manufacture, maintenance or alteration of a thing or in the rendering of planning or monitoring services for this purpose,
  2. after five years in the case of a building and in the case of a work the result of which consists of the rendering of planning or monitoring services for this purpose, and
  3. in all other cases, after the regular limitation period.
- (2) In the cases governed by subsection (1) nos. 1 and 2, limitation begins on acceptance.
- (3) In derogation from subsection (1) nos. 1 and 2, and subsection (2), claims become statute-barred after the standard limitation period if the contractor fraudulently concealed the defect. However, in the case governed by subsection (1) no. 2, claims do not become statute-barred before the end of the period specified therein.
- (4) The right of rescission designated in section 634 is governed by section 218. Notwithstanding the ineffectiveness of rescission under section 218 (1), the customer may refuse to pay the remuneration to the extent that they would be entitled to do so by reason of the rescission. Where the customer exercises this right, the contractor may rescind the contract.
- (5) Section 218 and subsection (4) sentence 2 apply accordingly to the right to abate the price designated in section 634.

### **Section 635**

#### **Cure**

- (1) If the customer demands cure, then the contractor may, at their option, remedy the defect or produce a new work.
- (2) The contractor is to bear the expense necessary for cure, in particular transport, workmen's travel, work and materials costs.
- (3) The contractor may refuse cure, without prejudice to section 275 subsections (2) and (3), if it is possible only at disproportionate cost.
- (4) If the contractor produces a new work, they may demand from the customer return of the defective work in accordance with sections 346 to 348.

### **Section 636**

#### **Special provisions on rescission and damages**

In addition to the cases governed by sections 281 (2) and 323 (2), there also is no need for a period to be set 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 them for cure, remedy the defect themselves and demand reimbursement of the necessary expenses, unless the contractor rightly refuses cure.
- (2) Section 323 (2) applies accordingly. There also is no need to specify a period of time if cure has failed or cannot reasonably be required of the customer.
- (3) The customer may demand from the contractor advance payment of the expenses necessary to remedy the defect.

### **Section 638**

#### **Abatement of price**

- (1) Instead of rescinding the agreement, the customer may, by declaration to the contractor, abate the remuneration. The ground for exclusion under section 323 (5) sentence 2 does not apply.

- (2) If the party of the customer or the contractor consists of more than one person, the abatement of price may be declared only by all them or to all of them.
- (3) In abating the price, the payment is to be reduced in the ratio of the value that the defect-free work would have had to its actual value at the time the contract was concluded. If required, the abatement is to be identified by way of an estimate.
- (4) If the customer has paid more than the abated remuneration, the amount overpaid is to be reimbursed by the contractor. Section 346 (1) and section 347 (1) apply accordingly.

### **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 nature of the work.

### **Section 640** **Acceptance**

- (1) The customer is obliged to accept the work that has been produced as contractually agreed, except to the extent that, in view of the nature of the work, acceptance is excluded. Acceptance may not be refused by reason of trivial defects.
- (2) A work is considered accepted also if, following completion of the work, the contractor has set a reasonable period to the customer for its acceptance and the customer has not refused to accept the work within that period, citing at least one defect in the refusal. Where the customer is a consumer, the legal consequences of sentence 1 arise only if the contractor has made the customer aware, together with the demand for acceptance, of the consequences that failure to declare the refusal of acceptance, or failure to cite defects in refusing acceptance, will have; such notification must be in text form.
- (3) If the customer accepts a defective work under subsection (1) sentence 1 even though they know of the defect, they only will be entitled to the rights designated in section 634 nos. 1 to 3 if they reserve their rights with regard to the defect in accepting the work.

### **Section 641** **Due date of remuneration**

- (1) The remuneration is to 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 upon its acceptance.
- (2) The remuneration of the contractor for a work the production of which the customer has promised to a third party is due at the latest
1. to the extent that the customer has received from the third party their remuneration or parts of their remuneration for the production of the promised work,
  2. to the extent that the work of the customer has been accepted by the third party or is deemed to have been accepted, or
  3. if the contractor has set the customer a reasonable time limit for information on the circumstances referred to in nos. 1 and 2 and this has expired without result.

If the customer has given the third party security on account of possible defects of the work, sentence 1 applies only if the contractor gives the customer an appropriate security.

- (3) If the customer may demand remedy of a defect, they may refuse to pay a reasonable portion of the remuneration after this has become due; as a rule, twice the costs necessary to remedy the defect are appropriate.
- (4) If the remuneration is assessed in money, the customer is to pay interest on it from the acceptance of the work onwards, except to the extent that remuneration is deferred.

### **Section 641a** **(repealed)**



### **Section 642**

#### **Cooperation 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 the expenses the contractor saves or what the contractor is able to earn from other use of their labour.

### **Section 643**

#### **Termination for failure to collaborate**

In the case governed by section 642, the contractor is entitled to give the customer a reasonable time limit for making up for the act to be performed by declaring that they 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 devolves to them. The contractor is not liable for any accidental destruction or chance deterioration of the materials supplied by the customer.
- (2) If, on 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 accordingly.

### **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 as to how the work is to be carried out, without a circumstance for which the contractor is responsible contributing to this, then the contractor may demand a portion of the remuneration that corresponds to the work performed and reimbursement of those expenditures 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 remains unaffected.

### **Section 646**

#### **Completion in lieu of acceptance**

If acceptance is excluded due to the nature of the work, then, in the cases governed by 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 their claims under the contract, the contractor has a security right over the movable things of the customer that they have produced or repaired if they have come into their possession during the production or for the purpose of repair.

### **Section 647a**

#### **Mortgage of the owner of a shipyard**

The owner of a shipyard, for their claims in relation to the building or repair of a ship, may demand to be granted a ship mortgage for the ship under construction or the ship of the customer. Where the work has not yet been completed, the owner of a shipyard may demand to be granted a ship mortgage for the portion of the remuneration corresponding to

the work performed and for the expenditures not included in the remuneration. Section 647 does not apply.

### **Section 648**

#### **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 trader is entitled to demand the agreed remuneration; however, the trader must allow to be credited against them what they save due to the contract being cancelled or what they acquire or wilfully fail to acquire from other use of their labour. The presumption is that on that basis, the contractor is entitled to five per cent of the remuneration accounted for by the part of the work not yet provided.

### **Section 648a**

#### **Termination for a compelling reason**

- (1) Both contractual parties may terminate the contract for a compelling reason without observing a period of notice. There is a compelling reason if, having considered all the circumstances of the specific case and having weighed the interests of both parties against each other, the terminating party cannot reasonably be required to continue the contractual relationship until the work is completed.
- (2) A partial termination is possible; it must refer to a definable portion of the work owed.
- (3) Section 314 (2) and (3) applies accordingly.
- (4) Following the termination, each contractual party may demand of the other party that it cooperate in jointly determining the status of the work. Where one contractual party refuses to so cooperate, or where it fails to attend a meeting agreed for determining the status of the work, or a meeting scheduled by the other contractual party within a reasonable period, the burden of proof concerning the status of the work as per the date of the termination will be incumbent on that party. This does not apply if the contractual party fails to attend due to a circumstance for which it is not responsible and of which it has notified the other contractual party without undue delay.
- (5) Where a contractual party terminates the contract for a compelling reason, the contractor is entitled to demand only whatever remuneration covers the portion of the work performed up until the termination.
- (6) The termination does not rule out the entitlement to demand compensation of damages.

### **Section 649**

#### **Cost estimate**

- (1) If the contract is based on a cost estimate without the contractor guaranteeing the accuracy of the estimate and if it becomes apparent that the work cannot be carried out without substantially exceeding the estimate, then, if the customer terminates the contract for this reason, the contractor will be entitled only to the claim specified in section 645 (1).
- (2) If such exceeding of the estimate is to be expected, then the contractor is to notify the customer without undue delay.

### **Section 650**

#### **Contract for work and materials; consumer contract on the production of digital products**

- (1) The provisions governing purchase 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, 648 and 649 apply, subject to the proviso that the relevant point in time under sections 446 and 447 takes the place of acceptance.
- (2) Sections 633 to 639 on the rights in the case of defects as well as section 640 on acceptance are not to be applied to a consumer contract under which the trader enters into obligation

1. to produce digital content,
2. to procure a result by a digital service, or
3. to produce a tangible medium serving exclusively as a carrier of digital content,

The provisions of Division 3 Title 2a Title 2a take the place of the provisions not to be applied in accordance with sentence 1. Sections 641, 644 and 645 are to be applied subject to the proviso that the supply of the digital product (section 327b (3) to (5)) takes the place of acceptance.

(3) In derogation from subsection (1) sentences 1 and 2, section 433 (1) sentence 2, sections 434 to 442, section 475 subsection (3) sentence 1, subsections (4) to (6) and sections 476 and 477 on the rights in the case of defects are not to be applied to a consumer contract under which the trader enters into obligation to deliver a tangible medium, which is to be produced, serving exclusively as a carrier of digital content. The provisions of Division 3 Title 2a take the place of the provisions not to be applied in accordance with sentence 1.

(4) The exclusion of application under subsection (2) applies accordingly, in the case of a consumer contract under which the trader enters into obligation to produce a thing that incorporates a digital product or is inter-connected with digital products, to those elements of the contract relating to the digital products. The exclusion of application under subsection (3) applies accordingly, in the case of a consumer contract under which the trader enters into obligation to deliver a thing, which is to be produced, that incorporates a digital product or is inter-connected with digital products, to those elements of the contract relating to the digital products.

## **Chapter 2 Construction contract**

### **Section 650a Construction contract**

(1) A construction contract is a contract on the construction, reconstruction, removal or conversion of a building, an outdoor facility or a part thereof. The following provisions of this Chapter apply supplementally to the construction contract.

(2) A contract on the structural maintenance of a building is a construction contract if the work is of essential significance for the structure, the continued existence, or the use in accordance with the intended purpose.

### **Section 650b**

#### **Amendment of the contract; right of the customer to issue orders**

(1) Where the customer seeks to obtain

1. a modification of the agreed result to be obtained by the work (section 631 (2))  
or
2. a modification necessary to achieve the agreed result to be obtained by the  
work,

the contractual parties will strive to reach mutual agreement regarding the modification and the augmented or reduced remuneration to be paid, as a consequence of the modification. The contractor is under obligation to prepare an offer for the augmented or reduced remuneration; however, this is the case in the event of a modification pursuant to sentence 1 no. 1 only if the execution of the modification reasonably can be expected of the contractor. Where the contractor asserts internal processes within their operations as the reason for which the contractor cannot reasonably be required to comply with the order pursuant to subsection (1) sentence 1 no. 1, the burden of proof will be incumbent on the contractor. Where the customer is responsible for planning the building or the outdoor facility, the contractor is obliged to prepare an offer for the augmented or reduced remuneration only if the customer has prepared the planning necessary for the modification and has made it

available to the contractor. Where the customer is seeking to obtain a modification regarding which the contractor is not entitled to a claim to remuneration of increased expense and effort pursuant to section 650c (1) sentence 2, the parties will strive to reach mutual agreement solely regarding the modification; in such event, sentence 2 does not apply. (2) If the parties fail to reach mutual agreement in accordance with subsection (1) within 30 days of the contractor having received the request for modification, the customer may order the modification in text form. The contractor is under obligation to comply with the order issued by the customer; however, the contractor is obliged to comply with an order under subsection (1) sentence 1 no. 1 only if the execution of said order reasonably can be required of them. Subsection (1) sentence 3 applies accordingly.

### **Section 650c**

#### **Adjustment of remuneration in case of orders pursuant to section 650b (2)**

(1) The amount of the claim to remuneration for the expense and effort that, as a consequence of the customer's order pursuant to section 650b (2), have increased or decreased is to be identified based on the factually required costs, with reasonable surcharges being added for general administrative costs, business risk and profits. Where the contractor's duty of performance also includes planning the building or the outdoor facility, the contractor will not be entitled, in the case governed by section 650b (1) sentence 1 no. 2, to a claim to remuneration for increased expense and effort. (2) In calculating the remuneration for the change order, the contractor may take recourse to the calculation approaches used in the initial costing calculation that has been lodged as contractually agreed. It is presumed that the remuneration updated on the basis of the initial costing calculation corresponds to the remuneration pursuant to subsection (1). (3) Unless the parties have reached an agreement on the amount, or unless a court of law hands down a decision stipulating otherwise, the contractor may, in calculating part payments agreed upon or part payments owed under section 632a, assess 80 per cent of an additional remuneration set out in an offer pursuant to section 650b (1) sentence 2. Where the contractor opts to proceed in this manner and no court decision is handed down that stipulates otherwise, the additional remuneration owed pursuant to subsections (1) and (2) will be due only following acceptance of the work. Payments under sentence 1 that are in excess of the additional remuneration owed pursuant to subsections (1) and (2) are to be repaid to the customer and are to bear interest from the date of their receipt by the contractor. Section 288 subsection (1) sentence 2, subsection (2) and section 289 sentence 1 apply accordingly.

### **Section 650d**

#### **Injunction**

For an injunction to be issued in disputes regarding the right to issue orders in accordance with section 650b or the adjustment of remuneration in accordance with section 650c, after construction work has commenced, it is not required that the grounds for seeking such injunction be satisfactorily demonstrated to the court.

### **Section 650e**

#### **Mortgage of a building contractor**

The contractor may demand, for satisfaction of their claims under the contract, that a mortgage be granted over the building plot of the customer. If the work is not yet completed, then the contractor may demand that a mortgage be granted for a portion of the remuneration corresponding to the work performed and for expenditures not included in the remuneration.

### **Section 650f**

#### **Builder's security**

(1) The contractor may demand a security from the customer for the remuneration also agreed in additional commissions and not yet paid, including associated incidental claims,

which are to be estimated at 10 per cent of the claim to remuneration that is to be secured. Sentence 1 also applies in the same scope to claims replacing the remuneration. The claim of the contractor for a security is not ruled out by the customer being able to demand performance or of their having accepted the work. Claims with which the customer is able to set off against the contractor's claim to remuneration are not taken into account in calculating the remuneration unless they are uncontested or have been finally and bindingly established. The security is to be deemed sufficient even if its provider reserves the right to withdraw their promise in case of a 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 also may be provided by means of a guarantee or other promise of payment by a banking institution or credit insurer authorised to operate its business within the territorial extent of this Code. The banking institution or credit insurer may only make payments to the contractor to the extent that the customer recognises the contractor's claim to remuneration or has been ordered by a provisionally enforceable judgment to pay the remuneration and the prerequisites are met based on which compulsory enforcement may be commenced.

(3) The contractor is to pay to the customer the costs customarily entailed by the provision of security up to a maximum amount of two per cent per year. This does not apply insofar as a security must be maintained because of objections raised by the customer to the contractor's claim to remuneration and the objections prove to be unfounded.

(4) Insofar as the contractor has obtained a security for their claim to remuneration under subsection (1) or (2), the claim to be granted a mortgage under section 650e is excluded.

(5) If the contractor has set the customer a reasonable time limit to provide the security in accordance with subsection (1) and this has expired without result, the contractor may refuse to carry out the work or may terminate the contract. If the contractor terminates the contract, then they are entitled to claim the agreed remuneration; however, the contractor must allow to be credited against them what they save due to the contract being cancelled or what they acquire or wilfully fail to acquire from other use of their labour. The presumption is that on that basis, the contractor is entitled to five per cent of the remuneration accounted for by the part of the work not yet performed.

(6) Subsections (1) to (5) are not to be applied if the customer is

1. a legal person under public law or a special fund under public law with regard to the assets of which insolvency proceedings are not permissible, or
2. a consumer and the matter concerns a construction contract with a consumer pursuant to section 650i or a developer contract pursuant to section 650u.

No. 2 of sentence 1 does not apply if the construction project is managed by a construction agent authorised to dispose over the financial resources of the customer.

(7) Any agreement deviating from subsections (1) to (5) is ineffective.

### **Section 650g**

#### **Determination of the status in the case of acceptance being refused; final invoice**

(1) Where the customer refuses to accept the work, citing defects, they are to cooperate, upon the contractor so demanding, in a joint determination of the status of the work that has been reached. The joint determination of the status reached is to state the date of its preparation and is to be signed by both contractual parties.

(2) Where the customer fails to attend a meeting agreed for determining the status of the work, or a meeting scheduled by the contractor within a reasonable time limit, the contractor also may determine the status of the work unilaterally. This does not apply if the customer fails to attend due to a circumstance for which they are not responsible and of which they have notified the contractor without undue delay. The contractor is to furnish the unilateral determination of the status with the date on which it was prepared, is to sign it and is to make available to the customer a copy of the unilateral determination of the status.

(3) Where the work has been procured to the customer and the determination of the status under subsections (1) or (2) does not cite any evident defects, the presumption is that such evident defect arose after the determination of the status and is the responsibility of the customer. This presumption does not apply if the defect, by its nature, cannot have been caused by the customer.

(4) The remuneration is to be paid when

1. the customer has accepted the work or if the acceptance may be dispensed with pursuant to section 641 subsection (2)
2. the contractor has issued to the customer an auditable final invoice.

The final invoice is auditable if it includes an easily surveyed list of the work performed and is logically understandable to the customer. It is considered auditable unless the customer finds fault, citing their reasons therefor, as to the final invoice's auditability within 30 days of having received it.

#### **Section 650h**

##### **Written form of the termination**

The termination of the construction contract requires the written form.

#### **Chapter 3**

##### **Construction contract with a consumer**

#### **Section 650i**

##### **Construction contract with a consumer**

- (1) Construction contracts with consumers are contracts by which a contractor is obliged by a consumer to construct a new building, or to perform considerable reconstruction measures on an existing building.
- (2) The construction contract with a consumer is to be concluded in text form.
- (3) The following provisions of this Chapter apply supplementally to construction contracts with consumers.

#### **Section 650j**

##### **Specifications**

The contractor is to inform the consumer of the details evident from Article 249 of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*) in the form provided for therein, unless the consumer or an agent commissioned by the consumer provides the essential planning requirements.

#### **Section 650k**

##### **Subject matter of the contract**

- (1) The statements made in the specifications provided prior to the contract being concluded that relate to the execution of the construction work become part of the contract's content unless the contractual parties expressly have agreed otherwise.
- (2) Inasmuch as the specifications are incomplete or unclear, the contract is to be interpreted taking account of the entirety of all circumstances concurrent with the contract, in particular the standards of comfort and quality as evident from the remaining parts of the specifications. Any doubts arising in the interpretation of the contract as concerns the work owed by the contractor inure to the contractor's detriment.
- (3) The construction contract must include binding stipulations regarding the time at which the work is to be completed or, if such a point in time cannot be stated at the time the construction contract is concluded, regarding the duration of the execution of the construction work. Where the contract fails to include these stipulations, the information transmitted prior to the contract being concluded in the specifications concerning the time of completion of the work or the duration of the execution of the construction work will form part of the contract's content.

### **Section 650l**

#### **Right of withdrawal**

The consumer is entitled to a right of withdrawal in accordance with section 355 unless the contract was recorded by a notary. The contractor is under obligation to instruct the consumer in accordance with Article 249 section 3 of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*) concerning their right of withdrawal.

### **Section 650m**

#### **Part payments; security for the claim to remuneration**

(1) Where the contractor demands part payments in accordance with section 632a, the aggregate amount of the part payments may not exceed 90 per cent of the total remuneration agreed upon, including the remuneration for work done under change orders under section 650c.

(2) On effecting the first part payment, the consumer is to be provided with a security amounting to five per cent of the total remuneration agreed upon for the timely implementation of the work without major defects. If the claim to remuneration increases by more than 10 per cent as a result of an order by the consumer under sections 650b and 650c or as a consequence of changes or supplements made otherwise to the contract, the consumer is to be provided with a further security of five per cent of the additional claim to remuneration on effecting the next part payment. On demand by the contractor, the security is to be provided by retention such that the consumer retains the part payments up to the total amount of the security owed.

(3) Securities under subsection (2) also may be provided by way of a guarantee or any other payment undertaking by a financial institution or credit insurer authorised to operate its business in the territorial extent of this Code.

(4) Where the contractor demands part payments pursuant to section 632a, an agreement is ineffective that obligates the consumer to provide security for the remuneration agreed upon which is in excess of the next part payment, or in excess of 20 per cent of the total remuneration agreed upon. The same applies if the parties have agreed part payments.

### **Section 650n**

#### **Preparation of documents and surrender**

(1) In due time prior to commencing the execution of the work owed, the contractor is obliged to prepare those planning documents and to surrender them to the consumer that the latter requires in order to be able to provide proof to the authorities that the work will be executed in compliance with the relevant provisions of public law. The obligation does not exist inasmuch as the consumer or an agent commissioned by the consumer prepares the essential planning requirements.

(2) At the latest upon completion of the work, the contractor is to prepare those documents and to surrender them to the consumer that the latter requires in order to be able to provide proof to the authorities that the work has been executed in compliance with the relevant provisions of public law.

(3) Subsections (1) and (2) apply accordingly if a third party, such as a lender, demands proof of certain conditions being complied with and if the contractor has created the legitimate expectation with the consumer that it is complying with these conditions.

## **Chapter 4**

### **Mandatory nature**

#### **Section 650o**

#### **Deviating agreements**

No agreements in derogation from section 640 (2) sentence 2, sections 650i to 650l or section 650n that inure to the detriment of the consumer may be made. These provisions apply even if they are circumvented by other arrangements.

## **Subtitle 2**

### **Contract for architectural services and contract for engineering services**

#### **Section 650p**

##### **Contractual duties typical for contracts for architectural and for engineering services**

(1) A contract for architectural or for engineering services places the contractor under obligation to perform the work that is required in accordance with the respective status of the planning and execution of the building or of the outdoor facility in order to achieve the planning and supervision objectives agreed upon by the parties.

(2) Insofar as the essential planning and supervision objectives have not yet been agreed upon, the contractor is to initially provide a basic planning concept serving to identify these objectives. The contractor submits to the customer the basic planning concept together with a cost estimate for the project, for the latter's consent.

#### **Section 650q**

##### **Applicable provisions**

(1) Unless this Subtitle leads to a different conclusion, the provisions of Chapter 1 of Subtitle 1 as well as of sections 650b, 650e to 650h apply accordingly to contracts for architectural and for engineering services.

(2) The rules for calculating compensation as set out in the Scale of Fees for Architects and Engineers (*Honorarordnung für Architekten und Ingenieure*), as amended, apply to the adjustment of remuneration in the case of orders pursuant to section 650b (2), to the extent that work to be performed or cancelled under the order falls within the scope of application of the Scale of Fees. In all other cases, the adjustment of the remuneration for the increased or reduced expenditure of time and effort based on the performance ordered may be agreed freely. Insofar as the contracting parties do not conclude an agreement, section 650c applies accordingly.

#### **Section 650r**

##### **Special right of termination**

(1) Following submission of the documents pursuant to section 650p (2), the customer may terminate the contract. The right of termination expires two weeks following submission of the documents; in the case of a consumer, however, it expires only if the contractor has informed them, in text form and at submission of the documents, of the right of termination, of the period within which it may be exercised, and of the legal consequences of the termination.

(2) The contractor may set a reasonable time limit for the customer to grant consent pursuant to section 650p (2) sentence 2. The contractor may terminate the contract should the customer refuse to grant such consent or should the customer not make a declaration regarding the documents within the period according to sentence 1.

(3) Where the contract is terminated pursuant to subsection (1) or (2), the contractor will be entitled to claim only that remuneration that accrues for the work performed until termination.

#### **Section 650s**

##### **Partial acceptance**

From the acceptance of the last work performed by the contractor or contractors executing the construction work, the contractor may demand partial acceptance of the work they have performed up to that point.

#### **Section 650t**

##### **Joint and several liability with the contractor executing the construction work**

Where the customer lays claim to the contractor for a deficiency of supervision that has resulted in a defect of the building or of the outdoor facility, the contractor may refuse performance if the construction firm executing the work likewise is liable for the defect and the customer has not yet set a reasonable period for the contractor executing the construction work to cure the defect that has expired without result.



**Subtitle 3**  
**Developer contract**

**Section 650u**  
**Developer contract; applicable provisions**

(1) A developer contract is a contract that has as its object the construction or the conversion of a house or of a comparable building and that concurrently entails an obligation incumbent on the contractor to assign to the customer ownership of the plot of land or to establish or transfer a hereditary building right. The provisions of Subtitle 1 apply to the construction or the conversion unless the subsequent provisions lead to a different conclusion. The provisions governing purchase apply with regard to the claim to transfer of ownership to the plot of land or to the transfer or establishment of the hereditary building right.

(2) Sections 648, 648a, 650b to 650e, section 650k (1) as well as section 650l and section 650m (1) do not apply.

**Section 650v**  
**Part payments**

The contractor may demand part payments of the customer only insofar as they have been agreed in accordance with statutory instrument based on Article 244 of the Introductory Act to the Civil Code.

**Subtitle 4**  
**Package travel contract, brokerage of travel contracts and brokerage of linked travel arrangements**

**Section 651a**  
**Contractual duties typical for a package travel contract**

(1) By a package travel contract, the trader (organiser) is obliged to procure a package to the traveller. The traveller is obliged to pay the organiser the agreed price of the package.

(2) A package is a complete set comprised of at least two different types of travel services for the purpose of the same trip. A package is given also if

1. the travel services covered by the contract were combined at the request of or in accordance with the selection of the traveller, or
2. the trader entitles the traveller in the contract to choose, after the conclusion of the contract, from among a selection of travel services on offer with them.

(3) Travel services within the meaning of this Code are

1. the carriage of passengers,
2. the accommodation other than for residential purposes,
3. the rental
  - a) of four-wheel motor vehicles as defined in section 3 (1) of the Ordinance on the EC Approval of Motor Vehicles and their Trailers and of Systems, Components and Separate Technical Units Intended for such Vehicles (*EG-Fahrzeuggenehmigungsverordnung*) of 3 February 2011 (Federal Law Gazette I p. 126), most recently amended by Article 7 of the Ordinance of 23 March 2017 (Federal Law Gazette I p. 522), and
  - b) of motorcycles falling under the driver licence category "A" as defined in section 6 (1) of the Driver Licensing Regulations (*Fahrerlaubnis-Verordnung*) of 13 December 2010 (Federal Law Gazette I p. 1980), most recently amended by Article 4 of the Ordinance of 18 May 2017 (Federal Law Gazette I p. 1282),
4. any tourist service that is not a travel service within the meaning of nos. 1 to 3.

Travel services that intrinsically are part of a different travel service are not deemed travel services under sentence 1.

(4) No package is given if only one type of travel service within the meaning of subsection 3 sentence 1 no. 1 to 3 is combined with one or several tourist services within the meaning of subsection 3 sentence 1 no. 4 and if the tourist services

1. do not account for a significant share in the total value of the combination and neither represent an essential feature of the combination nor are advertised as such, or
2. are selected and agreed only after commencement of the performance of a travel service within the meaning of subsection 3 sentence 1 nos. 1 to 3.

Tourist services do not represent a significant share in the total value of the combination within the meaning of no. 1 of sentence 1 if they account for less than 25 per cent of the total value.

(5) The provisions on package travel contracts do not apply to contracts on trips that

1. are offered merely occasionally and on a not-for-profit basis and only to a limited group of travellers,
2. last less than 24 hours and do not include accommodation (day trip), and for which the price of the package is not in excess of 500 euros, or
3. are concluded on the basis of a framework agreement for the arrangement of business travel for a traveller who is a trader, for purposes relating to their enterprise.

#### **Section 651b Delimitation from brokerage**

(1) Notwithstanding sections 651v and 651w, the general provisions apply to the brokerage of travel services. However, a trader cannot invoke their brokering solely contracts with those persons who are to provide all of the travel services or individual of them (service provider) where at least two different types of travel services are to be provided to the traveller for the purpose of the same trip and

1. the traveller selects the travel services from a single point of sale of the trader within the same booking process before entering into obligation to make payment,
2. the trader offers, promises to procure or charges the travel services at a total price or
3. the trader advertises the travel services under the term “package” or under a similar term or promises to procure them in such manner.

In these cases, the trader is the organiser. The booking process within the meaning of sentence 2 no. 1 is not commenced already when inquiries are made of the traveller regarding their travel requirements and they are merely advised on the travel options on offer.

(2) The following are points of sale within the meaning of this Code:

1. immovable and movable retail premises,
2. websites serving electronic commerce and similar online sales facilities,
3. telephone services.

Where several different websites and similar online sales facilities under no. 2 of sentence 1 create the impression of a uniform appearance, they will constitute a point of sale.

#### **Section 651c Linked online booking processes**

(1) A trader who, by means of an online booking process, has concluded a contract with the traveller on a travel service or has facilitated such a contract by means of the same process, is to be deemed an organiser if

1. they facilitate at least one contract for a different type of travel service for purposes of the same package by enabling access to the online booking process of another trader,
2. they transmit the traveller's name, payment details and e-mail address to the other trader and
3. the further contract is concluded at the latest 24 hours following confirmation as to the conclusion of the contract for the first travel service.

(2) If a contract on a different type of travel service or several contracts on at least one different type of travel service come into existence as defined in subsection 1, then subject to section 651a (4), the contracts concluded by the traveller taken together are deemed to constitute a package travel contract within the meaning of section 651a (1).

(3) Section 651a (5) no. 2 is to be applied independently of the amount of the price of the package.

#### **Section 651d**

##### **Obligations to provide information; contents of the contract**

(1) The organiser obliged to inform the traveller, prior to their making their declaration as to the conclusion of a contract, in accordance with Article 250 sections 1 to 3 of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*). In this way, the organiser concurrently complies with the retailer's duties under section 651v (1) sentence 1.

(2) The traveller will be liable to pay additional fees, charges and other costs only if they were informed of them prior to making their declaration as to the conclusion of a contract pursuant to Article 250 section 3 no. 3 of the Introductory Act to the Civil Code.

(3) The information provided in accordance with Article 250 section 3 no. 1, 3 to 5 and 7 of the Introductory Act to the Civil Code becomes part of the contract's content unless the contractual parties expressly have agreed otherwise. The organiser is to provide the traveller with a copy or confirmation of the contract when it is concluded or without undue delay after conclusion of the contract in accordance with Article 250 section 6 of the Introductory Act to the Civil Code. The organiser is to transmit to the traveller, in due time before the start of the package, the necessary travel documents in accordance with Article 250 section 7 of the Introductory Act to the Civil Code.

(4) The burden of providing proof to the traveller that the information obligations have been complied with is incumbent on the organiser.

(5) In the case of package travel contracts under section 651c, the special provisions set out in Article 250 sections 4 and 8 of the Introductory Act to the Civil Code apply to the trader who is to be deemed the organiser, as well as to any other trader to whom data are transmitted in accordance with section 651c (1) no. 2. In all other cases, the above subsections remain unaffected.

#### **Section 651e**

##### **Transfer of contract**

(1) The traveller may declare on a durable medium, within a reasonable time limit prior to the start of the package, that a third party accedes in their stead to the rights and duties under the package travel contract. The declaration in any case is considered to have been made in due time if it is received by the organiser no later than seven days before the start of the package.

(2) The organiser may object to such accession to the contract by a third party if the third party does not satisfy the contractual travel requirements.

(3) Where a third party accedes to the contract, then the third party and the traveller are liable to the organiser as joint and several debtors for the price of the package and any

increased costs resulting from the third party acceding to the contract. The organiser may demand a refund of additional costs only if and to the extent these are reasonable and the organiser in fact has incurred them.

(4) The organiser is to provide proof to the traveller of the amount in which additional costs have arisen as a consequence of the third party acceding to the contract.

### **Section 651f**

#### **Reservations of the right to modify; price reduction**

(1) The organiser unilaterally may increase the price of the package only if

1. the contract provides for this option and moreover includes an indication of the organiser's obligation to reduce the price of the package as set out in subsection 4 sentence 1, along with information as to how changes to the price of the package are to be calculated, and

2. the increase of the price of the package results directly from

a) an increase of the price for the carriage of passengers due to higher costs for fuel or other energy sources,

b) an increase of taxes and other charges for the travel services agreed such as tourist taxes, harbour dues or airport charges, or

c) changes to the exchange rates relevant to the package concerned

occurring after conclusion of the contract.

The organiser is to notify the traveller on a durable medium in clear and comprehensible terms of the price increase and the grounds therefor and in this context is to communicate how the price increase is calculated. A price increase is effective only if it is in conformity to these requirements and the traveller is notified no later than 20 days before the start of the package.

(2) The organiser unilaterally may modify any conditions of the contract other than the price of the package only if this has been provided for in the contract and the modification is trivial. The organiser is to notify the traveller of the modification on a durable medium in a clear, comprehensible and prominent manner. A modification is effective only if it is in conformity to these requirements and if it is declared before the start of the package.

(3) Section 308 no. 4 and section 309 no. 1 are not to be applied to the reservations of the right to modify defined in subsections (1) and (2) that are agreed by pre-worded terms of contract.

(4) Where the contract provides for the possibility of increasing the price of the package, the traveller may demand that the price of the package be reduced if and insofar as the prices, charges or exchange rates set out in subsection (1) sentence 1 no. 2 have changed after conclusion of the contract and before the start of the package and this results in lower prices for the organiser. Where the traveller has paid more than the amount owed on this basis, the organiser is to refund the amount overpaid. The organiser may deduct the administrative costs they in fact have incurred from the refund for the amount overpaid. On the traveller's demand, the organiser is to provide proof of the amount in which they have incurred administrative costs.

### **Section 651g**

#### **Significant amendments of the contract**

(1) Where the price increase reserved in the contract in accordance with section 651f (1) exceeds eight per cent of the price of the package, the organiser may not unilaterally effect it. However, the organiser may offer a corresponding price increase to the traveller and demand that the traveller

1. accept the offer of a price increase or

2. declare their rescission of the contract

within a period of time specified by the organiser, which must be reasonable.

Sentence 2 applies accordingly to amendments of the contract other than price increases if the organiser is able to procure the package due to a circumstance that arose after conclusion of the contract only by way of significantly modifying one of the essential features of the travel services (Article 250 section 3 no. 1 of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*)) or only by deviating from special requirements made by the traveller that have become part of the contract's content. The offer of a price increase cannot be made later than 20 days prior start of the package; the offer of some other amendments of the contract may not be made after the start of the package.

(2) In their offer of a price increase or of some other amendment of the contract under subsection (1), the organiser also may offer to the traveller the option of participating in a different package (alternative package). The organiser is to inform the traveller in accordance with Article 250 section 10 of the Introductory Act to the Civil Code. Upon expiry of the period of time specified by the organiser, the offer of a price increase or of some other amendment of the contract is considered accepted.

(3) Where the traveller rescinds the contract, section 651h subsection (1) sentence 2 and subsection (5) apply accordingly; the traveller's claims under section 651i (3) no. 7 remain unaffected. Where the traveller accepts the offer of an amendment of the contract or of participation in an alternative package and where that package is not, at a minimum, of a nature equivalent to that of the originally owed package, section 651m applies accordingly; if it is of an equivalent nature but entails lower costs for the organiser, then section 651m (2) is to be applied accordingly with regard to the amount of the difference.

### **Section 651h**

#### **Rescission before the start of the package**

(1) Before the start of the package, the traveller may rescind the contract at any time. If the traveller rescinds the contract, then the organiser no longer has a claim to the price agreed for the package. However, the organiser may demand reasonable compensation.

(2) Reasonable standard compensation amounts may be specified in the contract, also by way of pre-worded terms of contract, that are based on the following criteria:

1. the period between the declaration of rescission and the start of the package,
2. the expenses the organiser is expected to save and
3. the expected gains resulting from an alternative deployment of the travel services.

Where no standard compensation amounts are specified in the contract, the amount of the compensation is determined by the price of the package less the value of the expenses saved by the organiser as well as less what the organiser gains by deploying the travel services otherwise. On demand by the traveller, the organiser is obliged to cite the grounds for the amount of the compensation.

(3) In derogation from subsection 1 sentence 3, the organiser may not demand compensation if unavoidable and extraordinary circumstances occurring at the place of destination or its immediate vicinity significantly affect the performance of the package or the carriage of passengers to the destination. Circumstances are unavoidable and exceptional within the meaning of this Subtitle if they are not subject to the control of the party who invokes such a situation and if their consequences could not have been avoided even if all reasonable measures had been taken.

(4) Before the start of the package, the organiser may rescind the contract in the following cases:

1. fewer persons than the minimum number of participants set out in the contract have enrolled for the package; in such event, the organiser is to declare their rescission within the period of time specified in the contract, but no later than
  - a) 20 days before the start of the package if the duration of the package is longer than six days,
  - b) seven days before the start of the package if the duration of the package is at least two and at most six days,
  - c) 48 hours before the start of the package if the duration of the package is less than two days,
2. the organiser is prevented by unavoidable exceptional circumstances from performing the contract; in such event, the organiser is to declare their rescission without undue delay upon having become aware of the grounds for rescission.

If the organiser rescinds the contract, then they no longer have a claim to the price agreed for the package.

(5) If the organiser is obliged, as the consequence of the contract having been rescinded, to refund the price of the package, it is to pay such refund without undue delay, but in any case within 14 days following the rescission.

#### **Section 651i**

##### **Rights of the traveller in the case of a lack of conformity of the package**

- (1) The organiser is to procure to the traveller the package such that it does not lack conformity.
- (2) The package does not lack conformity if it is of the agreed nature. Inasmuch as no nature has been agreed, the package does not lack conformity
  1. if it is suitable for the use on which the contract is premised, and otherwise,
  2. if it is suitable for customary use and is of a nature that is usual in packages of the same type and that the traveller may expect in view of the type of package.

The package lacks conformity also if the organiser fails to procure travel services or procures them only subject to an unreasonable delay.

(3) If the package lacks conformity, then provided the prerequisites set out in the following provisions have been met and unless otherwise provided, the traveller may

1. demand remedy under section 651k (1),
2. themselves remedy the lack of conformity and demand reimbursement of the expenses required under section 651k (2),
3. demand remedy by other travel services being provided (alternative performance) under section 651k (3),
4. demand that the costs of necessary accommodation be borne as set out in section 651k (4) and (5),
5. terminate the contract on the basis of section 651l,
6. assert the rights resulting from an abatement of the price of the package (section 651m) and
7. demand compensation of damages in accordance with section 651n or reimbursement of futile expenses as defined in section 284.

#### **Section 651j** **Limitation**

The claims of the traveller designated in section 651i (3) become statute-barred after two years. The limitation period commences on the day on which, according to the contract, the package was to end.

### **Section 651k Remedy**

(1) If the traveller demands remedy, then the organiser is to remedy the lack of conformity of the package. The organiser may refuse remedy only if

1. it is impossible or
2. if, taking account of the degree to which the package lacks conformity and of the value of the travel service concerned, the remedy would entail disproportionate costs.

(2) If, within a reasonable time limit specified by the traveller, the organiser fails to remedy the lack of conformity, subject to the exceptions under subsection (1) sentence 2, then the traveller may remedy the lack of conformity themselves and demand reimbursement of the expenses required. A period of time need not be specified if the organiser refuses to remedy the lack of conformity or if immediate remedy is necessary.

(3) If the organiser may refuse remedy of a lack of conformity of the package under subsection (1) sentence 2 and a significant part of the travel services lack conformity, then the organiser is to offer remedy by appropriate alternative performance. Where the consequence of the alternative performance is that the package is not of a nature at least equivalent to that of the package originally owed, the organiser is to grant the traveller an appropriate reduction of the price of the package; the appropriateness is governed by section 651m (1) sentence 2. Where the alternative performance is not comparable to the services agreed in the contract, or where the reduction of the package price offered by the organiser is not appropriate, the traveller may refuse the alternative performance. In this case, or if the organiser is incapable of offering alternative performance, section 651l (2) and (3) is to be applied subject to the proviso that termination by the traveller is not the decisive factor.

(4) Where the return of the traveller to the place of departure or to some other place agreed upon by the parties (repatriation) is covered by the contract and is impossible due to unavoidable extraordinary circumstances, the organiser is to bear the costs of the traveller's necessary accommodation for a period of time not exceeding three nights, if possible in accommodations that are equivalent to those agreed in the contract.

(5) The organiser may not rely on the limitation of the period of time to three nights under subsection (4) in the following cases:

1. under the directly applicable provisions of the European Union, the service provider is to offer the accommodation to the traveller for a longer period of time or is to bear the costs therefor,
2. the traveller belongs to one of the groups of persons set out below and the organiser was made aware of the traveller's particular needs no later than 48 hours before the start of the package:
  - a) persons with reduced mobility within in the meaning of Article 2 letter (a) of Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air (OJ L 204 of 26 July 2006, p. 1; L 26 of 26 January 2013, p. 34) and their accompanying persons,
  - b) pregnant women,
  - c) unaccompanied minors,
  - d) persons requiring special medical care.

**Section 651l**  
**Termination**

(1) Where the package is significantly impaired by its lack of conformity, the traveller may terminate the contract. Termination is permissible only upon the organiser having failed to provide remedy within a reasonable period specified to them by the traveller; section 651k

(2) sentence 2 applies accordingly.

(2) If the contract is terminated, then the organiser retains their claim to the agreed package price with regard to the travel services provided and with regard to the travel services yet to be provided until the end of the package under subsection (3); claims of the traveller under section 651i (3) no. 6 and 7 remain unaffected. As regards the travel services that no longer are to be provided, the organiser's claim to the agreed package price lapses; the organiser is to refund to the traveller payments already made in their regard.

(3) The organiser is obliged to take the measures necessitated by the cancellation of the contract, in particular, if the contract included the carriage of the traveller, to procure the traveller's repatriation; the means of transport used for this purpose must be equivalent to that agreed in the contract. The increased costs for the repatriation are borne by the organiser.

**Section 651m**  
**Abatement of the price**

(1) The price of the package is abated for the duration of the lack of conformity. In abating the price of the package, it is to be reduced in the ratio of the value that the package in conformity would have had to its actual value. If required, the abatement is to be identified by way of an estimate.

(2) Where the traveller has paid more than the abated package price, the organiser is to refund the amount overpaid. Section 346 (1) and section 347 (1) apply accordingly.

**Section 651n**  
**Damages**

(1) Notwithstanding any abatement of price or notice of termination, the traveller may demand damages unless

1. the traveller is at fault for the package's lack of conformity,
2. a third party who is neither a service provider nor involved in some other manner in providing the travel services covered by the package travel contract is at fault for the package's lack of conformity, and the lack of conformity was not foreseeable to the organiser or was not avoidable, or
3. the package's lack of conformity was caused by unavoidable extraordinary circumstances.

(2) If the package is frustrated or significantly impaired, then the traveller also may demand appropriate compensation in money for futilely expended holiday leave.

(3) Where the organiser is obliged to pay compensation of damages, they are to make payment without undue delay.

**Section 651o**  
**Notification by the traveller of a lack of conformity**

(1) The traveller is to notify the organiser without undue delay of a lack of conformity of the package.

(2) To the extent the organiser was unable to provide remedy because of the notification under subsection (1) culpably having been failed to be made, the traveller is not entitled

1. to assert the rights specified in section 651m or
2. to demand compensation of damages under section 651n.



### **Section 651p**

#### **Admissible limitation of liability; set-off**

(1) The organiser may, by agreement with the traveller, limit their liability for those damages to three times the price of the package that

1. do not constitute bodily injuries and
2. were not brought about culpably.

(2) Where international conventions or statutory provisions based on such conventions apply to travel services to be rendered by a service provider and stipulate that a claim for damages arises against the service provider, or that such a claim may be asserted against them, only subject to certain prerequisites or certain restrictions, or that it is excluded under certain prerequisites, then the organiser may also invoke this in relation to the traveller.

(3) Where the traveller is entitled vis-à-vis the organiser to a claim to compensation of damages or to the refund of an amount overpaid as the consequence of an abatement, the traveller must allow that amount to be credited against them that they have received as compensation for the same event or as a refund as a consequence of an abatement in accordance with international conventions or of statutory provisions based on such conventions, or in accordance with

1. Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ L 46 of 17 February 2004, p. 1),
2. Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations (OJ L 315 of 3 December 2007, p. 14),
3. Regulation (EC) No 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents (OJ L 131 of 28 May 2009, p. 24),
4. Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004 (OJ L 334 of 17 December 2010, p. 1) or
5. Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) 2006/2004 (OJ L 55 of 28 February 2011, p. 1).

Where the traveller already has received compensation of damages from the organiser or where an amount already has been refunded to them by the organiser as the consequence of an abatement, the traveller must allow the amount received to be credited against whatever is owed them as compensation for the same event or as a refund as a consequence of an abatement in accordance with international conventions or of statutory provisions based on such conventions, or in accordance with the regulations set out in sentence 1.

### **Section 651q**

#### **Organiser's obligation to provide assistance**

(1) If, in the case governed by section 651k (4) or for other reasons, the traveller is in difficulty, the organiser is to give them appropriate assistance without undue delay, in particular by

1. providing appropriate information on health services, local authorities and consular assistance,

2. assisting the traveller to make distance communications and
3. helping the traveller to find alternative travel arrangements; section 651k (3) remains unaffected.

(2) Where the traveller culpably has brought about the difficulty requiring the assistance, the organiser may demand reasonable compensation for their expenses if and insofar as these are appropriate and the organiser in fact has incurred them.

#### **Section 651r Insolvency protection; security certificate**

(1) The organiser is to ensure that the price of the package paid is refunded to the traveller to the extent that, in the case of the organiser's insolvency

1. travel services fail to materialise or
2. the traveller complies, with regard to travel services provided, with requests for payment made by service providers whose claims for payment the organiser has not discharged.

Where the contract also covers the carriage of the traveller, the organiser moreover is to ensure the agreed repatriation and the accommodation until the time of repatriation. The opening of insolvency proceedings regarding the assets of the organiser and the rejection of an application for opening of insolvency proceedings for insufficiency of assets are equivalent to insolvency.

(2) The organiser may perform the duties under subsection (1), subject to sentence 2, from 1 November 2021 onwards only by concluding a contract of guarantee with a travel guarantee fund authorised to operate its business under the Act on the Protection against Insolvency by Travel Guarantee Funds (*Reisesicherungsfondsgesetz*). Organisers who achieved a turnover in the last complete fiscal year as defined in section 1 no. 2 (a) of the Act on the Protection against Insolvency by Travel Guarantee Funds of less than 10 million euros may comply with the obligations under subsection (1) in the respectively subsequent fiscal year also

1. by means of an insurance policy taken out with an insurance company authorised to operate its business within the territorial extent of this Code, or
2. by the payment guarantee of a banking institution authorised to operate its business within the territorial extent of this Code.

The organiser must comply with the obligations under subsection (1) without regard to the traveller's place of residence, the place of departure or the place at which the contract was concluded.

(3) The travel guarantee fund, the insurer or the banking institution (guarantor) may offer the continuation of the package to the traveller. Where the traveller demands a refund under subsection 1, the guarantor is to comply with this claim without undue delay. Insurers and banking institutions may limit their obligation to assume liabilities resulting from contracts under subsection (2) sentence 2 nos. 1 and 2 to one million euros for each insolvency of an organiser who achieved a turnover, as defined in section 1 no. 2 (a) of the Act on the Protection against Insolvency by Travel Guarantee Funds, of less than three million euros in the last complete fiscal year. Where the benefits to be provided in this case exceed the maximum amount agreed, the individual claims of the travellers will be reduced in the ratio of their total amount to the maximum amount.

(4) By way of discharging their duties under subsection (1), the organiser is to procure to the traveller a direct claim on the guarantor and is to provide proof by a confirmation (security certificate) issued by the guarantor or at the guarantor's behest in accordance with Article 252 of the Introductory Act to the Civil Code. The guarantor named in the contract under Article 250 section 6 2 no. 3 of the Introductory Act to the Civil Code may not invoke, in

relation to the traveller, either objections under the guarantor contract nor its termination if the termination was effected after conclusion of the package travel contract. In the cases governed by sentence 2, the traveller's claim vis-à-vis the organiser devolves to the guarantor to the extent that the latter satisfies the traveller's claim.

#### **Section 651s**

##### **Insolvency protection of the organisers established in the European Economic Area**

If, at the time at which the contract is concluded, the organiser has their establishment within the meaning of section 4 (3) of the Trade Regulation Code (*Gewerbeordnung*) in another Member State of the European Union or in some other Contracting Party to the Agreement on the European Economic Area, then the organiser will be discharging their duties to provide insolvency protection also if they provide security to the traveller in compliance with the regulations in place in that other state that serve to implement Article 17 of Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC (OJ L 326 of 11 December 2015, p. 1).

#### **Section 651t**

##### **Repatriation, prepayments**

The organiser may agree a repatriation of the traveller and demand or take receipt of payments by the traveller towards the price of the package prior to the termination of the package only if

1. an effective contract of guarantee is in place or, in the cases governed by section 651s, the organiser provides security under section 651s and
2. the traveller was provided, in a clear, comprehensible and prominent manner, with the name and contact information of the guarantor or, in the cases governed by section 651s, with the name and contact information of the institution providing the insolvency protection and, if applicable, the name and contact information of the authority named by the state concerned.

#### **Section 651u**

##### **Exchange student stays**

(1) Section 651a (1), (2) and (5), sections 651b, 651d (1) to (4) and sections 651e to 651t apply accordingly, as do the subsections below, to a contract having as its subject matter the 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. These provisions only apply to a 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 implementation of an intership, if this has been agreed.

(2) The party offering the exchange student stay as the organiser is obliged, with the cooperation of the exchange student,

1. to procure the accommodations, supervision and care for the exchange student in a host family that are appropriate according to the circumstances given in the host country and
2. to create the necessary prerequisites for regular school attendance by the exchange student in the host country.

(3) If the traveller rescinds the contract before the start of the package, section 651h subsection (1) sentences 2 and 3 and subsection (2) are applicable only if the organiser appropriately has prepared the traveller for the stay and in any case has informed them at least two weeks prior to the start of the package of the following:

1. the name and address of the host family determined for the exchange student after their arrival, and
  2. the name and accessibility of a contact person in the host country from whom it is also possible to demand remedy.
- (4) The traveller may terminate the contract at any time until the end of the package. If the traveller gives notice, then the organiser is entitled to demand the agreed price of the package less the expenses saved. The organiser is obliged to take the measures necessitated by termination of the contract, in particular, where the contract included the carriage of the exchange student, to procure their repatriation. The increased costs are borne by the traveller. The sentences above do not apply if the traveller can give notice in accordance with section 651l.

#### **Section 651v Facilitation of travel**

- (1) A trader who facilitates a package travel contract for a traveller (retailer) is obliged to provide information to the traveller in accordance with Article 250 sections 1 to 3 of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*). In this way, the organiser concurrently complies with the retailer's duties under section 651v (1) sentence 1. The burden of providing proof to the traveller that the information obligations have been complied with is incumbent on the retailer.
- (2) Section 651t no. 2 applies accordingly to the acceptance of payments toward the price of the package by the retailer. A retailer is deemed to be authorised by the organiser to accept payments towards the price of the package if the retailer makes available to the traveller a copy or confirmation of the contract that conforms to the requirements of Article 250 section 6 of the Introductory Act to the Civil Code or if other circumstances attributable to the organiser show that the retailer has been entrusted by the organiser to negotiate package travel contracts on their behalf. This does not apply if the acceptance of payments by the retailer is excluded in relation to the traveller in a prominent manner.
- (3) If, at the time of the conclusion of contract, the organiser does not have its seat in a Member State of the European Union or in some other Contracting Party to the Agreement on the European Economic Area, then the duties of the organiser evident from sections 651i to 651t are incumbent on the retailer unless the retailer provides proof that the organiser is complying with its duties under these provisions.
- (4) The retailer deemed to be authorised by the organiser to take receipt of notices of a lack of conformity as well as other declarations by the traveller with regard to the provision of the travel services. The retailer is to notify the organiser without undue delay of such declarations by the traveller.

#### **Section 651w Facilitation of linked travel arrangements**

- (1) A trader is a facilitator of linked travel arrangements if, for purposes of the same trip that is not a package, they
1. facilitate contracts with other traders relating to a minimum of two different types of travel services, on the occasion of a single visit by the traveller in their point of sale or of a single contact with their point of sale, and the traveller separately selects these services and
    - a) pays for them separately or
    - b) enters into obligation to make payment separately for each service or
  2. facilitate, in a targeted manner, a minimum of one contract with some other trader relating to a different type of travel service for the traveller with whom they have concluded a contract on a travel service or for whom they have facilitated such a contract

and the further contract is concluded at the latest 24 hours after the confirmation of the conclusion of the contract for the first travel service.

Facilitation in a targeted manner within the meaning of no. 2 of sentence 1 is not given in particular in those cases in which the trader merely brings the traveller into contact with some other trader. In all other regards, section 651a (4) sentence 1 no. 1 sentence 2 and subsection (5) nos. 1 and 3 apply accordingly to sentence 1. Section 651a (5) no. 2 is to be applied accordingly, independently of the amount of the price of the package.

(2) The facilitator of linked travel arrangements is under obligation to inform the traveller in accordance with Article 251 of the Introductory Act to the Civil Code.

(3) Where the facilitator of linked travel arrangements takes receipt of payments by the traveller towards the remuneration for travel services, the facilitator is to ensure that such payments are refunded to the traveller to the extent that the travel services are to be provided by the facilitator of the linked travel arrangements themselves or that the claims to fees of other traders within the meaning of subsection (1) sentence 1 remain to be satisfied and, in the case of the facilitator of the linked travel arrangements becoming insolvent,

1. travel services fail to materialise or
2. the traveller complies, with regard to travel services provided, with requests for payment made by other traders within the meaning of subsection (1) sentence 1 whose claims have not been satisfied.

Where the facilitator of linked travel arrangements has entered into obligation to themselves perform carriage of the traveller, they moreover are to ensure the agreed repatriation and the accommodation until the time of repatriation. The opening of insolvency proceedings regarding the assets of the broker and the rejection of an application for opening of insolvency proceedings for insufficiency of assets are equivalent to insolvency. Section 651r (2) to (4) as well as sections 651s and 651t are to be applied accordingly.

(4) If the facilitator of linked travel arrangements fails to comply with their duties under subsections (2) and (3), then section 312 (7) sentence 2 as well as sections 651e, 651h to 651q and 651v (4) apply accordingly to the legal relationship between the facilitator and the traveller.

(5) Where, as a consequence of the facilitation under subsection (1), one or several contracts relating to travel services come into existence with the traveller, the respective other trader is to inform the facilitator of linked travel arrangements of the fact of the contract having been concluded. The obligation under sentence 1 does not exist if the facilitator of the linked travel arrangements has concluded the contract as the representative of the other trader.

#### **Section 651x Liability for booking errors**

The traveller is entitled to claim compensation of the damage

1. they suffer due to technical defects in the booking system of the organiser, the retailer, the facilitator of linked travel arrangements or the service provider unless the trader respectively concerned is not responsible for the technical defect,
2. that one of the traders set out in no. 1 has caused by an error in the course of the booking process, unless the traveller is at fault for the defect or it was caused by unavoidable extraordinary circumstances.

#### **Section 651y Deviating agreements**

Unless otherwise provided, no deviation may be made from the provisions of this Subtitle to the disadvantage of the traveller. Unless otherwise provided, the provisions of this Subtitle apply even if they are circumvented by other arrangements.

**Title 10**  
**Brokerage contract**

**Subtitle 1**  
**General provisions**

**Section 652**  
**Accrual of fee claim**

(1) A person who promises a brokerage fee for a demonstrable referral of the opportunity to conclude a contract or for brokering a contract is obliged to pay the fee only if the contract comes into existence as a result of the demonstrable referral or as a result of the brokerage by the agent. If the contract is concluded 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 into existence.

**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 only can 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 is 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 demonstrable referral of the opportunity to conclude a service contract or for brokering such a contract, then, on application by the party owing it, it may be reduced to the appropriate amount by court decision. After the fee has been paid, its reduction is excluded.

**Subtitle 2**  
**Intermediation of consumer credit agreements and non-gratuitous financial accommodation**

**Section 655a**  
**Credit intermediation contract**

(1) A contract by which a contractor

1. agrees, for remuneration to be paid by the consumer or a third party, to intermediate a consumer credit agreement or non-gratuitous financial accommodation,
2. agrees to give the consumer evidence of an opportunity to enter into a contract pursuant to no. 1, or
3. agrees to assist in some other manner with the conclusion of a contract pursuant to no. 1,

is governed, subject to sentence 2, by the following provisions of this Subtitle. In the case of non-gratuitous financial accommodation that corresponds to the exceptions under section 491 (2) sentence 2 no. 1 to 5 and subsection (3) sentence 2, the provisions of this Subtitle do not apply.

(2) The credit intermediary is under obligation to inform the consumer in accordance with Article 247 section 13 (2) and section 13b (1) of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*). The credit intermediary additionally is obliged vis-à-vis the consumer in the same way as a lender under section 491a. Sentence 2 does not apply to goods suppliers or service providers who operate as a credit intermediary for general-purpose consumer credit agreements or for the corresponding non-gratuitous financial accommodation in a solely subordinate function, for instance by intermediating, as an ancillary service, the conclusion of a linked consumer credit agreement.

(3) Where the credit intermediary offers advisory services pursuant to section 511 (1) in connection with the intermediation of a consumer credit agreement relating to immovable property or with a corresponding non-gratuitous financial accommodation, section 511 applies accordingly. Section 511 (2) sentence 2 applies accordingly subject to the proviso of the credit intermediary reviewing a sufficiently large number of credit agreements available on the market. Where the credit intermediary pursues activities on behalf of only one lender or a restricted number of lenders who do not represent a majority on the market, subject to the unlimited and unconditional responsibility of such lender/lenders, then, in derogation from sentence 2, the credit intermediary needs to consider only credit agreements from the product range of these lenders.

#### **Section 655b**

##### **Written form in the case of a contract with a consumer**

(1) The credit intermediation contract with a consumer requires the written form. The contract may not be linked to the application for the loan to be granted. The credit intermediary is to notify the consumer in text form of the contents of the contract.

(2) A credit intermediation contract with a consumer that does not satisfy the requirements of subsection (1) sentences 1 and 2, or where the obligations under Article 247 section 13 (2) as well as section 13b (1) and (3) of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*) have not been met prior to its conclusion, is void.

#### **Section 655c**

##### **Remuneration**

The consumer is only obliged to pay the fee for the activities pursuant to section 655a (1) if, as the result of the intermediation, the provision of a demonstrable referral of the opportunity to conclude a contract, or of the other activities pursued by the credit intermediary, the loan is granted to the consumer and the loan has been paid out to the consumer and withdrawal by the consumer under section 355 no longer is possible. To the extent that, with the knowledge of the credit intermediary, the consumer credit agreement is intended for the early repayment of another loan (debt rescheduling), a claim to remuneration arises only if the effective annual rate of interest is not increased; when the effective 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 credit agreement or providing a demonstrable referral of the opportunity to conclude a consumer credit agreement, the credit intermediary may not agree any payment except for remuneration in accordance with section 655c sentence 1 and except for the fee that may have been agreed for advisory services. However, it may be agreed that the credit intermediary be reimbursed for the necessary expenditures that were incurred. This right may not exceed the amount or the maximum amounts of which the credit intermediary has notified the consumer under Article 247 section 13 (2) sentence 1 no. 4 of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*).

### **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 arrangements.

(2) In this Subtitle, consumers are deemed equivalent to founders of new businesses within the meaning of section 513.

### **Subtitle 3**

#### **Marriage broking**

### **Section 656**

#### **Marriage broking**

(1) No obligation is established by promising a fee for providing a demonstrable referral of the opportunity to conclude 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, in particular to an acknowledgement of a debt.

### **Subtitle 4**

#### **Brokerage of purchase contracts for flats and single family houses**

### **Section 656a**

#### **Text form**

A brokerage contract having as its subject matter the demonstrable referral of the opportunity to conclude a sale and purchase contract for a flat or a single-family house or the brokerage of such a contract requires the text form.

### **Section 656b**

#### **Personal scope of sections 656c and 656d**

Sections 656c and 656d apply only if the buyer is a consumer.

### **Section 656c**

#### **Fee claim in the case of the broker working for both parties**

(1) Where the broker has both parties to the purchase agreement for a flat or a single family house promise to pay a brokerage fee to the broker, this may be effected only such that both parties enter into obligation to pay the same amount. Where the broker agrees with one party to the purchase agreement that they will pursue their activities for that party at no charge, the broker may not have the other party promise them a brokerage fee. Any waiver of the fee takes effect also to the benefit of the respective other party contracting with the broker. It is not possible to deviate from sentence 3 by way of a contract.

(2) A brokerage contract in derogation from subsection (1) sentences 1 and 2 is ineffective. Section 654 remains unaffected.

### **Section 656d**

#### **Agreements on the broker's costs**

(1) Where only one party to the purchase agreement on a flat or single family house has concluded a brokerage agreement, an agreement by which the other party is obliged to pay or reimburse the brokerage fee is effective only if the party that concluded the brokerage agreement remains under obligation to pay the brokerage fee in at least the same amount. The claim against the other party falls due only once the party that concluded the brokerage agreement has complied with its obligation to pay the brokerage fee or the broker provides proof thereof.

(2) Section 656c (1) sentences 3 and 4 applies accordingly.



**Title 11**  
**Promise of a reward**

**Section 657**  
**Binding promise**

Anyone offering, by means of a notice by publication, a reward for undertaking an act, in particular 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 made known to the public 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 nature, 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 is to apportion the reward at their reasonably exercised discretion, taking into account the contribution of each one to the outcome. The apportionment is not binding if it is manifestly 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 be 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 notice by publication.

(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) apply to awarding the prize.

(4) The person promising the reward may only demand transfer of ownership of the work if they have stipulated in the promise of a reward that the transfer is to occur.

**Section 661a**  
**Promises of prizes**

A trader who sends promises of prizes or comparable notifications to consumers and creates the impression through the design of such mailings that the consumer has won a prize is to give that prize to the consumer.

## **Title 12**

### **Mandate, contract for the management of the affairs of another and payment services**

#### **Subtitle 1**

#### **Mandate**

#### **Section 662**

##### **Contractual duties typical for a mandate**

By accepting a mandate, the mandatary agrees to carry out work or services gratuitously for the mandator with which the mandator has entrusted them.

#### **Section 663**

##### **Duty to notify in the case of rejection**

A person who is officially appointed to perform certain work or services or who publicly has offered to do so is obliged, when they do not accept a mandate to perform such work or services, to notify the mandator of the refusal without undue delay. The same applies if someone has offered to the mandator to perform certain work or services.

#### **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 they are liable only for fault in connection with the transfer. They are 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 they may assume in the circumstances that the mandator would approve of such deviation if they were aware of the factual situation. The mandatary is to notify the mandator prior to such deviation and is to wait for the decision of the latter unless postponement entails danger.

#### **Section 666**

##### **Duty of information and duty to render accounts**

The mandatary is obliged to provide the mandator with the necessary reports, to provide information on demand on the status of the work or services and, after carrying out the mandate, to render accounts for it.

#### **Section 667**

##### **Duty to surrender**

The mandatary is obliged to surrender to the mandator everything they receive to perform the mandate and what they obtain from carrying out the work or services.

#### **Section 668**

##### **Interest on money used**

Where the mandatary uses money for themselves that they are to return to the mandator or to use on the mandator's behalf, they are obliged to pay interest on it from the time onwards on which they so used it.

#### **Section 669**

##### **Duty of advance payment**

For expenses necessary to perform the mandate, the mandator is to make advance payment to the mandatary upon the latter's demand.

### **Section 670**

#### **Reimbursement of expenses**

If the mandatary, for the purpose of performing the mandate, incurs expenses that in the circumstances they are in their rights to consider to be necessary, then the mandator is obliged to make reimbursement.

### **Section 671**

#### **Withdrawal; 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 is able to make other arrangements for the work or services to be carried out, unless there is a compelling reason for premature termination. If the mandatary gives premature notice of termination without such a compelling reason, then they are to 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 they have 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 is to continue to carry out the work or services with which they have been entrusted until the heir or the legal representative of the mandator is able to make other arrangements for the work or services 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 is to notify the mandator of the death without undue delay and, if postponement entails danger, is to continue carrying out the work or services with which they have been entrusted until the mandator is able to make other arrangements; in this respect, the mandate is deemed to continue.

### **Section 674**

#### **Legal construct 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**

### **Section 675**

#### **Non-gratuitous 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 specified in this Subtitle and, if the person obliged is entitled to terminate without observing a period of notice, the provisions of section 671 (2) also apply accordingly.

(2) A person who gives another person advice or a recommendation, is not obliged, notwithstanding the responsibility that arises from a contractual relationship, a tort or another statutory provision, to pay compensation for the damage arising from following the advice or the recommendation.

(3) A contract by means of which one party undertakes to effect the enrolment or registration

of the other party to participate in games of chance operated by a third party requires text form.

### **Section 675a**

#### **Duties to provide information**

A person who officially is appointed to manage the affairs of others, or publicly offers to do so, gratuitously provides information, for regularly occurring standardised business transactions (standard transactions), on fees and expenditures for the management of such transactions in text form, to the extent that a price is not determined in accordance with section 315 or to the extent that fees and expenditures are not subject to binding statutory provisions.

### **Section 675b**

#### **Orders to transfer securities in systems**

Participants in securities delivery and invoicing systems no longer can revoke an order the subject matter of which is the transfer of securities or of claims to the surrender of securities by way of booking or by other means from the point in time determined by the rules of the system.

### **Subtitle 3**

#### **Payment services**

#### **Chapter 1**

#### **General provisions**

### **Section 675c**

#### **Payment services and e-money**

(1) Sections 663, 665 to 670 and 672 to 674 are to be applied accordingly to a contract for the management of the affairs of another, the subject matter of which is the provision of payment services, unless this Subtitle provides otherwise.

(2) The provisions of this Subtitle also are applicable to a contract on the issuance and use of e-money.

(3) The definitions made in the Banking Act (*Kreditwesengesetz*) and in the Act on Supervision of Payment Services (*Zahlungsdiensteaufsichtsgesetz*) are to be applied.

(4) To the exception of section 675d (2) sentence 2 as well as subsection (3), the provisions of this Subtitle are not to be applied to a contract for the provision of account information services.

### **Section 675d**

#### **Information on payment services**

(1) Where payment services are provided, payment service providers are to provide information to the payment service users on the circumstances laid down in Article 248 sections 1 to 12, section 13 (1) and (3) to (5), and sections 14 to 16 of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*) in the form provided for therein.

(2) Payment initiation service providers are to provide information to the payers exclusively on the circumstances determined in Article 248 section 13 (1) to (3) and section 13a of the Introductory Act to the Civil Code in the form provided for in Article 248 sections 2 and 12 of the Introductory Act to the Civil Code. Account information service providers are to provide information to the payment service users in accordance with the requirements set out in Article 248 sections 4 and 13 (1) and (3) of the Introductory Act to the Civil Code; they may agree the form of the information and the time at which it is provided with the payment service user.

(3) If the proper information is the subject of dispute, the burden of proof is incumbent on the payment service provider.

(4) For the provision of information, the payment service provider may only agree on a charge with the payment service user if the information is provided when requested by the payment service user, and the payment service provider

1. provides this information more frequently than stipulated in Article 248 sections 1 to 16 of the Introductory Act to the Civil Code,
2. provides information that extends beyond what has been stipulated in Article 248 sections 1 to 16 of the Introductory Act to the Civil Code, or
3. provides this information by other means of communication than those agreed in the framework contract on payment services.

The charge must be appropriate and in line with the payment service provider's actual costs.

(5) Payees, parties providing cash withdrawal services, and third parties provide information on the circumstances specified in Article 248 sections 17 to 18 of the Introductory Act to the Civil Code. The payer is obliged to pay the charges set out in Article 248 section 17 (2) and section (18) of the Introductory Act to the Civil Code only if they were made known in their full amount prior to the payment transaction being initiated.

(6) Subsections (1) to (5) are not to be applied

1. to the components of a payment transaction that are effected outside of the European Economic Area if
  - a) the payment transaction is made in the currency of a state outside of the European Economic Area and both the payment service provider of the payer and the payment service provider of the payee are located within the European Economic Area, or if,
  - b) in the case of several payment service providers being involved with the payment transaction, at least one of these payment service providers is located within the European Economic Area and at least one of them is located outside of the European Economic Area;
2. to payment transactions in which none of the payment service providers involved is located within the European Economic Area.

In the cases governed by sentence 1 no. 1, the obligations to provide information in accordance with Article 248 section 4 (1) no. 2 letter (e), section 6 no. 1 as well as section 13 (1) sentence 1 no. 2 of the Introductory Act to the Civil Code also are not to be applied to the components of a payment transaction that are effected within the European Economic Area. The same applies in the case governed by sentence 1 no. 1 (b) as concerns the obligation to provide information under Article 248 section 4 (1) no. 5 (g) of the Introductory Act to the Civil Code.

### **Section 675e**

#### **Deviating agreements**

(1) Unless otherwise provided, it is not permissible to deviate from the provisions of this Subtitle to the detriment of the payment service user.

(2) In the cases governed by section 675d (6) sentence 1 nos. 1 and 2

1. section 675s (1), section 675t (2), section 675x (1), section 675y (1) to (4), as well as section 675z sentence 3 are not to be applied;
2. it is permissible in all other cases to deviate from the provisions of this Subtitle to the detriment of the payment service user.

(3) For payments not effected in euros, the payment service user and their payment service provider may agree that section 675t (1) sentence 3 and subsection (2) is not to be applied as a whole or in part.

(4) If the payment service user is not a consumer, the parties may agree that section 675d subsection (1) to (5), section 675f (5) sentence 2, sections 675g, 675h, 675j (2), sections 675p as well as sections 675v to 676, are not to be applied as a whole or in part; they may also agree time-limits other than those provided for in section 676b (2) and (4).

## **Chapter 2**

### **Payment services contract**

#### **Section 675f**

##### **Payment services contract**

(1) By means of a single payment service contract, the payment service provider is obliged to execute a payment transaction for the person availing themselves of a payment service as a payer, payee or in both capacities (payment service user).

(2) Through a framework contract on payment services, the payment service provider is obliged to execute individual and successive payment transactions for the payment service user, as well as where appropriate to maintain a payment account in the payment service user's name or in the names of several payment service users. A framework contract on payment services also may be a component of another agreement or be connected to another agreement.

(3) The payment service user is entitled to use a payment initiation service or an account information service unless the payment account of the payment service user is not accessible to them online. The account servicing payment service provider may not make the use of these services by the payment service user contingent on the payment initiation service provider or the account information service provider concluding a contract for this purpose with the account servicing payment service provider.

(4) A payment transaction is any placing, transfer or withdrawal of an amount of money, regardless of the underlying legal relationship between the payer and the payee. A payment order is any instruction that a payer issues to their payment service provider to execute a payment transaction, either directly or indirectly through a payment initiation service provider or the payee.

(5) The payment service user is obliged to effect payment to the payment service provider in respect of the charge agreed for the provision of a payment service. The payment service provider is entitled to claim a charge for the fulfilment of ancillary obligations under this Subtitle only if this is permitted and has been agreed between the payment service user and the payment service provider; this charge must be appropriate and in line with the payment service provider's actual costs.

(6) A framework contract on payment services between the payee and their payment service provider may not rule out the right of the payee to offer a reduction or some other incentive to the payer for the use of a certain payment instrument.

#### **Section 675g**

##### **Amendment of the framework contract on payment services**

(1) An amendment to the framework contract on payment services arranged by the payment service provider is contingent on the latter offering the intended amendment no later than two months prior to the proposed time of effectiveness to the payment service user in the form provided for in Article 248 sections 2 and 3 of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*).

(2) The payment service provider and the payment service user may agree that consent by the payment service user to an amendment under subsection (1) is deemed to have been given if the latter has not notified the payment service provider of their rejection prior to the proposed time of effectiveness of the amendment. In the event of such an agreement, the payment service user also is entitled to terminate without notice the framework contract on payment services prior to the proposed time of effectiveness of the amendment. The payment service provider is obliged to notify the payment service user, at the time of making

the offer to amend the agreement, of the consequences of their remaining silent, as well as of the right to terminate free of charge and without notice.

(3) Changes to interest rates or exchange rates become effective immediately and without any prior notice insofar as this was agreed in the framework contract on payment services and the changes are based on the reference interest rates or reference exchange rates agreed therein. The reference interest rate is the interest rate that is taken as a basis for calculating the interest and that originates from a publicly available source which both parties to a payment service agreement are able to verify. The reference exchange rate is the exchange rate that underlies each currency exchange and that is made available by the payment service provider or that originates from a publicly-accessible source.

(4) The payment service user may not be placed at a disadvantage by means of agreements on the calculation under subsection (3).

#### **Section 675h**

##### **Notice of termination in accordance with usual procedure of a framework contract on payment services**

(1) The payment service user may terminate the framework contract on payment services, even if this has been concluded for a specific period of time, at any time without observing a period of notice unless a period of notice was agreed. The agreement of a notice period of more than one month is ineffective.

(2) The payment service provider may terminate the framework contract on payment services only if the contract was concluded for an indefinite period and the right of termination was agreed. The period of notice may not be less than two months. Termination is to be declared in the form provided for in Article 248 sections 2 and 3 of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*).

(3) In the event of termination, regularly-levied charges are payable only on a pro rata basis until the time of termination of the agreement. Charges paid in advance that accrue in respect of the time after termination of the agreement are to be refunded on a pro rata basis.

(4) The payment service provider may not agree with the payment service user that a charge is to be paid for termination of the framework contract on payment services.

#### **Section 675i**

##### **Exceptions for low-value payment instruments and e-money**

(1) A payment service agreement may provide that a low-value payment instrument be made available to the payment service user. A low-value payment instrument is a means

1. with which only individual payment transactions that do not exceed 30 euros can be initiated,
2. which has a spending limit of 150 euros, or
3. which stores funds that do not exceed 150 euros at any time.

In the cases governed by nos. 2 and 3, the maximum amount is increased to 200 euros if the low-value payment instrument can be used only for domestic payment transactions.

(2) In the cases governed by subsection (1), the parties may agree that

1. the payment service provider is not obliged to offer amendments to the conditions of the contract in the form provided for in section 675g (1),
2. section 675l (1) sentence 2, section 675m (1) sentence 1 nos. 3 and 5, as well as sentence 2, and section 675v (5) are not to be applied if the low-value payment instrument cannot be blocked or its further use cannot be prevented,
3. sections 675u, 675v subsections (1) to (3) and subsection (5), sections 675w and 676 are not to be applied if the use of the low-value payment instrument cannot be attributed to any payment service user, or if the payment service provider is not in a

position for other reasons that are intrinsic to the low-value payment instrument itself to prove that a payment transaction was authorised,

4. by way of derogation from section 675o (1), the payment service provider is not required to notify the payment service user of their refusal of the payment order if the non-execution is apparent from the context,

5. by way of derogation from section 675p, the payer may not revoke the payment order after transmitting the payment order or giving their consent to execute the payment transaction to the payee, or

6. other execution periods than those specified in section 675s apply.

(3) Sections 675u and 675v are not to be applied to e-money if the payer's payment service provider does not have the opportunity to block the payment account on which the e-money is stored, or the low-value payment instrument. Sentence 1 applies only to payment accounts on which the e-money is stored, or to low-value payment instruments having a maximum value of 200 euros.

### **Chapter 3 Provision and use of payment services**

#### **Subchapter 1**

#### **Authorisation of payment transactions; payment instruments; refusal of access to the payment account**

##### **Section 675j**

##### **Consent and withdrawal of consent**

(1) A payment transaction is effective vis-à-vis the payer only if the payer has consented to it (authorisation). Consent may be granted either as an approval or, if agreed in advance between the payer and their payment service provider, as a subsequent approval. The modalities of granting consent are to be agreed between the payer and their payment service provider. In particular, it may be agreed that consent may be granted using a specific payment instrument.

(2) Consent may be withdrawn by the payer by making a declaration towards the payment service provider as long as the payment order is revocable (section 675p). Consent to execute a series of payment transactions also may be withdrawn with the effect that any future payment transaction is to be considered as unauthorised.

##### **Section 675k**

##### **Restrictions on the use of a payment instrument; refusal of access to the payment account**

(1) In cases in which consent is granted through a payment instrument, the payer and the payment service provider may agree maximum amounts for the use of this payment instrument.

(2) The payer and the payment service provider may agree that the payment service provider has the right to block a payment instrument if

1. factual reasons in connection with the security of the payment instrument justify this,
2. there is a suspicion of non-authorised or of fraudulent use of the payment instrument, or
3. in case of a payment instrument granting credit, a considerably increased risk exists that the payer is unable to meet their obligation to pay.

In such cases the payment service provider is obliged to inform the payer of the blocking of the payment instrument, if possible before the payment instrument is blocked and at the



latest immediately thereafter. The reasons for blocking the payment instrument are to be stated in the notification. It is not necessary to state reasons insofar as the payment service provider would breach statutory obligations thereby. The payment service provider is obliged to unblock the payment instrument or to replace it with a new payment instrument once the reasons for blocking it no longer exist. The payment service user is to be informed promptly of the fact of the payment instrument no longer being blocked.

(3) Where the account servicing payment service provider has refused access to the payment service user's payment account to a payment initiation service provider or an account information service provider, the account servicing payment service provider is under obligation to inform the payment service user of the reasons therefor in a form to be agreed in the framework contract on payment services. The information must be provided if possible before, but at the latest promptly after access is refused. Stating the reasons for such refusal to grant access may be dispensed with should this mean that the account servicing payment service provider would breach statutory obligations.

#### **Section 675l**

##### **Obligations of the payment service user with regard to payment instruments**

(1) On receipt of a payment instrument, the payment service user is obliged to immediately take all reasonable precautions to protect the personalised security features against unauthorised access. The payment service user is to notify the payment service provider or an agency named by the latter of the loss, theft, abusive use or other unauthorised use of a payment instrument without undue delay having become aware thereof. The payment service provider may agree on a charge with the payment service user that is to apply to the replacement of a payment instrument that has been lost, stolen, misappropriated or otherwise used without authorisation; at a maximum, such charge is to cover the costs entailed exclusively and directly by the replacement.

(2) An agreement by which the payment service user enters into obligation vis-à-vis the payment service provider to comply with conditions for the issuance and use of a payment instrument is effective only insofar as these conditions are objectively justified, proportionate, and non-discriminatory.

#### **Section 675m**

##### **Obligations of the payment service provider with regard to payment instruments; risk of dispatch**

(1) The payment service provider issuing a payment instrument is obliged

1. to ensure, regardless of the obligations incumbent on the payment service user under section 675l (1), that the personalised security features of the payment instrument are accessible only to the person authorised to use them,
2. to refrain from unsolicited dispatch of payment instruments to the payment service user unless a payment instrument already delivered to the payment service user must be replaced,
3. to ensure that the payment service user is able by suitable means at any time to make a notification as provided for under section 675l (1) sentence 2 or to demand that the payment instrument be unblocked pursuant to section 675k (2) sentence 5,
4. to enable the payment service user to issue a notification pursuant to section 675l (1) sentence 2 free of charge, and
5. to prevent any use of the payment instrument as soon as a notification has been made in accordance with section 675l (1) sentence 2.

If the payment service user has reported the loss, theft, abusive use or other unauthorised use of a payment instrument, then, on demand, their payment service provider will provide

them with the means, by no later than 18 months following said report, allowing them to prove that a report was filed.

(2) The risk of the dispatch of a payment instrument and of the dispatch of personalised security features of the payment instrument to the payment service user is incumbent on the payment service provider.

(3) Where a payment service provider issuing card-based payment instruments requests confirmation from the payer's account servicing payment service provider that an amount required for the execution of a card-based payment transaction is available on the payment account, the payer may demand of the account servicing payment service provider that the latter forward to them the identification data of this payment service provider and the answer given.

## **Subchapter 2** **Execution of payment transactions**

### **Section 675n** **Receipt of payment orders**

(1) A payment order becomes effective when it is received by the payer's payment service provider. If the time of receipt does not fall on a business day of the payer's payment service provider, the payment order is deemed to have been received on the following business day. The payment service provider may determine that payment orders received after a specified time close to the end of the business day are deemed, for the purposes of section 675s (1), to have been received on the following business day. A business day is each day on which the payment service provider involved in executing a payment transaction maintains the business operations required for executing payment transactions.

(2) If the payment service user who initiates a payment transaction, or via whom a payment transaction is initiated, and their payment service provider agree that the execution of the payment order is to commence on a specific date or at the end of a specific period or on the day on which the payer has made available to the payment service provider the amount of money required for its execution, the agreed date is deemed to apply for the purposes of section 675s (1) as the time of receipt. If the agreed date does not fall on a business day of the payer's payment service provider, the business day following this date is deemed to be the time of receipt for the purposes of section 675s (1).

### **Section 675o** **Refusal of payment orders**

(1) If the payment service provider refuses to execute or initiate a payment order, they are obliged to inform the payment service user of this promptly, but in any case within the periods set out in section 675s (1). Wherever possible, the notification is to state the reasons for the refusal, as well as the opportunities for remedying the errors that led to the refusal. Reasons need not be stated insofar as they would violate other legal provisions. The payment service provider may agree on a charge with the payment service user in the framework contract on payment services for those cases in which the payment service provider refuses to execute a payment order for legitimate reasons.

(2) The payer's payment service provider is not entitled to refuse to execute an authorised payment order if the execution conditions set out in the framework contract on payment services are met and the execution does not violate any other legal provisions.

(3) For the purposes of sections 675s, 675y and 675z, a payment order the execution of which was justifiably rejected is deemed to have not been received.

### **Section 675p** **Irrevocability of a payment order**

(1) Subject to the proviso of subsections (2) to (4), the payment service user no longer may revoke a payment order after it has been received by the payer's payment service provider.

(2) If the payment transaction was initiated via a payment initiation service provider, by the payee or through the payee, the payer no longer may revoke the payment order after having granted consent to the payment initiation service provider to initiate a payment transaction or after having granted consent to the payee regarding the execution of the payment transaction. However, in the case of a direct debit, the payer may revoke the payment order without prejudice to their rights under section 675x until the end of the business day prior to the agreed due date.

(3) If a specific date has been agreed between the payment service user and their payment service provider for the execution of a payment order (section 675n (2)), the payment service user may revoke the payment order until the end of the business day prior to the agreed date.

(4) The payment order may only be revoked after the deadlines set out in subsections (1) to (3) if the payment service user and the respective payment service provider have so agreed. In the cases governed by subsection (2), additionally, consent by the payee to the revocation of the payment order is required. The payment service provider may agree on a charge with the payment service user in the framework contract on payment services for processing such revocation.

(5) Participants in payment transaction systems no longer may revoke orders to the credit of another participant from the time determined in the rules of the system.

#### **Section 675q**

##### **Charges for payment transactions**

(1) The payer's payment service provider, as well as any intermediary agencies involved in the payment transaction, are obliged to transfer the amount that is the subject matter of the payment transaction (payment amount), without any reduction, to the payee's payment service provider.

(2) The payee's payment service provider may deduct charges to which they are entitled prior to crediting the amount from the amount transferred only if this was agreed with the payee. In this case, the full amount of the payment transaction and the charges are to be shown separately for the payee in the information in accordance with Article 248 sections 8 and 15 of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*).

(3) The payee and the payer each pay the charges levied by their respective payment service provider if both the payment service provider of the payer and the payment service provider of the payee are located within the European Economic Area.

(4) If one of the cases governed by section 675d (6) sentence 1 no. 1 is given,

1. then section 675q (1) is not to be applied to the components of a payment transaction that are effected within the European Economic Area, and

2. then section 675q (2) may be deviated from as regards the components of a payment transaction that are effected within the European Economic Area.

#### **Section 675r**

##### **Execution of a payment transaction using unique identifiers**

(1) The payment service providers involved are entitled to execute a payment transaction exclusively on the basis of the unique identifier stated by the payment service user. If a payment order is executed in accordance with this unique identifier, the payment order is deemed to have been executed properly with regard to the payee designated by the unique identifier.

(2) A unique identifier is a sequence of letters, numbers or symbols specified to the payment service user by the payment service provider and which the payment service user must provide in order to allow another payment service user or the payment account of that other payment service user to be unambiguously identified for a payment transaction.

(3) If a unique identifier stated by the payer cannot recognisably be attributed by the payer's payment service provider to any payee or to any payment account, the service provider is obliged to inform the payer of this promptly, and where appropriate to return the payment amount to them.

### **Section 675s**

#### **Execution deadline for payment transactions**

(1) The payer's payment service provider is obliged to ensure that the payment amount is received at the latest at the end of the business day following the time of receipt of the payment order by the payee's payment service provider. A payer and their payment service provider may agree a maximum time-limit of four business days for payment transactions within the European Economic Area which are not effected in euros. The time-limits under sentence 1 may be extended by a further business day for payment transactions initiated in paper form.

(2) In the case of a payment transaction initiated by or through the payee, the payee's payment service provider is obliged to transmit the payment order to the payer's payment service provider within the time-limits agreed between the payee and their payment service provider. In the case of a direct debit, the payment order is to be transmitted in good time so that it can be debited on the due date notified by the payee.

(3) Where one of the cases governed by section 675d (6) sentence 1 no. 1 is given, section 675s (1) sentences 1 and 3 is not to be applied to the components of a payment transaction that are effected within the European Economic Area. Where a case governed by section 675d (6) sentence 1 no. 1 (a) is given,

1. section 675s (1) sentence 2 also is not to be applied to the components of a payment transaction that are effected within the European Economic Area, and
2. section 675s (2) may be deviated from as regards the components of a payment transaction that are effected within the European Economic Area.

### **Section 675t**

#### **Value date and availability of funds; blocking available funds**

(1) The payment service provider of the payee is obliged to make the payment amount available to the payee without undue delay after the amount has been credited to the account of the payment service provider, if the latter

1. is not obliged to perform a conversion to another currency, or
2. is obliged to perform only one currency conversion between the euro and a currency of a Contracting Party to the Agreement on the European Economic Area or between the currencies of two Contracting Parties to the Agreement on the European Economic Area.

Insofar as the payment amount is to be credited to a payment account of the payee, crediting, even if it takes place subsequently, is to be carried out such that the point in time used by the payment service provider as a basis for the calculation of the interest on credit or debit of an amount on a payment account (value date) is, at the latest, the business day on which the payment amount was credited to the account of the payee's payment service provider. Sentence 1 also applies if the payee does not maintain a payment account.

(2) If a consumer places cash on a payment account with a payment service provider in the currency of the payment account concerned, this payment service provider ensures that the amount is made available and credited to the payee promptly after the time at which receipt has been taken. If the payment service user is not a consumer, the amount of money must be made available and credited to the payee at the latest on the business day following the day on which receipt has been taken.

(3) A debit to the payer's payment account is to be effected such that the value date is at the earliest the time at which this payment account is debited with the payment amount. The

payer's payment account may not be debited before the payment order has been received by their payment service provider.

(4) Notwithstanding any other statutory or contractual rights, the payer's payment service provider is entitled to block funds available on the payment account of the payer, in the event of a card-based payment transaction, if

1. the payment transaction was initiated by or via the payee, and
2. the payer also has consented to the exact amount of the funds to be blocked.

Notwithstanding any other statutory or contractual rights, the payer's payment service provider immediately will release the funds blocked upon having either been informed of the exact payment amount or received the payment order.

(5) If a case governed by section 675d (6) sentence 1 no. 1 (a) is given,

1. then section 675t (1) sentence 3 may be deviated from as regards the components of a payment transaction that are effected within the European Economic Area, and
2. section 675t (2) is not to be applied to the components of a payment transaction that are effected within the European Economic Area.

### **Subchapter 3 Liability**

#### **Section 675u**

##### **Liability of the payment service provider for unauthorised payment transactions**

In the case of an unauthorised payment transaction, the payer's payment service provider has no claim to refund of their expenses vis-à-vis the latter. They are obliged to refund the payment amount to the payer promptly and, insofar as the amount has been debited from a payment account, to restore this payment account back to the balance it would have had without being debited with the unauthorised payment transaction. This obligation is to be met without undue delay, but no later than by the end of the business day following that day on which the payment service provider was notified that the payment transaction is unauthorised, or on which the payment service provider has become aware of this fact in some other way. Where the payment service provider has informed a competent authority in writing that they have legitimate grounds for suspecting fraudulent conduct on the part of the payer, the payment service provider is to verify their obligation under sentence 2 without undue delay and is to comply with it if the suspicion as to fraud is not confirmed. Where the payment transaction was initiated via a payment initiation service provider, the obligations under sentences 2 to 4 are incumbent on the account servicing payment service provider.

#### **Section 675v**

##### **Liability of the payer in case of misappropriation of a payment instrument**

(1) If unauthorised payment transactions are based on the use of a lost, stolen or otherwise missing payment instrument or as the result of other misappropriation of a payment instrument, the payer's payment service provider may demand from the latter compensation for the loss thus incurred up to an amount of 50 euros.

(2) The payer is not liable pursuant to subsection (1) if

1. it was not possible for them to become aware of the loss, theft or other misappropriation of the payment instrument or of the fact of its having gone missing before the unauthorised payment transaction, or
2. the loss of the payment instrument was caused by an employee, an agent, a branch office of a payment service provider or some other body to which activities of the payment service provider were outsourced.

(3) In derogation from subsections (1) and (2), the payer is obliged to provide compensation to their payment service provider with regard to the entire damage caused as the result of an unauthorised payment transaction if the payer

1. has acted with fraudulent intent or
2. has brought about the damage by means of an intentional or grossly negligent violation
  - a. of one or several obligations under section 675I (1), or
  - b. of one or several conditions agreed for the issuance and use of the payment instrument

(4) In derogation from subsections (1) and (3), the payer is not under obligation to compensate their payment service provider for damages if

1. the payer's payment service provider does not demand a strong customer authentication within the sense of section 1 (24) of the Act on Supervision of Payment Services (*Zahlungsdienstenaufsichtsgesetz*) or
2. the payee or their payment service provider does not accept a strong customer authentication within the sense of section 1 (24) of the Act on Supervision of Payment Services.

Sentence 1 does not apply if the payer acted with fraudulent intent. In the case governed by sentence 1 no. 2, that party who does not accept a strong customer authentication is under obligation to compensate the payer's payment service provider for the resulting damage (5) In derogation from subsections (1) and (3), the payer is not obliged to provide compensation with regard to damage resulting from the use of a payment instrument after a report has been made pursuant to section 675I (1) sentence 2. The payer also is not obliged to provide compensation with regard to loss within the meaning of subsection (1) if the payment service provider failed to comply with their obligation in accordance with section 675m (1) no. 3. Sentences 1 and 2 are not to be applied if the payer acted with fraudulent intent.

#### **Section 675w** **Proof of authentication**

If the authorisation of a payment transaction that has been carried out is disputed, the payment service provider is to prove that authentication took place and that the payment transaction was properly recorded and posted and was not impaired by a malfunction. Authentication is deemed to have taken place if the payment service provider has verified the use of a specific payment instrument, including its personalised security features, with the aid of a procedure. If the payment transaction was initiated using a payment instrument, the recording of the use of the payment instrument, including authentication, by the payment service provider and, as the case may be, by a payment initiation service provider, is not necessarily sufficient by itself in order to prove that the payer

1. authorised the payment transaction,
2. acted with fraudulent intent,
3. violated one or several obligations under section 675I (1), or
4. intentionally or with gross negligence violated one or several conditions for the issuance and use of the payment instrument.

The payment service provider must submit supporting evidence in order to prove fraud, intent or gross negligence on the part of the payment service user.

### **Section 675x**

#### **Refund claim in case of an authorised payment transaction initiated by or through the payee**

(1) The payer is entitled vis-à-vis their payment service provider to claim refund of a debited payment amount, which debit is based on an authorised payment transaction initiated by or through the payee, if

1. the precise amount was not stated on the authorisation, and
2. the payment amount exceeds the amount that the payer could have anticipated in line with their previous expenditure conduct, the conditions of the framework contract on payment services, and the respective circumstances of the individual case; reasons connected with any currency exchange are not to be considered if the reference exchange rate agreed between the parties was used as a basis.

Where a payment amount has been debited to a payment account, the payment amount is to be credited back to this payment account such that the value date is no later than the business day on which the payment amount was debited. On request by their payment service provider, the payer is to provide evidence as to the prerequisites set out in sentence 1 numbers 1 and 2 having been met.

(2) Notwithstanding subsection (3), the payer is entitled to claim a refund from their payment service provider in the case of SEPA core direct debits and SEPA business-to-business direct debits, without needing to state reasons, also in those cases in which the prerequisites for a refund under subsection (1) are not met.

(3) The payer may agree with their payment service provider that they are not entitled to a refund in those cases in which they have granted consent to the execution of the payment transaction directly to their payment service provider and, where agreed, they were informed of the coming payment transaction at least four weeks prior to the due date by the payment service provider or by the payee.

(4) A claim to refund on the part of the payer is excluded if they fail to assert it vis-à-vis their payment service provider within eight weeks from the time at which the payment amount in question was debited.

(5) The payment service provider is obliged to either refund the full amount of the payment transaction or to inform the payer of the reasons for the refusal to provide a refund within 10 business days following receipt of a demand for refund. In the event of a refusal, the payment service provider is to indicate the options available for filing a complaint available under sections 60 to 62 of the Act on Supervision of Payment Services

(*Zahlungsdiensteaufsichtsgesetz*) and the option to call on an arbitration agency under section 14 of the Injunctive Relief Act (*Unterlassungsklagengesetz*). The right of the payment service provider to refuse a refund claimed within the period of time under subsection (4) does not cover the case governed by subsection (2).

(6) If a case governed by section 675d (6) sentence 1 no. 1 (b) is given,

1. then section 675x (1) is not to be applied to the components of a payment transaction that are effected within the European Economic Area, and
2. section 675x subsections (2) to (5) may be deviated from as regards the components of a payment transaction that are effected within the European Economic Area.

### **Section 675y**

#### **Liability of the payment service provider in case of non-execution, defective or late execution of a payment order; obligation to make enquiries**

(1) Where a payment transaction is initiated by the payer, the latter may demand from their payment service provider, in the event of the non-execution or of the incorrect execution of the payment order, that the payment amount be refunded promptly and without deduction. If the amount was debited from a payment account of the payer, this payment account is to be

restored to the balance which it would have had without the incorrectly executed payment transaction. Where a payment transaction is initiated by the payer via a payment initiation service provider, the obligations under sentences 1 and 2 are incumbent on the account servicing payment service provider. Insofar as charges were deducted from the payment amount contrary to section 675q (1), the payer's payment service provider is to transfer the deducted amount to the payee without undue delay. If the payer's payment service provider proves that the payment amount was received without deductions by the payee's payment service provider, the liability under this subsection ceases to be given.

(2) Where a payment transaction is initiated by or through the payee, the latter may demand from their payment service provider, in the event of the non-execution or of the incorrect execution of the payment order, that this payment order be transferred without undue delay, where necessary once again, to the payer's payment service provider. If the payee's payment service provider proves that they have met the obligations incumbent on them in implementing the payment transaction, the payer's payment service provider is to refund to the payer, as the case may be without undue delay, the payment amount without deductions in accordance with subsection (1) sentences 1 and 2. Insofar as charges were deducted from the payment amount contrary to section 675q subsections (1) and (2), the payee's payment service provider is to make available the deducted amount to the payee without undue delay.

(3) Where a payment transaction is initiated by the payer, the payer may demand, in the case of their payment order being executed late, that their payment service provider raise the claim pursuant to sentence 2 against the payee's payment service provider. The payer's payment service provider may demand of the payee's payment service provider that the payment amount be credited to the payee's payment account as if the payment transaction had been duly and properly executed. Where a payment transaction is initiated by the payer via a payment initiation service provider, the obligation under sentence 1 is incumbent on the account servicing payment service provider. Where the payer's payment service provider proves that the payment amount was received in due time by the payee's payment service provider, the liability under this subsection ceases to be given.

(4) Where a payment transaction is initiated by or via the payee, the payee may demand, in the event of the payment order being transmitted late, that their payment service provider credit the payment amount to the payee's payment account as if the payment transaction had been executed properly. Where the payee's payment service provider proves that they have transmitted the payment order in due time to the payer's payment service provider, the payer's payment service provider is under obligation to refund to the payer, as the case may be without undue delay, the payment amount without any deductions in accordance with subsection (1) sentences 1 and 2. This does not apply if the payer's payment service provider proves that the payment amount was merely received late by the payee's payment service provider. In such event, the payee's payment service provider is under obligation to credit the payment amount to the payee's payment account in accordance with sentence 1.

(5) Claims of the payment service user against their payment service provider under subsection (1) sentences 1 and 2 as well as under subsection (2) sentence 2 are deemed not to exist insofar as the payment order was implemented in accordance with the incorrect unique identifier stated by the payment service user. In this case, the payer may however demand from their payment service provider that the latter does their utmost to recover the payment amount. The payee's payment service provider is under obligation to provide to the payer's payment service provider all information that is required in order to recover the payment amount. Where it is impossible to recover the payment amount pursuant to sentences 2 and 3, the payer's payment service provider is under obligation to provide to the payer, at the latter's written application, all available information necessary to enable the payer to assert a claim to reimbursement of the payment amount. The payment service provider may agree on a charge with the payment service user in the framework contract on payment services for activities pursuant to sentences 2 to 4.



(6) A payment service user may demand from their payment service provider, over and above the claims under subsections (1) and (2), that the charges and interest be refunded to them which the payment service provider invoiced to them in connection with the non-execution or incorrect execution of the payment transaction or which the payment service provider debited from their payment account.

(7) If a payment order was not executed, or if it was executed incorrectly, the payment service provider of the payment service user who initiated a payment transaction, or through whom a payment transaction was initiated, is to subsequently trace, at the request of their payment service user, the payment transaction and inform their payment service user of the outcome.

(8) Where a case governed by section 675d subsection (6) sentence 1 no. 1 (b) is given, section 675y subsection (1) to (4) is not to be applied to the components of a payment transaction that are effected within the European Economic Area.

### **Section 675z**

#### **Other claims in case of non-execution, defective or late execution of a payment order or in case of an unauthorised payment transaction**

Sections 675u and 675y are final with regard to the claims of a payment service user provided for therein. The liability of a payment service provider towards their payment service user for a loss caused by non-execution or by the incorrect or late execution of a payment order which is not already covered by section 675y may be restricted to 12,500 euros; this does not apply to intent and gross negligence, to lost interest and to risks which the payment service provider separately has taken on. In this context, payment service providers are to assume as their own responsibility any responsibility that is attributed to an intermediary agency unless the main cause lies with an intermediary agency that the payment service user had stipulated. In cases governed by the exception made in sentence 3, the intermediary agency stipulated by the payment service user is liable in place of the payment service provider of the payment service user. Section 675y (5) sentence 1 is to be applied accordingly to the liability of a payment service provider under sentences 2 to 4. Where a case governed by section 675d (6) sentence 1 no. 1 (b) is given, section 675z sentence 3 is not to be applied to the components of a payment transaction that are effected within the European Economic Area.

### **Section 676**

#### **Proof of execution of payment transactions**

If it is a matter of dispute between the payment service user and their payment service provider as to whether the payment transaction was executed properly, the payment service provider must prove that the payment transaction was recorded and posted properly, and not impaired by any malfunction.

### **Section 676a**

#### **Equalisation claim**

(1) If the cause for the liability of a payment service provider under sections 675u, 675y and 675z lies within the sphere of responsibility of another payment service provider, a payment initiation service provider or of an intermediary agency, then the payment service provider may demand that the other payment service provider, the payment initiation service provider or the intermediary agency provide compensation for the damage the payment service provider has incurred by satisfying the claims of a payment service user under sections 675u, 675y and 675z.

(2) If it is in dispute between the payer's account servicing payment service provider and the payment initiation service provider whether or not a payment transaction that has been effected was authorised, the payment initiation service provider must prove that an authentication was performed within their sphere of responsibility and that the payment transaction was properly recorded and was not impaired by a disruption.

(3) If it is in dispute between the payer's account servicing payment service provider and the payment initiation service provider whether or not a payment transaction has been properly executed, the payment initiation service provider must prove that

1. the payment order was received by the account servicing payment service provider in accordance with section 675n, and that
2. the payment transaction was duly and properly recorded within the sphere of responsibility of the payment initiation service provider and was not impaired by a disruption.

#### **Section 676b**

##### **Notification of unauthorised or incorrectly executed payment transactions**

- (1) The payment service user is to notify their payment service provider without undue delay after learning of an unauthorised or defectively executed payment transaction.
- (2) Claims of the payment service user vis-à-vis the payment service provider and objections raised against them under this Subchapter are ruled out if the payment service user has failed to notify their payment service provider accordingly by no later than 13 months after the day on which their account has been debited with an unauthorised or incorrectly executed payment transaction. The period of time begins running only once the payment service provider has provided the payment service user with the information regarding the payment transaction under Article 248 sections 7, 10 or section 14 of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*); otherwise, the date of notification is the relevant date for the beginning of the period.
- (3) Section (2) applies to other claims than those set out in section 675z sentence 1 by the payment service user against their payment service provider because of an unauthorised or incorrectly executed payment transaction, subject to the proviso that the payment service user still is able to assert these claims on expiry of the period if they were unable to meet the deadline through no fault of their own.
- (4) Where the payment transaction was initiated via a payment initiation service provider, claims of the payment service user vis-à-vis their account servicing payment service provider and objections raised against them are ruled out if the payment service user has failed to notify the account servicing payment service provider that an unauthorised or incorrect payment transaction was debited by no later than 13 months after the date of the debit. The period begins running only once the payment service provider has provided the payment service user with the information regarding the payment transaction under Article 248 sections 7, 10 or section 14 of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*); otherwise, the date of notification by the account servicing payment service provider is the relevant date for the beginning of the period.
- (5) Subsection (4) applies to the claims, other than those set out in section 675z sentence 1, of the payment service user against their account servicing payment service provider or against the payment initiation service provider for an unauthorised or incorrectly executed payment transaction, subject to the proviso that

1. the notification of the account servicing payment service provider also is sufficient to preserve the claims and objections of the payment service user against the payment initiation service provider, and
2. the payment service user may assert their claims against the account servicing payment service provider or against the payment initiation service provider also after the period has expired if they were unable to meet the deadline through no fault of their own.

#### **Section 676c**

##### **Disclaimer**

Claims under this Chapter are ruled out if the circumstances giving rise to a claim

1. are based on an unusual and unforeseeable event on which the party invoking this event has no influence and the consequences of which could not have been prevented despite application of due diligence, or
2. were brought about by the payment service provider on the basis of a statutory obligation.

**Title 13**  
**Voluntary agency without specific authorisation**

**Section 677**  
**Duties of the voluntary agent**

A person who performs work or services in connection with the affairs of another person without being instructed by that person or otherwise being entitled towards them is to perform the work or services in such a way as the interests of the principal require taking account of the real or putative intent 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 putative intent of the principal and if the voluntary agent ought to have realised this, then they are liable to compensate the principal for damage arising from the voluntary agency even they are is not otherwise at fault.

**Section 679**  
**Irrelevance of the contrary will of the principal**

No regard is to be had to the will of the principal that is contrary to the agency if, without the voluntary agency, a duty of the principal the fulfilment of which is in the public interest or a statutory maintenance duty of the principal would not have been fulfilled in good time.

**Section 680**  
**Agency of necessity**

If the voluntary agency is intended to ward off imminent danger threatening the principal, then the voluntary agent is responsible only for intent and gross negligence.

**Section 681**  
**Ancillary duties of the voluntary agent**

The voluntary agent is to notify the principal, as soon as appropriate, of their having assumed the voluntary agency and, if postponement does not entail danger, is to await the decision of the principal. In all other cases, the provisions relating to a mandatary in sections 666 to 668 apply accordingly to the duties of the voluntary agent.

**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 their capacity to contract, then they are responsible only under the provisions on damages for torts and on the surrender of unjust enrichment.

**Section 683**  
**Reimbursement of expenses**

If the assumption of agency corresponds to the interest and the real or putative intent of the principal, then the voluntary agent may demand reimbursement of expenses like a mandatary. In the cases governed by 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**  
**Surrender of enrichment**

If the prerequisites set out in section 683 are not met, then the principal is obliged to surrender to the voluntary agent everything that they obtain as a result of the voluntary agency in accordance with the provisions on the surrender 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 they 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 recipient.

**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 voluntary agency.

**Section 687**  
**False voluntary agency without specific authorisation**

- (1) The provisions of sections 677 to 686 do not apply if a person performs work or services in connection with the affairs of another person in the belief that they are their own affairs.
- (2) If a person treats work or services in connection with the affairs of another person as their own despite knowing that they are not entitled to do so, then the principal may assert claims resulting from sections 677, 678, 681 and 682. If the principal so asserts them, then they are under a duty to the voluntary agent under section 684 sentence 1.

**Title 14**  
**Safekeeping**

**Section 688**  
**Contractual duties typical for safekeeping**

By a safekeeping contract, the depositary is obliged to keep safe a movable thing delivered to them 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 they customarily exercise in their 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 responsible only for their own fault in making this deposit. They are 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 they may assume in the circumstances that the depositor would approve of the change if they were aware of the

factual situation. The depositary is to notify the depositor prior to such a change and is to 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 they 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 is to compensate the depositary for damage incurred by the depositary due to the nature of the thing deposited, unless they are neither aware of the dangerous nature of the thing when depositing it nor ought to have been aware of it, or unless they notified the depositary of it or the depositary was aware of it without notification.

#### **Section 695**

##### **Right of the depositor to demand return**

The depositor may demand at any time 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 upon the demand 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 the depositary may demand early repossession only 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 is to be effected at the place where the thing was to be kept safe; the depositary is not obliged to take the thing to the depositor.

#### **Section 698**

##### **Interest on money used**

Where the depositary uses money for themselves, they are obliged to pay interest on it from the time onwards on which they so used it

#### **Section 699**

##### **Due date of remuneration**

(1) The depositor is to 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 their remuneration corresponding to their 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 credit agreements 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 credit agreements apply and in the case of other things, the provisions on contracts for the loan of a thing apply from the point in time onwards at which the depositary appropriates the

things. 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 is to provide 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 their helpers,

2. things that within a reasonable time limit prior to or after the time when the guest was first accommodated were taken into custody by the innkeeper or their helpers.

In the case of an instruction or assumption of custody by the helpers of the innkeeper, however, this only applies if they were ordered or were to be considered as having 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 nature 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 on the basis 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 they or their helpers are at fault for the loss, destruction or damage,

2. if the things brought in are things that they assumed for safekeeping or which they 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. The innkeeper may demand that they be delivered in a closed or sealed container.

### **Section 702a** **Release from liability**

(1) The innkeeper may be released from liability in advance only to the extent that the sum involved exceeds the applicable maximum amount under section 702 (1). The innkeeper may not 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 the acceptance of which 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 becomes extinct 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 they or their helpers are at fault for the loss, destruction or damage.

### **Section 704**

#### **Security right of the innkeeper**

For the innkeeper's claims for providing living space and other services to satisfy the needs of the guest, including the innkeeper's expenditures, 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 accordingly.

### **Title 16**

#### **Partnership**

### **Section 705**

#### **Contents of partnership agreement**

By a partnership agreement, the partners mutually place each other under obligation to promote the achievement of a common purpose in the manner stipulated by the contract, in particular to make the agreed contributions.

### **Section 706**

#### **Contributions of the partners**

- (1) Unless otherwise agreed, the partners are to 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 distribution of profits.
- (3) The contribution of a partner also may consist of 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 707a to 707c**

**(will enter into force at a future time)**

### **Section 707d**

#### **Authorisation to issue statutory instruments**

- (1) The *Land* governments are authorised to determine by statutory instrument the details of the electronic maintenance of the company register, the electronic registration, the electronic submission of documents as well as their retention, unless the corresponding provisions are enacted by the Federal Ministry of Justice and for Consumer Protection under section 387 (2) of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction (*Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit*). In adopting such provisions, they may also make more detailed provisions for the transmission of data and determine the form of electronic documents to be transmitted to ensure their suitability for handling by the court. The *Land* governments may confer this authority by statutory instrument upon the *Land* departments of justice.
- (2) The *Land* departments of justice determine the electronic information and communications systems via which data from the company registers are retrievable, and

they are responsible for operating the electronic retrieval procedure. The *Land* government may, by statutory instrument, redistribute these responsibilities; it may, by statutory instrument, confer such authority upon the *Land* department of justice. The *Länder* may determine a nationwide, centralised electronic information and communications system. They may also agree to have the operational tasks transferred to the competent body of another *Land*, as well as agree with the operator of the business register to have the operational tasks transferred to the business register.

**Section 708**  
**Liability of the partners**

A partner is only liable, in discharging the duties incumbent upon them, for the care they customarily exercise in their own affairs.

**Section 709**  
**Joint management**

- (1) The partners are jointly entitled to manage the business of the partnership; each transaction requires the approval of all partners.
- (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 accordingly.

**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 their 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**  
**Revocation and dismissal of management**

- (1) The authority to manage that is conferred on a partner by the partnership agreement may be revoked 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 in particular 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 subsections (2) and (3) applicable to mandates apply accordingly.

**Section 713**  
**Rights and duties of managing partners**

The rights and duties of the managing partners are determined by the provisions of 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 they also are authorised to represent the other partners in relation to third parties.



#### **Section 715**

##### **Revocation 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 revoked subject to the provisions of section 712 (1) and, if it has been granted in connection with the authority to manage, may only be revoked together with the latter.

#### **Section 716**

##### **Right of control of the partners**

- (1) A partner may, even if excluded from management, obtain first-hand information on the affairs of the partnership, inspect the accounts and documents of the partnership and on their basis prepare a survey of the state of the assets of the partnership for their own use.
- (2) An agreement that excludes or limits this right does not prevent its being asserted if there are grounds for assuming management in bad faith.

#### **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. Those claims are exempt to which a partner is entitled in their management to the extent that satisfaction of such claims 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 winding up.

#### **Section 718**

##### **Partnership assets**

- (1) The contributions of the partners and the items acquired for the partnership as a result of management become 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 the destruction, damage or removal of an item belonging to the partnership assets.

#### **Section 719**

##### **Joint assets**

- (1) A partner may not alienate their share in partnership assets and in the individual items that are part of partnership assets; they are not entitled to demand division.
- (2) A debtor may not set off a claim they have against an individual partner from 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 them that a claim acquired under section 718 (1) is part of the partnership assets if the debtor has obtained knowledge that it comprises such a part; the provisions of sections 406 to 408 apply accordingly.

#### **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 in case of doubt are to be made at the end of every fiscal year.

#### **Section 722**

##### **Shares in profits and losses**

- (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 their contribution, has an equal share in profit and loss.

(2) If only the share in profits or in losses 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 specific period of time, then each partner may terminate it at any time. If a period of time has been specified, then notice of termination prior to the expiry of that period is admissible if there is a compelling reason. A compelling reason is given in particular if

1. another partner intentionally or with gross negligence has violated a fundamental duty incumbent upon them under the partnership agreement or if the discharge of such a duty becomes impossible,
2. the partner has reached the age of 18.

The partner who has attained full age may give notice of termination under no. 2 only within three months from the time at which they were aware or ought to have been aware of their position as a partner. There is no right to give notice if the partner was authorised with 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 their personal needs. Under the same prerequisites, if a period of notice has been specified, termination is permissible without complying with the notice period.

(2) Notice of termination may not be given prematurely unless there is a compelling reason for the premature termination. If a partner gives notice of termination prematurely without such a reason, then they are to compensate the remaining partners for the damage incurred thereby.

(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 they may terminate the partnership without observing a period of notice 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 to 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 is to inform the remaining partners of the death without undue delay and, where postponement entails danger, is to carry on the business transferred to the deceased by the partnership agreement until the remaining partners are able to reach another arrangement jointly with the heir. The

remaining partners in like manner are obliged to continue temporarily the work and service 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 opening of insolvency proceedings regarding the assets of the partnership. If the proceedings are discontinued on application by 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 opening of insolvency proceedings regarding 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 likewise is deemed to continue in existence to their benefit until they become aware of the dissolution or ought to be aware 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 regarding the assets of the partnership.

(2) For the termination of pending transactions, 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 all other cases, the provisions on co-ownership apply to division.

#### **Section 732**

##### **Return of objects**

Objects that a partner has made available to the partnership for use are to be returned to the partner. They may not demand compensation for an object that accidentally has been lost or has suffered chance deterioration.

#### **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 is to be retained.

(2) From the assets of the partnership remaining after discharge of debts, the contributions are to be repaid. For contributions that did not consist of money, the value that they had at the time when they were contributed is to be reimbursed. Compensation may not be demanded for contributions consisting of the performance of services or of an object being made available for use.

(3) For discharge of debts and repayment of contributions, the assets of the partnership are to 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 contributions, then the partners are to make up the deficit in the ratio in which they are to bear losses. If an amount attributable to a partner cannot be obtained from the partner, then the remaining partners are to 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 of termination or dies or if insolvency proceedings are opened in relation to the partner's 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 accordingly.

#### **Section 737**

##### **Exclusion of a partner**

If the partnership agreement stipulates that if a partner gives notice of termination, the partnership will be carried on by the remaining partners, then a partner in whose person a circumstance occurs that 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 their share in the assets of the partnership accrues to the remaining partners. The latter are obliged to return to the retiring partner, subject to the provisions of section 732, the items the retiring partner made available to the partnership for its use and to exempt the retiring partner from joint debts and to pay what the retiring partner would receive in case of winding-up if the partnership had been dissolved at the time of the partner's retirement. If joint debts are not yet due for repayment, then the remaining partners may provide the retiring partner with security instead of releasing the partner from the corresponding duties.

(2) The value of the assets of the partnership is, to the extent necessary, to be determined by way of an estimate.

#### **Section 739**

##### **Liability for deficit**

If the assets of the partnership do not suffice to cover the joint debts and the contributions, then the retiring partner is liable to the remaining partners for deficit in the ratio of their share in the loss.

#### **Section 740**

##### **Sharing in the financial results of pending transactions**

(1) The retiring partner shares in profits and losses resulting from pending transactions at the time of their retirement. The remaining partners are entitled to terminate such transactions in the manner that appears most advantageous to them.

(2) The retiring partner may at the end of each fiscal year demand accounting for transactions terminated in the meantime, disbursement of the amount due to them and information on the status of pending transactions.

**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 statute 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) Each part owner is entitled to a fraction of the fruits corresponding to their share.
- (2) Each part owner is authorised to use the joint object to the extent that this does not adversely affect joint use by other part owners.

**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; they may demand that the latter grant their consent to such a measure in advance.

**Section 745**  
**Administration and use by resolution**

- (1) It may be resolved by a majority of votes that there is to be proper administration and use appropriate to the nature of the joint object. 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 their share may not be impaired without their 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, then the determination reached also takes effect for and against the successors in interest.

**Section 747**  
**Disposition over a share and joint objects**

Each part owner may control their 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 their share.

**Section 749**  
**Claim to dissolution**

- (1) Each part owner may at any time demand dissolution of the co-ownership.

(2) If the right to demand dissolution is excluded by agreement permanently or for a period of time, then dissolution still may be demanded if there is a compelling reason to do so. Subject to the same prerequisite, if a period of notice has been specified, then dissolution is permissible without complying with the notice period.

(3) An agreement by which the right to demand dissolution is excluded or limited contrary to these provisions is void.

#### **Section 750**

##### **Exclusion of dissolution in case of death**

If the part owners have temporarily excluded entitlement to demand dissolution of co-ownership, then in case of doubt the agreement loses its effect upon the death of a part owner.

#### **Section 751**

##### **Exclusion of dissolution and successors in interest**

If the part owners have excluded the right to demand dissolution of co-ownership permanently or for a period of time 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 they may demand dissolution of co-ownership notwithstanding the agreement if the instrument of indebtedness is not merely provisionally enforceable.

#### **Section 752**

##### **Division in kind**

Dissolution of co-ownership occurs by division in kind if the joint object is or, if more than one object is 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 dissolution of co-ownership occurs by sale of the joint object according to the provisions on sale of a pledge, or, in the case of a plot of land, by compulsory auction, and by division of the proceeds. If alienation to a third party is inadmissible, then the object is to 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 is to bear the costs if a repeated attempt fails.

#### **Section 754**

##### **Sale of joint claims**

The sale of a joint claim is only permissible 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 performing such an obligation, then each part owner may demand upon dissolution of the co-ownership that the debt be discharged out of the joint object.

(2) The claim also may be asserted against successors in interest.

(3) To the extent that a sale of the joint object is required for discharge of the debt, the sale is to be effected 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 at dissolution of the co-ownership they may demand discharge of their claim from the part of

the joint object attributable to the debtor. The provisions of section 755 subsections (2) and (3) apply.

#### **Section 757**

##### **Warranty upon allocation to a part owner**

If, upon the dissolution of co-ownership, a joint object is allocated to one of the part owners, then each of the remaining part owners is to give a warranty in the proportion of their share for a defect of title or a material defect in the same manner as a seller.

#### **Section 758**

##### **Claim to dissolution not subject to the statute of limitations**

The claim to dissolution 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 in case of doubt is to pay the annuity for the duration of the lifetime of the creditor.
- (2) The amount intended for the annuity in case of doubt is 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 is to be paid in advance is determined according to the nature 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 they are entitled to the entire amount attributable to that period of time.

#### **Section 761**

##### **Form of life annuity commitment**

For a contract to be valid by which a life annuity is promised, the written form is required for the promise, 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 governed by 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 grounds of no obligation having existed.
- (2) These provisions also apply to an agreement by which the losing party, for the purpose of discharging a gaming or betting debt, enters into an obligation in relation to the winning party, in particular 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. In all other cases, the provisions of section 762 apply.

#### **Section 764**

##### **(repealed)**

## **Title 20 Suretyship**

### **Section 765**

#### **Contractual duties typical for suretyship**

- (1) By a contract of suretyship, the surety enters into obligation vis-à-vis the creditor of a third party to be responsible for discharging that third party's obligation.
- (2) Suretyship also may 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 is to be issued in writing. The declaration of suretyship may not be made in electronic form. To the extent 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 also if the main obligation has been changed due to the 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 a 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 merely 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 into 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 failure to pursue remedies**

The surety may refuse to satisfy the creditor as long as the creditor has not attempted without success to obtain compulsory enforcement against the principal debtor (defence of failure to pursue remedies). Where the surety raises the defence of failure to pursue remedies, the limitation of the claim of the creditor against the surety is suspended until the creditor has attempted without success to obtain compulsory enforcement against the principal debtor.

### **Section 772**

#### **Duty of creditor of enforcement and realisation**

- (1) If the suretyship applies to a monetary claim, then compulsory enforcement must be attempted against the movable things of the principal debtor at their residence and, if the



principal debtor has a commercial establishment in another locality, at the latter as well, and, in the absence of a residence and a commercial establishment, at their place of abode.

(2) If the creditor has a pledge over or right of retention to a movable thing of the principal debtor, then the creditor must make efforts satisfy their claim from this thing as well. 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 failure to pursue remedies**

(1) The defence of failure to pursue remedies is excluded:

1. if the surety waives the defence, in particular if the surety has assumed suretyship as principal debtor,
2. if the pursuit of rights against the principal debtor is made considerably more difficult due to a change of residence, of commercial establishment or of place of abode occurring after assumption of suretyship,
3. if insolvency proceedings have been opened regarding the assets of the principal debtor,
4. if it is to be assumed that compulsory enforcement against the assets of the principal debtor will not result in satisfaction of the creditor's claim.

(2) In the cases governed by nos. 3 and 4, the defence is admissible to the extent that the creditor may satisfy their claim out of a movable thing of the principal debtor over which they have a security right or regarding which they have a right of retention; the provisions of section 772 (2) sentence 2 apply.

### **Section 774**

#### **Statutory devolution of claims**

(1) To the extent that the surety satisfies the claims of the creditor, the claim the creditor has in relation to the principal debtor devolves to the surety. The devolution may not be asserted to the disadvantage of the creditor. Objections by the principal debtor under a legal relationship existing between the principal debtor and the surety remain 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 the surety entitled under the provisions on voluntary agency without specific authorisation, as a result of assuming the suretyship, to the rights of a voluntary agent against the principal debtor, then they may demand that the principal debtor releases them from the suretyship

1. if the financial situation of the principal debtor has deteriorated substantially,
2. if the pursuit of rights against the principal debtor is made considerably more difficult due to a change of residence, of commercial establishment or of place of abode occurring after the assumption of suretyship,
3. if the principal debtor is in default of discharging their 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 them.

### **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 they 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) Where the surety has provided suretyship for an existing obligation for a specified period of time, then the surety is released at the end of the specified period of time, 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 notifies the surety without undue delay after the end of the proceedings that they are claiming payment from the surety. If the surety is not entitled to the defence of failure to pursue remedies, then they are released at the end of a specified period of time, unless the creditor makes this notification to them without undue delay.

(2) If notification has been made in good time, then the liability of the surety in the case governed by subsection (1) sentence 1 is limited to the scope the main obligation has at the time at which 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 financial accommodation in their own name and for their own account is liable as surety to the mandatary for the obligation of the third party arising from the loan or the financial accommodation.

**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 facts and circumstances on which the contract, by its contents, is premised do not correspond to reality and the dispute or uncertainty would not have occurred if the factual situation 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 required that the commitment be made in writing. Making the commitment in electronic form is excluded.

**Section 781**  
**Acknowledgement of a debt**

For a contract by which the existence of an obligation is acknowledged (acknowledgement of debt) to be valid, it is required that the declaration of acknowledgement be made in writing. Making declaration of acknowledgement in electronic form is excluded. If another form is

prescribed to create the obligation the existence of which is being acknowledged, then the acknowledgement contract requires this form.

#### **Section 782**

##### **No requirements as to form 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 instruction**

If a person delivers to a third party a document in which that person instructs another person to furnish money, securities or other fungible things to that third party, then the third party is authorised to demand performance from the instructed party in its own name; the instructed party is authorised to render performance to the recipient of the document setting out the instruction for the account of the instructing party

#### **Section 784**

##### **Acceptance of the instruction**

(1) If the instructed party accepts the instruction, then they are obliged to render performance to the recipient of the document setting out the instruction; they may only raise against the recipient such objections that relate to the validity of the acceptance or follow from the contents of the instruction or the contents of the acceptance or to which the instructed party is entitled directly against the recipient of the document setting out the instruction.

(2) Acceptance is made by a written notation on the instruction. If the notation is placed on the instruction prior to its delivery to the recipient of the document setting out the instruction, then acceptance only becomes effective in relation to the recipient upon delivery.

#### **Section 785**

##### **Handover of the instruction**

The instructed party is only obliged to render performance in return for handover of the instruction.

#### **Section 786**

**(repealed)**

#### **Section 787**

##### **Instruction to assume debt**

(1) In the case of an instruction to assume a debt, the instructed party is released from the debt by making payment in the amount of the debt.

(2) The instructed party is not under a duty to the instructing party to accept the instruction or to perform by paying the recipient of the document setting out the instruction merely because the instructed party is the debtor of the instructing party.

#### **Section 788**

##### **Underlying debt relationship**

If the instructing party issues the instruction for the purpose of in turn effecting performance to the recipient of the document setting out the instruction, then the performance, even if the instructed party accepts the instruction, is effected only upon performance by the instructed party to the recipient of the document setting out the instruction.

#### **Section 789**

##### **Duty of recipient of the document setting out the instruction to notify**

If the instructed party refuses acceptance of the instruction prior to the time for performance or if they refuse to render performance, then the recipient of the document setting out the instruction is to notify the instructing party without undue delay. The same applies if the recipient of the document setting out the instruction cannot enforce the instruction or does not wish to do so.

#### **Section 790**

##### **Revocation of the instruction**

The instructing party may revoke the instruction in relation to the instructed party as long as the instructed party has neither accepted it in relation to the recipient of the document setting out the instruction nor has rendered performance. This also applies if the instructing party by the revocation violates a duty incumbent upon them in relation to the recipient of the document setting out the instruction.

#### **Section 791**

##### **Death or incapacity to contract of a party involved**

The instruction does not lapse as a result of the death of one of the parties involved or of one of them becoming incapable of contracting.

#### **Section 792**

##### **Transfer of the instruction**

(1) The recipient of the document setting out the instruction may transfer the instruction to a third party by contract with that third party, even if the instruction has not yet been accepted. The declaration of transfer requires the written form. For transfer, handover of the instruction to the third party is required.

(2) The instructing party may exclude transfer. Exclusion is only effective in relation to the instructed party if such exclusion is evident from the instruction or if the instructed party is notified thereof by the instructing party before having accepted the instruction or having rendered performance.

(3) If the instructed party accepts the instruction in relation to the acquirer, then they may not derive objections from the legal relationship existing between them and the recipient of the document setting out the instruction. In all other cases, provisions applying to assignment of a claim apply accordingly to transfer of the instruction.

#### **Title 24**

##### **Bearer bond**

#### **Section 793**

##### **Rights under a bearer bond**

(1) If a person has issued a document in which they promise to render performance to the bearer (bearer bond), then the holder may demand from them the act of performance in accordance with the promise, unless they are not entitled to dispose over the document. However, the issuer also is released by performance being made to a non-entitled bearer.

(2) The validity of the signature may be made contingent on 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 them or is lost or if it otherwise comes into circulation against their will.

(2) The effectiveness of a bearer bond is not affected by the fact that the document is delivered 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 issuance or as are evident from the document or to which the issuer is directly entitled in relation to the bearer.

### **Section 797**

#### **Duty to render performance only in return for handover**

The issuer is only obliged to pay in return for handover of the bearer bond. Upon handover, they acquire ownership of the document even if the bearer is not entitled to dispose over it.

### **Section 798**

#### **Replacement instrument**

If a bearer bond is no longer suitable for circulation due to damage or disfigurement, then, as long as its essential contents and its distinguishing features can still be recognised with certainty, the bearer may demand from the issuer the issuance of a new bearer bond in return for handover of the damaged or disfigured one. They are to bear and advance the costs.

### **Section 799**

#### **Declaration of invalidity**

- (1) A lost or destroyed bearer bond may, unless the opposite is specified in the instrument, be declared invalid by way of the judicial call procedure. Interest coupons, annuity coupons and profit share coupons as well as interest-free bearer bonds payable on sight are exempt.
- (2) The issuer is obliged to provide the previous bearer, on the latter's demand, with the information required for effecting the judicial call or blockage of payment and to issue the required certificates. The costs of the certificates are to be borne and advanced by the previous bearer.

### **Section 800**

#### **Effect of the declaration of invalidity**

If a bearer bond has been declared invalid, then, without prejudice to the authority to assert the claim under the document, the party that obtained the exclusory order may demand that the issuer provide them with a new bearer bond instead of the invalidated one. They are to bear and advance the costs.

### **Section 801**

#### **Extinction; prescription**

- (1) The claim under a bearer bond is extinguished at the end of 30 years following the occurrence of the time stipulated for performance if the document has not been presented to the issuer for redemption prior to the end of 30 years. If presentation occurs, then the claim becomes statute-barred after two years from the end of the submission period. Presentation is equivalent to judicial assertion of the claims under the instrument.
- (2) For interest coupons, annuity coupons and profit share coupons, the period for presentation is four years. The period of time commences at the close of the year in which the time stipulated for performance occurred.
- (3) The duration and commencement of the presentation period may be specified otherwise by the issuer in the document.

### **Section 802**

#### **Blockage of payment**

The commencement and running of the period for presentation, and also of prescription, are suspended for the benefit of the applicant by the blockage of payment. Suspension commences upon the lodging of the application for blockage of payment; it ends upon the completion of the judicial call procedure and, if the blockage of payment is ordered before the initiation of the procedure, also in those cases in which six months have passed since

the removal of the impediment to initiation and the application was not made previously. The provisions of sections 206, 210 and 211 apply to this period accordingly.

**Section 803**  
**Interest coupons**

(1) If interest coupons are delivered 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 they are 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 in court, unless the presentation or assertion occurs after the period of time has expired. The claim becomes statute-barred after four years.

(2) The claim specified 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 delivered to the bearer of the instrument authorising receipt of the coupons (renewal coupon) if the bearer of the bond has objected to the issuance. In this case, the coupons are to be handed over to the bearer of the bond upon their presenting 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 effected by the issuer. The issuer is not obliged to effect reregistration.

**Section 807**  
**Bearer tickets and stamps**

If tickets, stamps or similar instruments in which a creditor is not identified are delivered by the issuer in circumstances from which it is evident 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 accordingly.

**Section 808**  
**Registered securities with bearer clause**

(1) If an instrument in which the creditor is named is delivered with the stipulation that the act of performance promised in the instrument may be made to any bearer, then the debtor is released from obligation by performance to the bearer of the instrument. The bearer is not entitled to demand performance.

(2) The debtor is obliged to pay only in return for handover of the instrument. If the instrument has been lost or destroyed, then unless otherwise provided, it may be declared invalid by way of the judicial call 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 they have such a claim may, if inspection of the thing is of interest to them for this reason, demand that the possessor presents the thing to them for inspection or that the possessor permit inspection.

#### **Section 810**

##### **Right to inspect instruments**

A person who has an interest of a legal nature in inspecting an instrument in the possession of another person may demand from its possessor permission to inspect it if the instrument was drawn up in their interests or if in the instrument a legal relationship existing between that person and another is documented or if the instrument contains negotiations on a legal transaction that were engaged in between them and another person or between one of the two of them and an intermediary active for both parties.

#### **Section 811**

##### **Place of presentation, risk and costs**

(1) Presentation is to be effected, in the cases governed by sections 809 and 810, 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) The risk and the costs are to 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 to surrender**

(1) A person who obtains something as a result of the performance of another person or otherwise at that person's expense without legal grounds for doing so is under a duty to surrender to that person what has been obtained. This duty also exists if the legal grounds later cease to exist or if the result intended to be achieved by an act of performance in accordance with the substance of the legal transaction does not materialise.

(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 for the purpose of performing an obligation also may 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) remain unaffected.

(2) If an obligation due on a specific date is performed early, then the claim for return is excluded and refund 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 they were 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 to 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 was aware of this fact or 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 over an object and the disposition is effective in relation to the authorised person, then they are obliged to surrender to the authorised person the benefit obtained by the disposition. 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 surrender the performance.

### **Section 817**

#### **Breach of law or act offending common decency**

If the purpose of performance was determined in such a way that the recipient, in accepting it, was violating a statutory prohibition or offending common decency, then the recipient is obliged to surrender the performance. A claim to return is excluded if the person who rendered performance likewise was at fault for such a breach, unless the performance consisted in entering into an obligation; restitution may not be demanded of any performance rendered in performing such an obligation.

### **Section 818**

#### **Scope of the claim to enrichment**

- (1) The duty to surrender extends to emoluments taken as well as to whatever the recipient acquires by reason of a right acquired or as compensation for destruction, damage or deprivation of the object obtained.
- (2) If surrender is not possible due to the nature of the benefit obtained, or if the recipient is incapable for another reason of surrendering the benefit obtained, then the recipient is to provide compensation for value.
- (3) The obligation to surrender the benefit obtained or to reimburse the value is excluded to the extent that the recipient is no longer enriched.
- (4) From the time onwards at which the action is pending, the recipient is liable under the general provisions of law.

### **Section 819**

#### **Increased liability in case of knowledge and in cases of breaches of law or acts offending common decency**

- (1) If the recipient, at the time of receipt, knows of the defect in the legal basis or if they learn of it later, then they are obliged to surrender the benefit from the moment of receipt or of obtaining knowledge of the defect as if the claim for surrender had been pending from this time on.
- (2) If the recipient, in accepting the performance, violates a statutory prohibition or offends common decency, then they are under the same obligation from receipt of performance onwards.

### **Section 820**

#### **Increased liability where the result is uncertain**

- (1) If the performance was intended to produce a result the occurrence of which, according to the substance of the legal transaction, was regarded as uncertain, then, if the result does not materialise, the recipient is under a duty to surrender in the same way as if the claim to surrender 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 substance of the legal transaction was regarded as likely to lapse and the legal grounds cease to exist.
- (2) The recipient is to pay interest only from the time onwards at which they learn that the result has not materialised or that the legal grounds have ceased to exist; they are not obliged to surrender emoluments to the extent that they no longer are enriched at this time.



**Section 821**  
**Enrichment defence**

A person who enters into an obligation without legal grounds to do so also may refuse fulfilment if the claim to release from the obligation has become statute-barred.

**Section 822**  
**Duty to surrender of third parties**

If the recipient bestows the benefit obtained on a third person at no charge, then that third person is obliged to surrender the benefit as if they had received the benefit from the creditor without legal grounds, to the extent that as a result of the bestowal the duty of the recipient to surrender the enrichment is excluded.

**Title 27**  
**Torts**

**Section 823**  
**Liability in damages**

(1) A person who, intentionally or negligently, unlawfully injures the life, limb, health, freedom, property or some other right of another person is liable to provide compensation to the other party for the damage arising therefrom.

(2) The same duty is incumbent on 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 is possible to violate it also 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 suited to endanger the credit of another person or to cause other disadvantages to their livelihood or advancement is to provide compensation to the other for the damage caused by this even if, although they do not know that the fact is untrue, they ought to have known.

(2) A person who makes a communication and is unaware that it is untrue is not obliged to pay damages if they or the recipient of the communication have a legitimate interest in the communication.

**Section 825**  
**Inducing others to sexual acts**

A person who induces another person to perform or acquiesce to sexual acts by cunning, duress or abuse of a dependency relationship is under obligation to provide compensation to that person for the resulting damage.

**Section 826**  
**Intentional damage inflicted in a manner offending common decency**

A person who, in a manner offending common decency, intentionally inflicts damage on another person is liable to the other person to provide 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 the free exercise of will, inflicts damage on another person is not responsible for such damage. If they have temporarily induced a state of this type by imbibing alcoholic beverages or similar means, then they are responsible for damages that they unlawfully cause in this state as if they were at fault for negligence; the responsibility does not ensue if they 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 10 is not responsible for damage that they inflict on another party in an accident involving a motor vehicle, a railway or a suspension railway. This does not apply if they intentionally brought about the injury.

(3) A person who has not yet attained the age of 18 is not responsible, to the extent that their responsibility is not excluded under subsection (1) or (2), for damage they inflict on another person if, when committing the damaging act, they do not have the insight required to recognise their responsibility.

### **Section 829**

#### **Liability in damages for reasons of equity**

A person who, by reason of sections 827 and 828, is not responsible for damage they caused in the cases specified in sections 823 to 826 nonetheless is to provide compensation for the damage, unless it is possible to obtain compensation of damages from a third party with a duty of supervision, to the extent that in light of the situation given, in particular the circumstances of the parties involved, equity requires indemnification and they are not deprived of the resources needed for reasonable maintenance and to discharge their 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 their act.

(2) Instigators and accessories are equivalent to joint tortfeasors.

### **Section 831**

#### **Liability for vicarious agents**

(1) A person who deploys another person to perform a task is liable to provide 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 the care required in business dealings when selecting the person deployed and, to the extent that they are to procure devices or equipment or to manage the business activity, in such procurement or management, or if the damage would have occurred even if this care had been exercised.

(2) The same responsibility is incumbent on 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 requiring supervision because they are a minor or because of their mental or physical condition is liable to provide compensation for the damage that this person unlawfully causes to a third party. Liability in damages does not apply if they comply with their duty to supervise or if the damage would have been caused even 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 suffers injury to life, limb or health by an animal or if a thing is damaged by an animal, then the person who keeps the animal is liable to provide compensation to the injured person for the damage arising therefrom. Liability in damages does not apply if the damage is caused by a domestic animal intended to serve the profession, gainful employment or subsistence of the keeper of the animal and either the keeper of the animal in

supervising the animal has exercised the care required in business dealings or the damage also would have occurred even if such 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 they exercise the care required in business dealings in supervision or if the damage also would 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 suffers injury to life, limb or health, or if a thing is damaged, by the collapse of a building or any other work attached to a plot of land or by parts of the building or work separating therefrom, then the possessor of the plot of land is liable to provide compensation to the injured person for damage resulting from this, to the extent that the collapse or separation is a consequence of defective construction or inadequate upkeep. Liability in damages does not apply if the possessor has exercised the care required in business dealings for the purpose of averting danger.

(2) A previous possessor of the plot of land is responsible for the damage if the collapse or separation occurs within one year after they vacated possession, unless during their period of possession they exercised the care required in business dealings or a later possessor would have been able to avert the danger by observing such 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 them instead of the possessor of the plot of land.

**Section 838**  
**Liability of the person with a duty of upkeep regarding a building**

A person who assumes the upkeep of a building or of a work attached to a plot of land for the possessor or is responsible for the upkeep of the building or the work by virtue of a right of use to which they are entitled is responsible in the same way as the possessor for the damage caused by the collapse or the separation 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 them in relation to a third party, then they are to provide compensation to the third party for the damage arising therefrom. If the official is at fault only for negligence, then they may be held liable only if the injured person is not able to obtain compensation in another way.

(2) If an official breaches their official duties in a judgment in a legal matter, then they are responsible only for any damage arising therefrom if the breach of duty consists of a criminal offence. This provision does not apply to a refusal, in breach of duty, to perform official tasks or to a delay, in breach of duty, in doing so.

(3) Liability in damages does not apply if the injured person intentionally or negligently has failed to avert the damage by taking recourse to legal remedies.

**Section 839a**  
**Liability of court-appointed expert**

(1) If an expert appointed by the court intentionally or by gross negligence submits an incorrect expert opinion, then they are liable to provide 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) is to be applied accordingly.

#### **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 provide 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 provide compensation for damage under sections 833 to 838, a third party is responsible, then in their internal relationship the third party is obliged alone.

#### **Section 841**

##### **Compensation for liability of a public official**

If an official, who by virtue of their official duty is to appoint another person for management for a third party or is to 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 in their internal relationship the other person is obliged alone.

#### **Section 842**

##### **Extent of liability in damages in case of injury of a person**

Liability to provide compensation 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 limb or health or if their needs are increased, then the injured person is to be provided compensation for their damages by payment of an annuity.

(2) The provisions of section 760 apply to the annuity. Whether the person liable in damages is to provide security, the kind of security and for 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 is to provide the injured person with maintenance.

#### **Section 844**

##### **Third-party compensation claims in the case of death**

(1) In cases in which death is caused, the person liable in damages is to 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 with a third party on the basis of which they were obliged or might become obliged by operation of law to provide maintenance for that person and if as a result of the death the third party has been deprived of their right to maintenance, then the person liable in damages is to provide the third party with compensation for damages by payment of an annuity to the extent that the person killed would have been obliged to maintain for the presumed duration of their life; the provisions of

section 843 (2) to (4) apply accordingly. Liability in damages applies also in cases in which the third party at the time of injury had been conceived but not yet born.

(3) The person liable in damages is to pay to the survivor, who had a special relationship of personal closeness to the person killed at the time of the injury, adequate compensation in money for the emotional suffering caused to the survivor. A special relationship of personal closeness is presumed where the survivor was the spouse, the life partner, a parent or a child of the person killed.

#### **Section 845**

##### **Compensation claims for lost services**

In the case of injury to life, limb or health, as well as in the case of deprivation of liberty, the person liable in damages is to provide compensation to a third party for loss of services by payment of an annuity if, by operation of law, the injured person 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 accordingly.

#### **Section 846**

##### **Contributory negligence of the injured person**

In the cases governed by 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 apply to the claim of the third party.

#### **Section 847**

**(repealed)**

#### **Section 848**

##### **Liability for chance in the case of deprivation of a thing**

A person who is obliged to return a thing of which they have deprived another person by tort is also responsible for the chance loss, for a chance impossibility of surrender arising for another reason or for chance deterioration of the thing, unless such loss, other impossibility of surrender 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 reduction 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 onwards on which the determination of the value is based.

#### **Section 850**

##### **Reimbursement of outlays**

If the person obliged to surrender a thing that another person has been deprived of makes outlays on the thing, then in relation to the injured person they have 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 movable thing or for damage to a movable thing provides compensation to that person in whose possession the thing was at the time when the deprivation or damage occurred, then by so providing compensation they are released, even if a third party was the owner of the thing or had another right in the thing, unless they are aware of the right of the third party or their lack of knowledge is due to gross negligence.

#### **Section 852**

##### **Claim to surrender 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 has become statute-barred, they are obliged to surrender the benefit obtained in accordance with the provisions on the surrender of unjust enrichment. This claim becomes statute-barred 10 years after it arises, or, notwithstanding the date on which it arises, 30 years after the date on which the act causing the injury was committed or after the other event triggering the loss occurred.

**Section 853**  
**Defence of bad faith**

If someone obtains a claim against the injured person by committing a tort, the injured person may refuse performance even if the claim to cancellation of the claim has become statute-barred.

**Book 3**  
**Law of property**

**Division 1**  
**Possession**

**Section 854**  
**Acquisition of possession**

- (1) Possession of a thing is acquired by obtaining actual control of the thing.
- (2) Agreement between the previous possessor and the acquirer is sufficient for acquisition if the acquirer is in a position to exercise control over the thing.

**Section 855**  
**Agent in possession**

If a person exercises actual control over a thing for another in the other's household or in the other's trade or business or in a similar relationship, by virtue of which they are to follow instructions from the other that relate to the thing, then only the other is the possessor.

**Section 856**  
**Ending of possession**

- (1) Possession comes to an end as a result of the possessor giving up actual control of the thing or losing actual control in another way.
- (2) Possession does not come to an end as a result of the possessor being prevented in a way that is temporary in nature from exercising control.

**Section 857**  
**Inheritability**

Possession devolves to the heir.

**Section 858**  
**Prohibited interference with possession**

- (1) A person who, against the will of the possessor, deprives the possessor of possession or interferes with the possessor's possession acts, except where the deprivation or the interference is permitted by law, unlawfully (prohibited interference).
- (2) The possession obtained as a result of prohibited interference is defective. The successor in possession must allow the defectiveness to be asserted against them if they are the heir of the possessor or if they are aware, in acquiring possession, that the possession of their predecessor was defective.

**Section 859**  
**Self-help by the possessor**

- (1) The possessor may use force to defend themselves against prohibited interference.

- (2) If a movable thing is taken away from the possessor by prohibited interference, the possessor may use force to remove it from the interferer who is caught in the act or pursued.
- (3) If the possessor of a plot of land is deprived of possession by prohibited interference, the possessor may recover possession immediately after the deprivation of possession by removing the interferer.
- (4) The possessor has the same rights against a person who under section 858 (2) must allow the defectiveness of the possession to apply against them.

#### **Section 860**

##### **Self-help by the agent in possession**

The rights to which the possessor is entitled under section 859 also may be exercised by the person who exercises actual control for the possessor under section 855.

#### **Section 861**

##### **Claim on account of deprivation of possession**

- (1) If the possessor is deprived of possession by prohibited interference, then the possessor may require possession to be restored by the person who is in defective possession in relation to the possessor.
- (2) The claim is excluded if the possession of which the possessor was deprived was defective in relation to the present possessor or their predecessor in title and was obtained in the last year before the deprivation of possession.

#### **Section 862**

##### **Claim on account of interference with possession**

- (1) If the possessor is disturbed in their possession by prohibited interference, they may require the disturber to remove the disturbance. If there is the concern that further disturbances will ensue, the possessor may seek a prohibitory injunction.
- (2) The claim is excluded if the possessor is in possession defectively in relation to the disturber or the predecessor in title of the disturber and the possession was obtained in the last year before the disturbance.

#### **Section 863**

##### **Objections of the party depriving of possession or of the disturber**

In response to the claims set out in sections 861 and 862, a right of possession or to act in disturbance of possession may be asserted only to justify the submission that the deprivation or disturbance of possession does not constitute prohibited interference.

#### **Section 864**

##### **Extinction of claims to possession**

- (1) A claim based on sections 861 or 862 is extinguished at the end of one year after the act of prohibited interference, unless the claim is asserted by way of bringing an action before this date.
- (2) Extinction also occurs if it is established by a final and binding judgment, after the act of prohibited interference has been committed, that the interferer is entitled to a right to the thing, by virtue of which right they may demand that a possessory status corresponding to their manner of acting be established.

#### **Section 865**

##### **Part possession**

The provisions of sections 858 to 864 also apply to the benefit of a person who possesses only part of a thing, in particular separate residential premises or other spaces.

#### **Section 866**

##### **Co-possession**

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

### **Section 867**

#### **Possessor's right of pursuit**

If a thing leaves the control of the possessor and arrives on a plot of land in the possession of another, the possessor of the plot of land is to permit the possessor of the thing to search for and remove the thing, unless possession meanwhile has been taken of the thing. The possessor of the plot of land may require compensation for the damage caused by the search and removal. Where there is the concern that damage will be caused, the possessor of the land may refuse permission until they are given security; it is inadmissible to refuse permission if delay entails danger.

### **Section 868**

#### **Indirect possession**

If a person possesses a thing as a usufructuary, a pledgee, a usufructuary lessee, a lessee, a depositary or based on a similar relationship by virtue of which they are, in relation to another, entitled to possession or obliged to have possession for a period of time, the other person also is a possessor (indirect possession).

### **Section 869**

#### **Claims of the indirect possessor**

If an act of prohibited interference with the possessor's possession is committed, the indirect possessor also is entitled to the claims set out in sections 861 and 862. If the possessor is deprived of possession, then the indirect possessor is entitled to require possession to be restored to the previous possessor; if the latter cannot or does not wish to retake possession, the indirect possessor may require that possession be granted to the indirect possessor. Under the same prerequisite, the indirect possessor, in the case set out in section 867, may require that they themselves be permitted to search for and remove the thing.

### **Section 870**

#### **Transfer of indirect possession**

Indirect possession may be transferred to another by assigning to the other the claim to surrender of the thing.

### **Section 871**

#### **Multilevel indirect possession**

If the indirect possessor is in a relationship with a third party of the nature set out in section 868, then the third party likewise is an indirect possessor.

### **Section 872**

#### **Proprietary possession**

A person who possesses a thing as belonging to them is a proprietary possessor.

## **Division 2**

### **General provisions on rights in land**

### **Section 873**

#### **Acquisition by agreement and registration**

- (1) The transfer of the ownership of a plot of land, the encumbrance of a plot of land with a right and the transfer or encumbrance of such a right require agreement between the person entitled and the other person on the occurrence of the change of rights and the entry of the change of rights in the Land Register, unless otherwise provided by law.
- (2) Before the registration, the parties are bound by the agreement only if the declarations are recorded by a notary, or made before the Land Registry, or submitted to the Land Registry, or if the person entitled has handed over to the other person an approval of registration that satisfies the provisions of the Land Register Code (*Grundbuchordnung*).



#### **Section 874**

##### **Reference to approval of registration**

On the registration of a right encumbering a plot of land, reference may be made, for a more detailed description of the contents of the right, to the approval of registration, unless otherwise provided by law. A reference to the previous entry in accordance with section 44 (3) sentence 2 of the Land Register Code (*Grundbuchordnung*) is equivalent to a reference to the approval of registration.

#### **Section 875**

##### **Cancellation of a right**

(1) The cancellation of a right in a plot of land, unless otherwise provided by law, requires a declaration by the person entitled that they surrender the right, and the deletion of the right in the Land Register. The declaration is to be made to the Land Registry or to the person for whose benefit it is made.

(2) Before the deletion, the person entitled is obliged by their declaration only if they have made it to the Land Registry or if they have handed over to the person for whose benefit it is made an approval of the deletion that complies with the provisions of the Land Register Code (*Grundbuchordnung*).

#### **Section 876**

##### **Cancellation of an encumbered right**

If a right in a plot of land is encumbered by the right of a third party, then cancellation of the encumbered right requires the approval of the third party. Where the right that is to be cancelled is that of the respective owner of another plot of land, then, if that plot of land is encumbered by the right of a third party, the approval of the third party is necessary, unless the right of the third party is not affected by the cancellation. The approval is to be declared to the Land Registry or to the person for whose benefit it is made; it is irrevocable.

#### **Section 877**

##### **Alterations of rights**

The provisions of sections 873, 874 and 876 also apply to alterations of the contents of a right in a plot of land.

#### **Section 878**

##### **Subsequent restrictions on disposition**

A declaration by the person entitled made under sections 873, 875 or 877 does not become ineffective as a result of the person entitled being restricted in disposition after the declaration has a binding effect for them and the application for registration has been made to the Land Registry.

#### **Section 879**

##### **Order of priority of more than one right**

(1) The order of priority of more than one right by which a plot of land is encumbered is determined, if the rights are entered in the same division of the Land Register, by the sequence of the entries. If the rights are entered in different divisions, then the right entered stating an earlier date has priority; rights that are entered stating the same date have the same priority.

(2) The entry determines the order of priority even if the agreement required under section 873 for the acquisition of the right has come into existence only after the entry.

(3) A determination of the order of priority in derogation herefrom requires an entry to be in the Land Register.

#### **Section 880**

##### **Change of priority**

(1) The order of priority may be altered subsequently.

(2) For the change of priority, the agreement of the person entitled who takes lower priority and of the person entitled who takes higher priority and the entry of the change in the Land Register are required; the provisions of section 873 (2) and section 878 apply. If a mortgage, a land charge, or an annuity land charge is to take lower priority, then the approval of the owner also is required. Approval is to be declared to the Land Registry or to one of the parties involved; it is irrevocable.

(3) If the right taking lower priority is encumbered by the right of a third party, then the provisions of section 876 apply accordingly.

(4) The priority accorded to the right that takes higher priority is not lost as a result of the right that takes lower priority being cancelled by legal transaction.

(5) Rights the priority of which is between that of the right taking lower priority and the right taking higher priority are not affected by the change of priority.

#### **Section 881 Reservation of priority**

(1) In encumbering the plot of land by a right, the owner may reserve the power to have another right of a defined scope registered with priority before that right.

(2) The reservation requires an entry in the Land Registry; the entry must be made under the right that is to take lower priority.

(3) If the plot of land is alienated, the reserved power devolves to the acquirer.

(4) If, before the entry of the right which is given priority, the plot of land has been encumbered by a right without such a reservation, the priority has no effect to the extent that the right entered subject to the reservation would, as a result of the encumbrance effected in the interim period, suffer an impairment exceeding the reservation.

#### **Section 882 Maximum amount of compensation for lost value**

Where a plot of land is encumbered by a right for which, under the provisions applying to compulsory auction, if the right is extinguished by the acceptance of the bid, the person entitled is to be compensated out of the proceeds of sale, the maximum amount of compensation may be determined. The determination requires entry in the Land Register.

#### **Section 883 Prerequisites and effect of priority notice**

(1) To secure a claim to the grant or cancellation of a right in a plot of land or in a right encumbering the plot of land or to the alteration of the contents or the priority of such a right, a priority notice may be entered in the Land Register. The entry of a priority notice also is admissible to secure a future or a conditional claim.

(2) A disposition that is made, after the entry of the priority notice, over the plot of land or over the right, is ineffective to the extent that it would frustrate or adversely affect the claim. This also applies if the disposition is made by way of compulsory enforcement or enforcement of a seizure or by the insolvency administrator.

(3) The priority of the right to the granting of which the claim relates is determined based on the entry of the priority notice.

#### **Section 884 Effect in relation to heirs**

To the extent that the claim is secured by the priority notice, the heir of the person under an obligation may not rely on the restriction of their liability.

#### **Section 885 Prerequisite for the entry of the priority notice**

(1) The entry of a priority notice is effected on the basis of an injunction or on the basis of the approval of the person whose plot of land or whose right is affected by the priority notice. The issuance of the injunction does not require the endangerment of the claim to be secured to be satisfactorily demonstrated.

(2) In making the entry, reference may be made to the injunction or to the approval of registration in order to provide a more detailed description of the claim to be secured.

**Section 886**  
**Claim for removal**

If the person whose plot of land or whose right is affected by the priority notice is entitled to a defence that permanently excludes the assertion of the claim secured by the priority notice, the person may require the priority notice claimant to have the priority notice removed.

**Section 887**  
**Judicial call of the priority notice claimant**

Where the person whose claim is secured by the priority notice is unknown, their right may be excluded by way of the judicial call procedure if the prerequisites for the exclusion of a mortgage creditor stipulated in section 1170 are satisfied. Upon the exclusory order becoming final and binding, the effect of the priority notice is extinguished.

**Section 888**  
**Claim to approval of the person entitled to the priority notice**

(1) To the extent that the acquisition of a registered right or of a right to such a right is ineffective in relation to the person for whose benefit the priority notice exists, this person may require the acquirer to approve the registration or the deletion that is required in order to realise the claim secured by the priority notice.

(2) The same applies if the claim is secured by a prohibition on alienation.

**Section 889**  
**Exclusion of merger for rights in rem**

A right in a plot of land belonging to another does not expire by reason of the owner of the plot of land acquiring the right in the plot of land or the person entitled acquiring the ownership of the plot of land.

**Section 890**  
**Union of plots of land; addition**

(1) More than one plot of land may be united to become a single plot of land by the owner having them entered in the Land Register as one plot of land.

(2) A plot of land may be made part of another plot of land by the owner having it added to the latter in the Land Register entry.

**Section 891**  
**Statutory presumption**

(1) If a right has been entered in the Land Register for a person, it is presumed that the person is entitled to this right.

(2) If a right entered in the Land Register is deleted, it is presumed that the right does not exist.

**Section 892**  
**Presumption of legal force of the contents of the Land Register**

(1) To the benefit of the person who acquires a right in a plot of land or a right in such a right by legal transaction, the contents of the Land Register are presumed to be correct, unless an objection to the accuracy is registered or the inaccuracy is known to the acquirer. Where the person entitled is restricted to the benefit of a particular person in their disposition over a right entered in the Land Register, the restriction is effective in relation to the acquirer only if it is apparent from the Land Register or known to the acquirer.

(2) Where an entry in the Land Register is required for the acquisition of the right, the knowledge of the acquirer at the time when the application for entry is made or, if the agreement required under section 873 is reached only later, the time of agreement is the determining point of time.

### **Section 893**

#### **Legal transaction with the person entered in the Land Register**

The provision of section 892 applies accordingly if performance on the basis of this right is made to the person for whom a right has been entered in the Land Register or if between this person and another person, on the basis of this right, a legal transaction that does not fall under the provision of section 892 is entered into and this legal transaction contains a disposition over the right.

### **Section 894**

#### **Correction of the Land Register**

If the contents of the Land Register are not consistent with the actual legal position with regard to a right in the plot of land, a right in such a right or a restriction of disposition of the kind set out in section 892 (1), the person whose right is not entered or not correctly entered or is impaired by the entry of an encumbrance or restriction that does not exist may require approval of the correction of the Land Register from the person whose right is affected by the correction.

### **Section 895**

#### **Prior entry of the person obliged**

If the correction of the Land Register can be made only after the right of the person obliged under section 894 has been entered, that person is to have their right entered upon the corresponding demand being made.

### **Section 896**

#### **Submission of certificate**

If a correction of the Land Register requires the submission of a mortgage certificate, a land charge certificate, or an annuity land charge certificate, the person in whose favour the correction is to be made may require the holder of the certificate to have the certificate submitted to the Land Registry.

### **Section 897**

#### **Costs of correction**

The costs of correcting the Land Register and of the declarations required for this purpose are to be borne by the person demanding the correction, unless a legal relationship existing between this person and the person obliged leads to a different conclusion.

### **Section 898**

#### **Claims to correction not subject to the statute of limitations**

The claims set out in sections 894 to 896 are not subject to the statute of limitations.

### **Section 899**

#### **Entry of an objection**

(1) In the cases governed by section 894, an objection challenging the accuracy of the Land Register may be entered.

(2) The entry is made on the basis of an injunction or on the basis of consent from the person whose right is affected by the correction of the Land Register. The issuance of the injunction does not require the endangerment of the right of the person objecting to be satisfactorily demonstrated.

### **Section 899a**

#### **Provisos for civil-law partnerships**

If a civil-law partnership has been entered in the Land Register, it is also presumed with regard to the registered right that the partners are those persons who have been entered in the Land Register in accordance with section 47 (2) sentence 1 of the Land Register Code (*Grundbuchordnung*), and that there are no further partners over and above these persons. Sections 892 to 899 apply accordingly with regard to the entry of the partners.

### **Section 900**

#### **Acquisition by prescription following entry in the Land Register**

(1) A person who is entered as the owner of a plot of land in the Land Register without having acquired ownership acquires ownership if the entry has existed for 30 years and they have had the plot of land in proprietary possession during this period. The thirty-year period is calculated in the same way as the period for acquiring a movable thing by prescription. The running of the period is suspended as long as an objection to the accuracy of the registration is entered in the Land Register.

(2) These provisions apply accordingly if a right is entered the Land Register for a person who is not entitled to that right, whereby such right entitles that person to possess the plot of land or the exercise of such right is protected under the provisions governing possession. The entry determines the priority of the right.

### **Section 901**

#### **Extinction of rights not entered in the Land Register**

Where a right in a plot of land belonging to another is wrongly deleted in the Land Register, it is extinguished if the claim of the person entitled in relation to the owner becomes statute-barred. The same applies if a right to a plot of land belonging to another that comes into existence by operation of law has not been entered in the Land Register.

### **Section 902**

#### **Rights entered in the Land Register not subject to the statute of limitations**

(1) The claims arising from rights entered in the Land Register are not subject to the statute of limitations. This does not apply to claims that relate to arrears in recurrent payments or to the compensation of damages.

(2) A right regarding which an objection challenging the accuracy of the Land Register has been registered is equivalent to a right entered in the Land Register.

## **Division 3**

### **Ownership**

#### **Title 1**

#### **Subject matter of ownership**

### **Section 903**

#### **Powers of the owner**

The owner of a thing may, to the extent that a statute or third-party rights does not conflict with this, deal with the thing at their discretion and exclude others from exercising any influence whatsoever. In exercising their powers, the owner of an animal is to take into account the special provisions for the protection of animals.

### **Section 904**

#### **Necessity**

The owner of a thing is not entitled to prohibit the influence of another person on the thing if the influence is necessary to avert a present danger and the imminent damage is disproportionately great in relation to the damage the owner stands to suffer as a result of the influence. The owner may require compensation for the damage they suffer.

### **Section 905**

#### **Restriction of ownership**

The right of the owner of a plot of land extends to the space above the surface and to the subsoil under the surface. However, the owner may not prohibit influences that are exercised at such a height or depth that they have no interest in excluding them.

### **Section 906**

#### **Introduction of imponderable substances**

(1) The owner of a plot of land may not prohibit the introduction of gases, steam, smells, smoke, soot, warmth, noise, vibrations and similar influences emanating from another plot of land to the extent that the influence does not impair the use of their plot of land, or impairs it only to an insignificant extent. An insignificant impairment normally is given if the limits or targets laid down in statutes or by statutory instruments are not exceeded by the influences established and assessed under these provisions. The same applies to values in general administrative provisions that have been issued under section 48 of the Federal Environmental Impact Protection Act (*Bundes-Immissionsschutzgesetz*) and represent the state of the art.

(2) The same applies to the extent that a material impairment is brought about by a use of the other plot of land that is customary in the location and cannot be prevented by measures that users of this kind reasonably can be expected to tolerate in economic terms. Where the owner is obliged to tolerate an influence under these provisions, they may require from the user of the other plot of land reasonable compensation in money if the influence impairs a use of the owner's plot of land that is customary in the location or its yield beyond the degree that the owner reasonably can be expected to tolerate.

(3) Introduction through a special pipe or line is impermissible.

#### **Section 907**

##### **Facilities threatening danger**

(1) The owner of a plot of land may demand that on the neighbouring plot of land no facilities may be produced or kept of which it can be predicted with certainty that their existence or use will have an impermissible influence on the owner's plot of land. Where an installation satisfies the provisions of *Land* law that prescribe a specific distance from the boundary or other protective measures, the removal of the installation may be required only if the impermissible influence actually occurs.

(2) Trees and bushes are not facilities within the meaning of these provisions.

#### **Section 908**

##### **Imminent collapse of building**

If a plot of land is subject to the risk that it is damaged as the result of the collapse of a building or of another structure that is connected to a neighbouring plot of land, or of the breaking away of parts of the building or of the structure, the owner may require of the person who would be responsible for the damage occurring under section 836 (1) or sections 837 and 838 that this person takes the precaution necessary to ward off the danger.

#### **Section 909**

##### **Excavation**

A plot of land may not be excavated in such a way that the ground of the neighbouring plot of land loses its necessary support, unless care has been taken to provide a sufficient reinforcement of another kind.

#### **Section 910**

##### **Overhang**

(1) The owner of a plot of land may cut off and keep roots of a tree or of a bush that have intruded from a neighbouring plot of land. The same applies to projecting branches if the owner has set a reasonable time limit for the possessor of the neighbouring plot of land to remove them and the removal does not take place within the period.

(2) The owner does not have this right if the roots or the branches do not adversely affect the use of the plot of land.

#### **Section 911**

##### **Falling fruit**

Fruit that falls from a tree or a bush onto a neighbouring plot of land is deemed to be the fruit of this plot of land. This provision does not apply if the neighbouring plot of land is for public use.

## **Section 912**

### **Encroachment; duty to tolerate**

- (1) If the owner of a plot of land, when erecting a building, built over the boundary, without this being the result of intent or gross negligence, then the neighbour is to tolerate the encroachment, unless the neighbour filed an objection before or immediately after the encroachment across the boundary.
- (2) The neighbour is to be compensated by periodical payments. The amount of the periodical payments depends on the period of the encroachment across the boundary.

## **Section 913**

### **Payment of periodical payments for encroachment**

- (1) The periodical payments for the encroachment are to be made by the respective owner of the other plot of land to the respective owner of the neighbouring plot of land.
- (2) The periodical payments are to be made annually in advance.

## **Section 914**

### **Priority, registration and extinction of periodical payments**

- (1) The right to the periodical payments has priority over all rights in the encumbered plot of land, even the older rights. It is extinguished when the encroachment is removed.
- (2) The right is not entered in the Land Register. An entry in the Land Register is required in order to waive the right and to determine the amount of the periodical payments by contract.
- (3) In all other cases, the provisions applying to a charge on land existing for the benefit of the respective owner of a plot of land apply.

## **Section 915**

### **Purchase**

- (1) The person entitled to the periodical payments at any time may require that the person liable for the periodical payments, in return for the transfer of ownership of the part of the plot of land built over, reimburse them the value that this part had at the time of the encroachment across the boundary. If they make use of this power, the rights and duties of both parties are governed by the provisions relating to purchase.
- (2) For the period until the transfer of ownership, the periodical payments are to continue to be paid.

## **Section 916**

### **Adverse effect on heritable building right or servitude**

If the encroachment has an adverse effect on a heritable building right or a servitude over the neighbouring plot of land, the provisions in sections 912 to 914 apply accordingly to the benefit of the person entitled.

## **Section 917**

### **Right of way of necessity**

- (1) If a plot of land lacks the connection to a public road necessary for the due use, the owner may require of the neighbours that until the defect is removed they tolerate the use of their plots of land to create the required connection. The direction of the right of way of necessity and the scope of the right of use are, if required, determined by judicial decision.
- (2) The neighbours over whose plots of land the right of way of necessity leads are to be compensated by periodical payments. The provisions of section 912 (2) sentence 2 and sections 913, 914 and 916 apply accordingly.

## **Section 918**

### **Exclusion of the right of way of necessity**

- (1) The obligation to tolerate the right of way of necessity does not arise if the previous connection of the plot of land with the public road is ended by an arbitrary act of the owner.
- (2) If, as a result of the alienation of part of the plot of land, the part alienated or the part retained is cut off from the connection with the public road, the owner of the part over which

the connection was previously made is to tolerate the right of way of necessity. The alienation of one part is equivalent to the alienation of one of several plots of land belonging to the same owner.

**Section 919**  
**Boundary marking**

- (1) The owner of a plot of land may require from the owner of a neighbouring plot of land that the latter cooperate in erecting fixed boundary markers and, if a boundary marker has moved or become unrecognisable, in the restoration.
- (2) The type of marking and the procedure are determined in accordance with *Land* statutes; if these contain no provisions, local practice decides.
- (3) The costs of the boundary marking are to be borne by the parties in equal parts, unless a legal relationship existing between them leads to a different conclusion.

**Section 920**  
**Confusion of boundaries**

- (1) If, in the case of a confusion of boundaries, the true boundary cannot be established, the delimitation is determined by possession. If the possession cannot be established, a piece of equal size of the area in dispute is to be allocated to each of the plots of land.
- (2) If a determination of the boundary under these provisions leads to a result that does not correspond to the circumstances determined, in particular with the fixed size of the plots of land, the boundary is to be drawn in a way that is equitable with regard to these circumstances.

**Section 921**  
**Joint use of boundary installations**

If two plots of land are separated by a space, border, corner, a ditch, a wall, hedge, fence or another structure that benefits both plots of land, it is presumed that the owners of the plots of land are jointly entitled to use the structure, unless outward features indicate that the structure belongs to one of the neighbours alone.

**Section 922**  
**Manner of use and maintenance**

If the neighbours are jointly entitled to use one of the installations set out in section 921, each of them may use them for the purpose indicated by their nature to the extent that the joint use of the other neighbour is not adversely affected. The costs of maintenance are to be borne by the neighbours in equal shares. As long as one of the neighbours has an interest in the continuance of the installation, it may not be removed or altered without that neighbour's approval. In all other cases, the legal relationship between the neighbours is governed by the provisions on co-ownership.

**Section 923**  
**Boundary tree**

- (1) Where there is a tree standing on the boundary, the fruits and, if the tree is felled, the tree itself belong to the neighbours in equal shares.
- (2) Each of the neighbours may require the tree to be removed. The costs of the removal are borne by the neighbours in equal shares. The neighbour who demands the tree's removal, however, is to bear the costs alone if the other neighbour waives their right to the tree; in this case the neighbour demanding removal acquires sole ownership upon the separation. The claim to removal is excluded if the tree serves as a boundary marker and in view of the circumstances cannot be replaced by another appropriate boundary marker.
- (3) These provisions also apply to a bush standing on the boundary.

**Section 924**  
**Neighbour-law claims not subject to the statute of limitations**



The claims arising from sections 907 to 909, 915, 917 (1), 918 (2), 919, 920 and 923 (2) are not subject to the statute of limitations.

## **Title 2**

### **Acquisition and loss of ownership of plots of land**

#### **Section 925**

##### **Declaration of conveyance**

(1) The agreement between the alienor and the acquirer (declaration of conveyance) necessary for the transfer of ownership of a plot of land under section 873 must be declared in the presence of both parties before a competent agency. Any notary is competent to take receipt of the declaration of conveyance, notwithstanding the competence of other agencies. A declaration of conveyance also may be made in an in-court settlement or in an insolvency plan or restructuring plan has been finally and bindingly confirmed.

(2) A declaration of conveyance that is made subject to a condition or a stipulation as to time is ineffective.

#### **Section 925a**

##### **Document of land transaction**

As a rule, the declaration of a conveyance is to be received only if the document of the contract required under section 311b (1) sentence 1 is submitted or is drawn up at the same time.

#### **Section 926**

##### **Accessories of the plot of land**

(1) If the alienor and the acquirer agree that the alienation is to include the accessories of the plot of land, the acquirer also obtains, together with the ownership of the plot of land, ownership of the accessories in existence at the time of the acquisition, to the extent that they belong to the alienor. In case of doubt it is to be assumed that the alienation is intended to extend to the accessories.

(2) If the acquirer, on the basis of the alienation, acquires possession of accessories that do not belong to the alienor or that are encumbered by the rights of third parties, the provisions of sections 932 to 936 apply; the time at which the acquirer obtained possession determines the good faith of the acquirer.

#### **Section 927**

##### **Judicial call procedure**

(1) The right of the owner of a plot of land may, if the plot of land has been in the proprietary possession of another for 30 years, be excluded by way of the judicial call procedure. The period of possession is calculated in the same way as the period for acquiring a movable thing by prescription. Where the owner is entered in the Land Register, the judicial call procedure is admissible only if the owner is dead or missing and a registration in the Land Register that required the approval of the owner has not been made for 30 years.

(2) The person who obtained the exclusory order obtains ownership by having an entry made in the Land Register listing them as owner.

(3) If, before the exclusory order is pronounced, a third party has been entered as owner or, on the basis of the ownership of a third party, an objection to the accuracy of the Land Register has been entered, the exclusory order has no effect with regard to the third party.

#### **Section 928**

##### **Relinquishment of ownership, appropriation by fiscal authority**

(1) The ownership of a plot of land may be relinquished by the owner declaring the waiver to the Land Registry and the waiver being entered in the Land Register.

(2) The right to appropriate the relinquished plot of land belongs to the fiscal authority of the *Land* in which the plot of land is situated. The fiscal authority acquires ownership by having itself entered in the Land Register as owner.

**Title 3**  
**Acquisition and loss of ownership of movable things**

**Subtitle 1**  
**Transfer**

**Section 929**  
**Agreement and delivery**

The transfer of the ownership of a movable thing requires the owner to deliver the thing to the acquirer and both to agree that ownership is to pass. If the acquirer is in possession of the thing, then agreement on the transfer of the ownership suffices.

**Section 929a**  
**Agreement with regard to unregistered ship**

(1) In order to transfer the ownership of a ship that is not entered in the ship register, or of a share in such a ship, delivery is not required if the owner and the acquirer are in agreement that the ownership is to devolve immediately.

(2) Either party may require that, at its cost, a publicly certified document of the alienation is issued to it.

**Section 930**  
**Constructive delivery**

If the owner is in possession of the thing, the delivery may be replaced by a legal relationship being agreed between the owner and the acquirer by which the acquirer obtains indirect possession.

**Section 931**  
**Assignment of claim to surrender**

If a third party is in possession of the thing, delivery may be replaced by the owner assigning to the acquirer the claim to surrender of the thing.

**Section 932**  
**Good faith acquisition from a person not entitled**

(1) As a result of an alienation carried out under section 929, the acquirer becomes the owner even if the thing does not belong to the alienor, unless the acquirer is not in good faith at the time when under these provisions they would acquire ownership. In the case governed by section 929 sentence 2 however, this applies only if the acquirer had obtained possession from the alienor.

(2) The acquirer is not in good faith if the acquirer is aware, or is unaware as a result of gross negligence, that the thing does not belong to the alienor.

**Section 932a**  
**Good faith acquisition of unregistered ships**

Where a ship alienated under section 929a does not belong to the alienor, the acquirer becomes the owner if the ship is delivered to them by the alienor, unless they are not in good faith at this time; where a share in a ship is the subject of the alienation, the granting of joint possession of the ship takes the place of delivery.

**Section 933**  
**Good faith acquisition on constructive delivery**

Where a thing alienated under section 930 does not belong to the alienor, the acquirer becomes the owner if the thing is delivered to them by the alienor, unless they are not in good faith at this time.

**Section 934**  
**Good faith acquisition on assignment of claim to surrender**

Where a thing alienated under section 931 does not belong to the alienor, the acquirer becomes owner, if the alienor is the indirect possessor of the thing, on the assignment of the claim, or otherwise when the acquirer obtains the possession of the thing from the third party, unless at the time of the assignment or the acquisition of possession they are not in good faith.

#### **Section 935**

##### **No good faith acquisition of lost things**

- (1) The acquisition of ownership under sections 932 to 934 does not occur if the thing was stolen from the owner, is missing or has been lost in any other way. The same applies, where the owner was only the indirect possessor, if the possessor had lost the thing.
- (2) These provisions do not apply to money or bearer instruments or to things that are alienated by way of public auction or in an auction pursuant to section 979 (1a).

#### **Section 936**

##### **Extinction of third party rights**

- (1) If an alienated thing is encumbered by the right of a third party, then the right is extinguished on the acquisition of ownership. In the case governed by section 929 sentence 2, however, this applies only if the acquirer had obtained possession from the alienor. If the alienation is made under section 929a or 930, or if the thing alienated under section 931 was not in the indirect possession of the alienor, the right of the third party is extinguished only when the acquirer obtains possession of the thing as a result of the alienation.
- (2) The right of the third party is not extinguished if the acquirer, at the time that is the relevant time under subsection (1), is not in good faith with regard to the right.
- (3) If, in the case governed by section 931, the right belongs to the third party possessor, it is not extinguished even with regard to a good faith acquirer.

#### **Subtitle 2**

##### **Acquisition by prescription**

#### **Section 937**

##### **Prerequisites, exclusion in the case of knowledge**

- (1) A person who has a movable thing in their proprietary possession for 10 years acquires the ownership (acquisition by prescription).
- (2) Acquisition by prescription is excluded if the acquirer on acquiring the proprietary possession is not in good faith or if they later discover that they are not entitled to the ownership.

#### **Section 938**

##### **Presumption of proprietary possession**

If a person had a thing in their proprietary possession at the beginning and at the end of a period of time, it is presumed that their proprietary possession also existed in the intermediate period.

#### **Section 939**

##### **Suspension of prescription**

- (1) Prescription is suspended if the claim to surrender against the proprietary possessor, or in the case of indirect proprietary possession against the possessor who derives their right to possession from the proprietary possessor, is asserted in a manner suitable to suspend limitation as defined in sections 203 and 204. However, the suspension occurs only for the benefit of the person who causes it.
- (2) Prescription is also suspended as long as the limitation of the claim to surrender under sections 205 to 207 or its expiry under sections 210 and 211 is suspended.

#### **Section 940**

##### **Interruption by loss of possession**

- (1) Prescription is interrupted by the loss of proprietary possession.

(2) The interruption is deemed not to have occurred if the proprietary possessor loses the proprietary possession involuntarily and recovers it within the period of one year or by legal action instituted within this period.

#### **Section 941**

##### **Interruption by act of execution**

Prescription is interrupted by undertaking or applying for a judicial or official act of execution. Section 212 subsections (2) and (3) applies accordingly.

#### **Section 942**

##### **Effect of interruption**

If the prescription period is interrupted, then no regard will be had to the time that passed before the interruption; a new prescription period may begin only after the termination of the interruption.

#### **Section 943**

##### **Acquisition by prescription and succession in title**

If as a result of succession in title the thing enters the proprietary possession of a third party, the prescription period that has passed in the possession of the predecessor in title benefits the third party.

#### **Section 944**

##### **Possessor of an inheritance**

The prescription period that has passed for the benefit of a possessor of an inheritance counts in favour of the heir.

#### **Section 945**

##### **Extinction of third party rights**

On the acquisition of ownership by prescription, the third-party rights in the thing that arose before the acquisition of proprietary possession are extinguished, unless the proprietary possessor is not in good faith with regard to these rights on the acquisition of proprietary possession or unless they learn of their existence only later. The period of prescription must be completed also with regard to the third-party right; the provisions of sections 939 to 944 apply accordingly.

#### **Subtitle 3**

##### **Combination, intermixture, processing**

#### **Section 946**

##### **Combination with a plot of land**

If a movable thing is combined with a plot of land in such a way that it becomes an essential part of the plot of land, the ownership of the plot of land extends to this movable thing.

#### **Section 947**

##### **Combination with movable things**

- (1) If movable things are combined with each other in such a way that they become essential parts of a uniform thing, the previous owners become co-owners of this thing; the shares are determined by the relationship of the value that the things have at the time of combination.
- (2) If one of the things is to be seen as the main thing, its owner acquires sole ownership.

#### **Section 948**

##### **Intermixture**

- (1) If movable things are inseparably intermixed or mingled with each other, the provisions of section 947 apply accordingly.
- (2) The situation is equivalent to inseparability if the separation of the intermixed or mingled things would entail disproportionately high costs.

#### **Section 949**

##### **Extinction of third party rights**

If, under sections 946 to 948, the ownership of a thing is extinguished, the other rights in the thing are also extinguished. If the owner of the encumbered thing acquires co-ownership, the rights in the share that takes the place of the thing continue in existence. If the owner of the encumbered thing becomes the sole owner, then the rights extend to the joined thing.

#### **Section 950**

##### **Processing**

(1) A person who, by processing or transforming one or more substances, creates a new movable thing acquires the ownership of the new thing, except where the value of the processing or the transformation is substantially less than the value of the substance. Processing also includes writing, drawing, painting, printing, engraving or a similar processing of the surface.

(2) On the acquisition of ownership of the new thing, the existing rights in the substance are extinguished.

#### **Section 951**

##### **Compensation for loss of rights**

(1) A person who, as a result of the provisions of sections 946 to 950, suffers a loss of rights may require, from the person to whose benefit the change of rights occurs, payment in money in accordance with the provisions on the surrender of unjust enrichment. The restoration of the former state cannot be required.

(2) The provisions on the obligation to pay damages for torts and the provisions on the reimbursement of outlays made and on the right of removal of an installation remain unaffected. In the cases governed by sections 946 and 947, the removal under the provisions applying to the right of removal of the possessor in relation to the owner is admissible even if the combination was not made by the possessor of the main thing.

#### **Section 952**

##### **Ownership of documents of debt**

(1) The creditor is entitled to the ownership of a certificate of indebtedness issued with regard to a claim. The right of a third party to the claim extends to the certificate of indebtedness.

(2) The same applies to documents on other rights under which performance may be requested, in particular for mortgage, land charge and annuity land charge certificates.

#### **Subtitle 4**

##### **Acquisition of products and other components of a thing**

#### **Section 953**

##### **Ownership of separated products and components**

Products and other components of a thing, even after separation, belong to the owner of the thing, unless sections 954 to 957 lead to a different conclusion.

#### **Section 954**

##### **Acquisition by person entitled in rem**

A person who, by reason of a right in a thing belonging to another, is entitled to appropriate products or other components of the thing, acquires the ownership of them, notwithstanding the provisions of sections 955 to 957, upon the separation.

#### **Section 955**

##### **Acquisition by proprietary possessor in good faith**

(1) A person who has a thing in their proprietary possession acquires the ownership of the products and other components that are among the fruits of the thing, notwithstanding the provisions of sections 956 and 957, on the separation. Acquisition is excluded if the proprietary possessor is not entitled to proprietary possession or another person, by reason

of a right in the thing, is entitled to receive the fruits and the proprietary possessor is not in good faith when they acquire proprietary possession or learn of the defect of title before the separation.

(2) The person who possesses the thing for the purpose of exercising a right of use of it is equivalent to the proprietary possessor.

(3) The provision of section 940 (2) applies accordingly to proprietary possession and possession equivalent to proprietary possession.

#### **Section 956**

##### **Acquisition by person entitled in personam**

(1) Where the owner permits another person to appropriate products or other components of the thing, the other person acquires the ownership of them, if possession of the thing has been made available to that other person, on separation, or otherwise on taking possession. If the owner is obliged to permit this, then the owner may not revoke permission as long as the other person is still in the possession of the thing that was made available to them.

(2) The same applies if the permission comes not from the owner but from another person to whom products or other components of a thing belong after separation.

#### **Section 957**

##### **Permission by the person not entitled**

The provision of section 956 applies even where the person who permits another to appropriate is not authorised to do so, unless the other person, if possession of the thing has been made available to them, is not in good faith at the time possession of the thing is made available, or otherwise when they take possession of the products or the other components, or if they learn of the defect of title before separation.

#### **Subtitle 5**

#### **Appropriation**

#### **Section 958**

##### **Acquisition of ownership of ownerless movable things**

(1) A person who takes proprietary possession of an ownerless movable thing acquires ownership of the thing.

(2) Ownership is not acquired if the appropriation is prohibited by law or if taking possession injures the right of appropriation of another.

#### **Section 959**

##### **Abandonment of ownership**

A movable thing becomes ownerless if the owner, in the intention of waiving ownership, abandons the possession of the thing.

#### **Section 960**

##### **Wild animals**

(1) Wild animals are ownerless as long as they are free. Wild animals in zoos and fish in ponds or other self-contained private waters are not ownerless.

(2) Where a captured wild animal regains freedom, it becomes ownerless if the owner fails to pursue the animal without undue delay or if the owner gives up the pursuit.

(3) A tamed animal becomes ownerless if it gives up the habit of returning to the place determined for it.

#### **Section 961**

##### **Loss of ownership of bee swarms**

Where a swarm of bees takes flight, it becomes ownerless if the owner fails to pursue it without undue delay or if the owner gives up the pursuit.

#### **Section 962**

##### **Right of pursuit of the owner**

The owner of the swarm of bees may, in pursuit, enter on plots of land belonging to others. If the swarm has entered an unoccupied beehive belonging to another, the owner of the swarm, for the purpose of capturing it, may open the hive and remove or break out the combs. The owner is to provide compensation for the damage caused.

**Section 963**  
**Merging of bee swarms**

If bee swarms of more than one owner that have moved out merge, the owners who have pursued their swarms become co-owners of the total swarm captured; the shares are determined according to the number of swarms pursued.

**Section 964**  
**Intermixture of bee swarms**

If a bee swarm has moved into an occupied beehive belonging to another, the ownership and the other rights in the bees that were occupying the beehive extend to the swarm that has moved in. The ownership and the other rights in the swarm that has moved in are extinguished.

**Subtitle 6**  
**Finding**

**Section 965**  
**Duty of the finder to notify**

- (1) A person who finds a lost thing and takes possession of it is to notify, without undue delay, the loser or the owner or some other rightful recipient.
- (2) If the finder does not know the rightful recipient or does not know their whereabouts, the finder is to notify, without undue delay, the competent authority of the finding and the circumstances that may be material to determine the rightful recipient. If the thing is not worth more than 10 euros, no notification is required.

**Section 966**  
**Duty of safekeeping**

- (1) The finder has a duty to keep the thing in safe custody.
- (2) Where there is the concern that the thing will spoil, or if safekeeping would entail disproportionate costs, the finder is to have the thing publicly auctioned. Before the auction, the competent authority is to be notified. The proceeds of sale take the place of the thing.

**Section 967**  
**Duty to deliver**

The finder is entitled and on the order of the competent authority obliged to deliver the thing or the auction proceeds to the competent authority.

**Section 968**  
**Extent of liability**

The finder is responsible only for intent and gross negligence.

**Section 969**  
**Surrender to the loser**

By surrendering the thing to the loser, the finder also is released from liability in relation to the other rightful recipients.

**Section 970**  
**Reimbursement of expenses**

If the finder, for the purpose of safe custody or preservation of the thing or for the purpose of tracing its rightful recipient, incurs expenses which they may in the circumstances regard as required, they may require reimbursement from the rightful recipient.

**Section 971**  
**Finder's reward**

(1) The finder may require a finder's reward from the rightful recipient. The finder's reward is five per cent of the value of the thing up to five hundred euros, three per cent of the value above this, and three per cent in the case of animals. If the thing is of value only for the rightful recipient, the finder's reward is to be determined based on reasonably exercised discretion.

(2) The claim is excluded if the finder violates the duty of notification or conceals the finding on being questioned.

**Section 972**  
**Right of retention of the finder**

The provisions applying to the claims of the possessor against the owner for outlays in sections 1000 to 1002 apply accordingly to the claims defined in sections 970 and 971.

**Section 973**  
**Acquisition of ownership by the finder**

(1) On the expiry of six months after the notification of the finding to the competent authority, the finder acquires the ownership of the thing, unless before this a rightful recipient has become known to the finder or has notified the competent authority of their right. On the acquisition of ownership the other rights in the thing are extinguished.

(2) If the thing is worth no more than 10 euros, the six-month period begins on the finding. The finder does not acquire ownership if they conceal the finding on being questioned. The notification of a right to the competent authority does not conflict with the acquisition of ownership.

**Section 974**  
**Acquisition of ownership after concealment**

If, before the expiry of the six-month period, rightful recipients have become known to the finder or if, in the case of a thing that is worth more than 10 euros, they have notified the competent authority in good time of their rights, the finder may require the rightful recipients under the provision of section 1003 to make a statement on the claims to which the finder is entitled under sections 970 to 972. On the expiry of the period laid down for the statement, the finder acquires the ownership and the other rights in the thing expire, unless the rightful recipients state in good time that they are prepared to satisfy the claims.

**Section 975**  
**Rights of the finder after delivery**

The delivery of the thing or of the proceeds of the auction to the competent authority does not affect the rights of the finder. If the competent authority has the thing auctioned, the proceeds take the place of the thing. The competent authority may hand over the thing or the proceeds to a rightful recipient only with the approval of the finder.

**Section 976**  
**Acquisition of ownership by the municipality**

(1) If the finder waives in relation to the competent authority the right to acquire the ownership of the thing, the finder's right devolves to the municipality of the location of the finding.

(2) If, after delivering the thing or the proceeds of auction to the competent authority under the provisions of sections 973 and 974, the finder has acquired ownership, the ownership devolves to the municipality of the location of the finding unless the finder, before the expiry of a period granted to them by the competent authority, demands that the thing be surrendered.

**Section 977**  
**Claim in enrichment**



A person who, under the provisions of sections 973, 974 and 976, suffers a loss of rights, may require, in the cases governed by sections 973 and 974 from the finder, in the cases governed by section 976 from the municipality of the location of the finding, the surrender of what has been obtained as a result of the change of rights, in accordance with the provisions on the surrender of unjust enrichment. The claim is extinguished on the expiry of three years after the ownership devolves to the finder or the municipality, unless it is judicially asserted prior to this.

### **Section 978**

#### **Finding in public authority or transport agency**

- (1) A person who finds a thing on the business premises or in the means of transport of a public authority or a transport agency serving public transport and takes possession of the thing is to deliver the thing without undue delay to the authority or the transport agency or to one of their employees. The provisions of sections 965 to 967 and 969 to 977 do not apply.
- (2) If the thing is worth no less than fifty euros, the finder may require a finder's reward from its rightful recipient. The finder's reward consists of half the amount that would result from applying section 971 (1) sentences 2 and 3. The claim is excluded if the finder is an employee of the authority or the transport agency or the finder violates the duty to deliver. The provision of section 1001, which applies to the claims of the possessor against the owner for outlays, applies accordingly to the claim to a finder's reward. If there is a claim to a finder's reward, the authority or the transport agency is to notify the finder of the surrender of the thing to its rightful recipient.
- (3) If the proceeds of auction or the money found devolves to the person entitled under section 981 (1), there is a claim to a finder's reward under subsection (2) sentences 1 to 3 against the person entitled. The claim is extinguished on the expiry of three years after it arises against the person entitled under sentence 1.

### **Section 979**

#### **Sale; authorisation to issue an ordinance**

- (1) The authority or the transport agency may have the thing delivered to it sold at public auction. The public authorities and the transport agency of the *Reich*, the states (*Bundesstaat*) and the municipalities may have the auction carried out by one of their officials.
- (1a) The auction may also take place on the Internet as a public auction, subject to the provisos of the following provisions.
- (1b) The Federal Government is authorised to designate, by means of a statutory instrument without the consent of the Bundesrat, for the area falling within its remit auction platforms for the auctioning of lost-and-found items; it may assign this authorisation by means of a statutory instrument to the supreme federal authorities with specialist responsibility. The *Land* governments are authorised to make corresponding arrangements for the areas falling within their remit by means of a statutory instrument; they may assign the authorisation to the supreme *Land* authorities with specialist responsibility. The *Länder* may designate auction platforms which they use nationwide. They may agree to assign processing tasks to the competent agency of another *Land*.
- (2) The proceeds of sale take the place of the thing.

### **Section 980**

#### **Notice by publication of the finding**

- (1) The auction is admissible only after the rightful recipients have been called on in a notice by publication of the finding which stipulates a time limit for them to file their rights, and the time limit has passed; it is inadmissible if notification was made in good time.
- (2) The notice by publication is not necessary if there is the concern that the thing will spoil, or if safekeeping would entail disproportionate costs.

### **Section 981**

#### **Receipt of the proceeds of auction**

(1) If, since expiry of the time limit stipulated in the notice given by publication, three years have passed, then the proceeds of the auction, unless a rightful recipient has filed their right, in the case of (*Reich*) authorities and (*Reich*) transport utilities revert to the (*Reich*) fiscal authorities, in the case of *Land* authorities and *Land* transport agencies revert to the fiscal authorities of the state (*Bundesstaat*), in the case of municipalities and municipality transport agencies revert to the municipality, in the case of transport agencies that are operated by a private person, revert to the private person.

(2) If the auction has taken place without notice having been given by publication, then the three-year period will begin only after the rightful recipients have been called on by a notice given by publication of the finding to file their rights. The same applies if found money has been delivered.

(3) The costs are deducted from the amount to be returned.

### **Section 982**

#### **Provisions for implementation**

The notice by publication stipulated in sections 980 and 981 is effected in the case of (*Reich*) authorities and (*Reich*) agencies subject the provisions enacted by the Bundesrat, and in the other cases under the provisions issued by the central authority of the state (*Bundesstaat*).

### **Section 983**

#### **Undeliverable things in the possession of authorities**

Where a public authority is in possession of a thing that it is obliged to surrender, and the obligation is not contractual, then if the authority is unaware of the rightful recipient or of their whereabouts, the provisions of sections 979 to 982 apply accordingly.

### **Section 984**

#### **Treasure trove**

If a thing that has lain hidden for so long that the owner no longer can be established (treasure) is discovered and is taken into possession as a result of the discovery, then one half of the ownership is acquired by the discoverer, and the other half by the owner of the thing in which the treasure was hidden.

## **Title 4**

### **Claims arising from ownership**

### **Section 985**

#### **Claim to surrender**

The owner may require the possessor to surrender the thing.

### **Section 986**

#### **Objections of the possessor**

(1) The possessor may refuse to surrender the thing if the possessor or the indirect possessor from whom the possessor derives the right of possession is entitled to possession in relation to the owner. If the indirect possessor is not authorised in relation to the owner to make possession available to the possessor, then the owner may require the possessor to surrender the thing to the indirect possessor or, if the indirect possessor cannot or does not wish to take possession again, to the owner themselves.

(2) The possessor of a thing that has been alienated under section 931 by assignment of the claim to surrender may raise against the new owner the objections that they are entitled to use against the claim assigned.

### **Section 987**

#### **Emoluments after litigation is pending**

(1) The possessor is to surrender to the owner the emoluments they receive after litigation is pending.

(2) If, after litigation is pending, the possessor fails to take emoluments that they could take under the rules of proper management, they are obliged to reimburse the owner to the extent that they are at fault.

#### **Section 988**

##### **Emoluments of the possessor who makes no payment**

If a possessor possessing the thing as belonging to themselves or for the purpose of exercising a right of use to which they are not in reality entitled has obtained possession without payment, they are obliged in relation to the owner to surrender the emoluments that they take before litigation is pending, in accordance with the provisions on the surrender of unjust enrichment.

#### **Section 989**

##### **Damages after litigation is pending**

The possessor is, from that date onwards at which litigation is pending, liable to the owner for the damage that occurs because as a result of the possessor's fault the thing deteriorates, is destroyed, or cannot be returned by the possessor for another reason.

#### **Section 990**

##### **Liability of possessor with knowledge**

- (1) If the possessor, in obtaining possession, was not in good faith, then the possessor is liable to the owner starting from the date of the acquisition under sections 987 and 989. If the possessor later discovers that they are not entitled to possession, they are liable in the same way from that date onwards on which they obtained the knowledge.
- (2) A more extensive liability of the possessor for default remains unaffected.

#### **Section 991**

##### **Liability of intermediary possessor in the case of indirect possession**

- (1) Where the possessor derives the right to possession from an indirect possessor, the provision of section 990 with regard to emoluments applies only if the prerequisites set out in section 990 also are satisfied by the indirect possessor or litigation is pending against the indirect possessor.
- (2) Where the possessor, on gaining possession, was in good faith, they nevertheless are responsible to the owner for the damage set out in section 989 starting from the date of the acquisition to the extent that they are liable to the indirect possessor.

#### **Section 992**

##### **Liability of the wrongful possessor**

If the possessor obtained possession by prohibited interference or by a criminal offence, the possessor is liable to the owner under the provisions on damages in tort.

#### **Section 993**

##### **Liability of the possessor in good faith**

- (1) If the prerequisites set out in sections 987 to 992 are not satisfied, the possessor is to return the fruits taken, insofar as according to the rules of proper management they are not to be seen as the yield of the thing, in accordance with the provisions on the surrender of unjust enrichment; in all other cases, the possessor is obliged neither to surrender emoluments nor to pay damages.
- (2) For the time for which the emoluments remain due to the possessor, the possessor is subject to the provision of section 101.

#### **Section 994**

##### **Necessary outlays**

- (1) The possessor may require from the owner reimbursement of the necessary outlays made on the thing. However, for the period for which the emoluments remain due to the possessor, the customary maintenance costs are not to be reimbursed to them.

(2) If the possessor, after litigation has become pending or after the beginning of the liability set out in section 990, makes necessary outlays, the duty of the owner to reimburse is governed by the provisions on voluntary agency without specific authorisation.

#### **Section 995 Charges**

The necessary outlays within the meaning of section 994 also include the expenses incurred by the possessor in paying charges on the thing. For the period for which the emoluments remain due to the possessor, the possessor is to be reimbursed only for the expenses of extraordinary charges that are to be seen as based on the original value of the thing.

#### **Section 996 Useful outlays**

For outlays other than necessary outlays, the possessor may require reimbursement only to the extent that they were incurred before litigation was pending and before the beginning of the liability defined in section 990 and to the extent the value of the thing is still increased by them at the time at which the owner regains possession of the thing.

#### **Section 997 Right of removal**

(1) If the possessor has combined with the thing another thing as an essential part, the possessor may separate the thing and take possession of it. The provision of section 258 applies.

(2) The right to separate is excluded if the possessor may not require reimbursement of the outlay under section 994 (1) sentence 2 or the separation is not of benefit for the possessor or the possessor is reimbursed at least the value that the component would have for them after separation.

#### **Section 998 Farming costs for agricultural plot of land**

If possession of an agricultural plot of land is to be surrendered, the owner is to reimburse the costs that the possessor incurred in connection with the fruits that are not yet separated but under the rules of proper management are to be separated before the end of the fiscal year to the extent that the costs are in keeping with proper management and do not exceed the value of these fruits.

#### **Section 999 Reimbursement of outlays of the predecessor in title**

(1) The possessor may require reimbursement of the outlays of a previous possessor whose successor in title they are in the same scope in which the previous possessor could require reimbursement if the previous possessor had to surrender the thing.

(2) The obligation of the owner to reimburse outlays also extends to the expenses that were incurred before the owner obtained ownership.

#### **Section 1000 Right of retention of the possessor**

The possessor may refuse to surrender the thing until they have been satisfied by reimbursement of their outlays. The possessor is not entitled to the right of retention if they obtained the thing by an intentionally committed tort.

#### **Section 1001 Action for reimbursement of outlays**

The possessor may assert the claim to reimbursement of outlays only if the owner regains possession of the thing or ratifies the outlays. Until the outlays are ratified, the owner may obtain release from the claim by returning the thing the possession of which they have regained. The ratification is deemed to have been made if the owner accepts the thing the possessor, while reserving the claim, offered to them.

## **Section 1002**

### **Extinction of the claim for outlays**

- (1) If the possessor returns the thing to the owner, the claim to reimbursement of outlays is extinguished on the expiry of one month, in the case of a plot of land on the expiry of six months after the surrender, unless prior to this the claim is asserted in judicial proceedings or unless the owner ratifies the outlays.
- (2) The provisions applying to limitation of sections 206, 210 and 211 apply accordingly to these time limits.

## **Section 1003**

### **Right to satisfaction of the possessor**

- (1) The possessor may call on the owner, specifying the amount being demanded as reimbursement, to state, within a reasonable time limit determined by the possessor, whether the owner ratifies the outlays. After the expiry of the time limit, the possessor is entitled to seek satisfaction from the thing in accordance with the provisions on the sale of a pledged item, and in the case of a plot of land in accordance with the provisions on compulsory enforcement on immovable property, if the ratification is not made in good time.
- (2) Where the owner denies the claim before the expiry of the time limit, the possessor may obtain satisfaction from the thing only if, following the final and binding establishment of the amount of the outlays, they have called on the owner, setting a reasonable time limit, to make a statement, and the time limit has passed; the right to satisfaction from the thing is excluded if the ratification is made in good time.

## **Section 1004**

### **Claim for removal and injunction**

- (1) If the ownership is interfered with by means other than removal or retention of possession, the owner may demand that the disturber remove the interference. If there is the concern that further interferences will ensue, the owner may seek a prohibitory injunction.
- (2) The claim is excluded if the owner is obliged to tolerate the interference.

## **Section 1005**

### **Right of pursuit**

If a thing is on a plot of land that is in the possession of a person other than the owner of the thing, the owner of the plot of land has the claim defined in section 867 in relation to the possessor of the plot of land.

## **Section 1006**

### **Presumption of ownership for possessor**

- (1) It is presumed to the benefit of the possessor of a movable thing that they are the owner of the thing. However, this does not apply in relation to a former possessor from whom the thing was stolen or who lost it or whose possession of it ended in another way, unless the thing is money or bearer instruments.
- (2) It is presumed to the benefit of a former possessor that during the period of their possession they were the owner.
- (3) In the case of indirect possession, the presumption is to the benefit of the indirect possessor.

## **Section 1007**

### **Claims of the former possessor, exclusion in the case of knowledge**

- (1) A person who has had a movable thing in their possession may require the possessor to surrender the thing if the possessor was not in good faith when they acquired possession.
- (2) If the thing was stolen from the former possessor or the former possessor lost it or their possession of it ended in another way, the former possessor may require surrender even from a possessor in good faith, unless the possessor in good faith is the owner of the thing or unless the possessor had lost possession of the thing before the time at which the former possessor had possession. This provision does not apply to money and bearer instruments.

(3) The claim is excluded if the former possessor was not in good faith on the acquisition of possession or if they have given up possession. In all other cases, the provisions of sections 986 to 1003 apply accordingly.

## **Title 5**

### **Co-ownership**

#### **Section 1008**

##### **Co-ownership by fractional shares**

If the ownership of a thing is shared between more than one owners by fractional shares, the provisions of sections 1009 to 1011 apply.

#### **Section 1009**

##### **Encumbrance to the benefit of a co-owner**

- (1) The co-owned thing also may be encumbered to the benefit of a co-owner.
- (2) The encumbrance of a co-owned plot of land to the benefit of the respective owner of another plot of land and the encumbrance of another plot of land to the benefit of the respective owners of the co-owned plot of land are not excluded by reason of the other plot of land belonging to a co-owner of the co-owned plot of land.

#### **Section 1010**

##### **Successor in interest of a co-owner**

- (1) Where the co-owners of a plot of land have arranged the management and use or excluded permanently or for a period of time the right to require the co-ownership to be dissolved, or have laid down a notice period, the provision agreed on will take effect against the successor in interest of a co-owner only if it is entered in the Land Register as an encumbrance of the share.
- (2) The claims set out in sections 755 and 756 may be asserted against the successor in interest of a co-owner only if they are entered in the Land Register.

#### **Section 1011**

##### **Claims arising from co-ownership**

Each co-owner may assert the claims arising from the ownership against third parties with regard to the thing as a whole, but the claim to surrender only in accordance with section 432.

### **Sections 1012 - 1017 (repealed)**

#### **Division 4 Servitudes**

#### **Title 1 Easements**

#### **Section 1018**

##### **Statutory definition of easement**

A plot of land may be encumbered to the benefit of the respective owner of another plot of land in such a way that the latter may use the plot of land as part of individual relationships or that certain acts may not be undertaken on the plot of land or that the exercise of a right towards the other plot of land that arises from the ownership of the encumbered plot of land is excluded (easement).

#### **Section 1019**

##### **Benefit of the dominant plot of land**

An easement may consist only of an encumbrance that offers a benefit for the use of the plot of land of the person entitled. The substance of the easement cannot be extended beyond the degree resulting therefrom.

**Section 1020**  
**Considerate use**

When using an easement, the person entitled is to have regard, if at all feasible, to the interest of the owner of the servient plot of land. If they maintain an installation on the servient plot of land in order to use the easement, they are to keep the installation in a proper condition to the extent that the interest of the owner so requires.

**Section 1021**  
**Agreed duty of maintenance**

(1) If, in order to use an easement, there is an installation on the servient plot of land, it may be determined that the owner of this plot of land is to provide for the upkeep of the installation, to the extent that the interest of the person entitled requires this. If the owner has the right to share the use of the installation, it may be determined that the person entitled is to provide for the upkeep the installation, to the extent that this is required for the owner's right of use.

(2) The provisions on charges on land apply accordingly to such a duty of maintenance.

**Section 1022**  
**Installations on building structures**

If the easement consists of the right to maintain a building structure on a building structure of the servient plot of land, then, unless otherwise provided, the owner of the servient plot of land is to provide for the upkeep of their structure, to the extent that the interest of the person entitled so requires. The provision of section 1021 (2) also applies to this duty of maintenance.

**Section 1023**  
**Moving the use**

(1) Where the respective use of an easement is restricted to a part of the servient plot of land, the owner may require the use to be moved to another place that is equally suitable for the person entitled, if the use in the previous place is particularly arduous for the owner; the owner is to bear and advance the costs of moving. This also applies if the part of the plot of land to which the use is restricted is determined by legal transaction.

(2) The right to move the use may not be excluded or restricted by legal transaction.

**Section 1024**  
**Coincidence of more than one right of use**

If an easement coincides with another easement or another right of use of the plot of land in such a way that the rights cannot be exercised concurrently or fully, and if the rights are of the same priority, then each person entitled may require arrangements for the use that take account of the interests of all persons entitled based on reasonably exercised discretion.

**Section 1025**  
**Division of the dominant plot of land**

If the plot of land of the person entitled is divided, the easement continues in existence for the separate parts; however, in case of doubt the use of the easement is admissible only in such a way that it does not become more burdensome for the owner of the servient plot of land. If the easement benefits only one of the parts, it is extinguished for the other parts.

**Section 1026**  
**Division of the servient plot of land**

Where the servient plot of land is divided, then, if the use of the easement is restricted to a particular part of the servient plot of land, the parts that lie outside the area of use are released from the easement.

**Section 1027**  
**Interference with easement**

If an easement is interfered with, the person entitled has the rights set out in section 1004.

**Section 1028**  
**Limitation**

(1) Where an installation has been erected on the servient plot of land that interferes with the easement, the claim of the person entitled to the removal of the interference is subject to limitation even if the easement is entered in the Land Register. On the expiry of the claim by limitation, the easement is extinguished to the extent that the existence of the installation conflicts with it.

(2) The provision of section 892 does not apply.

**Section 1029**  
**Protection of possession of the lawful possessor**

Where the possessor of a plot of land is disturbed in the use of an easement entered in the Land Register for the owner, the provisions applying to the protection of possession are applied accordingly if the easement was used within one year before the interference, even if only once.

**Title 2**  
**Usufruct**

**Subtitle 1**  
**Usufruct in things**

**Section 1030**  
**Statutory definition of usufruct in things**

(1) A thing can be encumbered in such a way that the person for whose benefit the encumbrance is made is entitled to take the emoluments of the thing (usufruct).

(2) The usufruct may be restricted by the exclusion of individual emoluments.

**Section 1031**  
**Application to accessories**

Together with the usufruct in a plot of land, the usufructuary acquires the usufruct in the accessories in accordance with the provisions of section 926 governing the acquisition of ownership.

**Section 1032**  
**Creation of usufruct in movable things**

The creation of usufruct in a movable thing requires the owner to deliver the thing to the acquirer and both to agree that it is intended for the usufruct to pass to the acquirer. The provisions of section 929 sentence 2, sections 930 to 932 and 933 to 936 apply accordingly; in the cases governed by section 936, the only effect that arises is that the usufruct takes priority over the third party's right.

**Section 1033**  
**Acquisition by prescription**

Usufruct in a movable thing may be acquired by prescription. The provisions governing the acquisition of ownership by prescription apply accordingly.

**Section 1034**  
**Determination of the condition**

The usufructuary may have the condition of the thing determined by experts at the usufructuary's own cost. The owner is entitled to the same right.

**Section 1035**  
**Usufruct in aggregate of things; list**

In the case of usufruct in an aggregate of things, the usufructuary and the owner are reciprocally obliged to cooperate in preparing a list of the things. The list is to state the date of entry and is to be signed by both parties; each party may require the signatures to be



publicly certified. Each party also may require the list to be made by the competent authority or by a competent official or notary. The costs are to be borne and advanced by the person demanding that the list be prepared or certified.

#### **Section 1036**

##### **Right of possession; exercise of usufruct**

- (1) The usufructuary is entitled to possess the thing.
- (2) In exercising the right of use, the usufructuary is to uphold the previous economic purpose of the thing and is to proceed in compliance with the rules of proper management.

#### **Section 1037**

##### **Transformation**

- (1) The usufructuary is not entitled to transform the thing or to substantially alter it.
- (2) The usufructuary of a plot of land may erect new facilities to extract stone, gravel, sand, loam, clay, marl, peat and other soil constituents, except where the economic purpose of the plot of land is materially altered as a result.

#### **Section 1038**

##### **Economic plan for forests and mines**

- (1) If a forest is the subject of usufruct, both the owner and the usufructuary may require that the degree of use and the nature of the economic treatment be laid down in an economic plan. If a substantial change of circumstances occurs, then each party may require a corresponding amendment of the economic plan. Each party is to bear one half of the costs.
- (2) The same applies if a mine or another installation designed to extract soil constituents is the subject of usufruct.

#### **Section 1039**

##### **Excessive taking of fruits**

- (1) The usufructuary also acquires the ownership of such fruits as they take contrary to the rules of proper management or such fruits as they take in excess because this has become necessary as the result of a particular event. However, notwithstanding the usufructuary's responsibility for fault, they are obliged to provide compensation to the owner for the value of the fruits at the end of the usufruct and to provide security for the fulfilment of this obligation. Both the owner and the usufructuary may require that the amount to be compensated be used to restore the thing to the extent that this complies with proper management.
- (2) If the outlay is not required to restore the thing, the duty to provide compensation ceases to exist to the extent that the emoluments due to the usufructuary are adversely affected by the improper or excessive taking of fruits.

#### **Section 1040**

##### **Treasure**

The right of the usufructuary does not extend to the share of the owner in a treasure that is found in the thing.

#### **Section 1041**

##### **Upkeep of the thing**

The usufructuary is to provide for the upkeep of the thing in its economic condition. The usufructuary is obliged to carry out repairs and renovations only to the extent that they are part of the normal upkeep of the thing.

#### **Section 1042**

##### **Duty of notification by the usufructuary**

If the thing is destroyed or damaged or if an extraordinary repair or renovation of the thing or a precaution for protection of the thing against a danger that was not foreseen is required, the usufructuary is to notify the owner without undue delay. The same applies if a third party arrogates for themselves a right in the thing.

**Section 1043**  
**Repair or replacement**

Where the usufructuary of a plot of land performs, on their own, extraordinary repair or replacement work that has become required, they may for this purpose, within the limits of proper management, also use components of the plot of land that are not part of the fruits due to them.

**Section 1044**  
**Toleration of repairs**

Where the usufructuary does not perform, on their own, extraordinary repair or replacement work on a thing that has become required, they are to permit the owner to perform it and, if a plot of land is the subject of the usufruct, they are to permit the use of the components of the plot of land designated in section 1043.

**Section 1045**  
**Obligation of the usufructuary to insure**

(1) The usufructuary is to insure the thing for the duration of the usufruct against damage by fire and other accidents at their own cost, if taking out insurance corresponds to proper management. The insurance is to be taken out in such a way that the owner is entitled to the claim against the insurer.

(2) If the thing is already insured, the payments to be made for the insurance are borne by the usufructuary for the duration of the usufruct to the extent that they would be obliged to insure.

**Section 1046**  
**Usufruct in an insurance claim**

(1) The usufructuary has the usufruct in a claim against an insurer in accordance with the provisions governing usufruct in an outstanding claim that bears interest.

(2) If damage covered by the insurance occurs, both the owner and the usufructuary may demand that the amount insured be used to restore the thing or to obtain a replacement to the extent that corresponds to proper management. The owner may arrange for the use on their own or may leave it to the usufructuary.

**Section 1047**  
**Bearing of charges**

The usufructuary is obliged to the owner to bear for the duration of the usufruct the public charges to which the thing is subject, to the exclusion of the extraordinary charges that are to be seen as based on the original value of the thing, and to bear the private-law charges to which the thing was already subject at the time at which the usufruct in the thing was created, in particular the interest on mortgage claims and land charges and the payment to be made on the basis of an annuity land charge.

**Section 1048**  
**Usufruct in plot of land with inventory**

(1) If a plot of land together with its inventory is the subject of usufruct, then the usufructuary may alienate the individual inventory items within the limits of proper management. The usufructuary is to obtain replacements for the normal loss by wastage and for the items eliminated under the rules of proper management; the items the usufructuary acquires, on being incorporated into the inventory, become the property of the person to whom the inventory belongs.

(2) If the usufructuary assumes the inventory at its estimated value with the duty of returning it at its estimated value upon termination of the usufruct, the provisions of section 582a apply accordingly.

**Section 1049**  
**Reimbursement of outlays**

- (1) If the usufructuary makes outlays on the thing which they are not obliged to incur, the duty of the owner to reimburse the usufructuary is governed by the provisions on voluntary agency without specific authorisation.
- (2) The usufructuary is entitled to remove an installation with which they have furnished the thing.

**Section 1050**  
**Wear and tear**

The usufructuary is not responsible for alterations or the deterioration of the thing that are brought about by the proper exercise of the usufruct.

**Section 1051**  
**Provision of security**

If the conduct of the usufructuary gives rise to the concern that there may be a substantial injury to the rights of the owner, the owner may require security to be provided.

**Section 1052**  
**Judicial administration in the absence of security**

- (1) If the usufructuary is finally and bindingly sentenced to provide security, the owner may demand, instead of the security, the exercise of the usufruct for the account of the usufructuary to be transferred to an administrator to be appointed by the court. A judicial order of administration is admissible only if, on application by the owner, the court has set a time limit for the usufructuary to provide security and the time limit has expired; it is inadmissible if the security is provided before the expiry of the time limit.
- (2) The administrator is under the supervision of the court in the same way as an administrator appointed for the judicially enforced administration of a plot of land. The owner also may be the administrator.
- (3) The administration is to be cancelled if the security is provided subsequently.

**Section 1053**  
**Application for a prohibitory injunction in the case of unauthorised use**

If the usufructuary uses the thing in a manner for which they have not been authorised, and if they continue the use notwithstanding a warning notice from the owner, then the owner may seek a prohibitory injunction.

**Section 1054**  
**Judicial administration on the basis of breach of duty**

If the usufructuary breaches the rights of the owner to a substantial degree, and if they continue the breaching conduct notwithstanding a warning notice from the owner, the owner may require administration to be judicially ordered under section 1052.

**Section 1055**  
**Duty of return of the usufructuary**

- (1) The usufructuary is obliged to return the thing to the owner after the end of the usufruct.
- (2) In the case of usufruct in an agricultural plot of land, the provisions of section 596 (1) and section 596a, and in the case of usufruct in an agricultural estate, the provisions of sections 596 (1), 596a and 596b apply accordingly.

**Section 1056**  
**Leases and usufructuary leases at the end of the usufruct**

- (1) If the usufructuary has let a plot of land, on a lease or usufructuary lease, beyond the term of the usufruct, then after the end of the usufruct, the provisions of sections 566, 566a, 566b (1), and also sections 566c to 566e and 567b governing the alienation of leased residential space apply accordingly.
- (2) The owner is entitled to terminate the lease or usufructuary lease, observing the statutory period of notice. If the usufructuary waives the usufruct, the termination is admissible only from the time onwards at which the usufruct would be extinguished without the waiver.

(3) The lessee or usufructuary lessee is entitled to demand, setting a reasonable time limit, that the owner state whether they intend to exercise their right of termination. Notice of termination may be given only until the expiry of the time limit.

#### **Section 1057**

##### **Limitation of compensation claims**

The claims to compensation of the owner for alterations or deterioration of the thing and the claims of the usufructuary to reimbursement of outlays or to permission to remove an installation become statute-barred after six months. The provision of section 548 subsection (1) sentences 2 and 3, subsection (2) applies accordingly.

#### **Section 1058**

##### **Grantor as owner**

In the relationship between the usufructuary and the owner, it is presumed to the benefit of the usufructuary that the grantor is the owner, unless the usufructuary knows that the grantor is not the owner.

#### **Section 1059**

##### **Non-transferability; ceding the exercise**

Usufruct is not transferable. The exercise of usufruct may be ceded to another.

#### **Section 1059a**

##### **Transferability in the case of a legal person or of a partnership having legal personality**

(1) If a usufruct is held by a legal person, then it is transferable subject to the following provisions:

1. Where the assets of the legal person, by way of universal succession, devolve to another, the usufruct likewise devolves to the successor in title, unless devolution expressly is excluded.

2. Where an enterprise operated by a legal person or a part of such an enterprise otherwise is transferred to another, a usufruct also may be transferred to the acquirer if it is suited to serve the purposes of the enterprise or of the part of the enterprise. Whether these prerequisites are met is established by a declaration of the competent *Land* authority. The declaration is binding upon the courts and the administrative authorities. The *Land* governments specify the competent *Land* authority by statutory instrument. The *Land* governments may, by statutory instrument, transfer the authorisation to the *Land* departments of justice.

(2) A partnership having legal personality is equivalent to a legal person.

#### **Section 1059b**

##### **Non-distrainability**

A usufruct may neither be seized, nor pledged, nor encumbered by a usufruct on the basis of the provision of section 1059a.

#### **Section 1059c**

##### **Devolution or transfer of usufruct**

(1) In the case of the devolution or transfer of the usufruct, the acquirer, in place of the person previously entitled, enters into the rights and obligations associated with the usufruct in relation to the owner. If, in view of these rights and duties, agreements have been made between the owner and the person entitled, these also take effect for and against the acquirer.

(2) The devolution or the transfer of the usufruct creates a claim for damages neither for the owner nor for other persons who are entitled in rem.

#### **Section 1059d**

##### **Leases and usufructuary leases on the transfer of the usufruct**

If the party previously entitled has let the plot of land encumbered by the usufruct, on a lease or usufructuary lease, beyond the term of the usufruct, then following the transfer of the usufruct, the provisions of sections 566 to 566e, 567a and 567b governing the alienation of leased residential space are to be applied accordingly.

#### **Section 1059e**

##### **Claim to grant of the usufruct**

If a legal person or a partnership having legal personality is entitled to a claim to be granted a usufruct, the provisions of sections 1059a to 1059d apply accordingly.

#### **Section 1060**

##### **Coincidence of more than one right of use**

If a usufruct coincides with another usufruct or with another right of use of the thing in such a way that the rights cannot be exercised concurrently or fully, and if the rights are of the same priority, then the provision of section 1024 applies.

#### **Section 1061**

##### **Death of the usufructuary**

The usufruct is extinguished upon the death of the usufructuary. If a legal person or a partnership with legal personality is entitled to the usufruct, it is extinguished when the legal person or partnership with legal personality ceases to exist.

#### **Section 1062**

##### **Extension of cancellation to accessories**

If the usufruct in a plot of land is cancelled by legal transaction, then the termination, in case of doubt, extends to the usufruct in the accessories.

#### **Section 1063**

##### **Coincidence with ownership**

- (1) The usufruct in a movable thing is extinguished if it coincides, in the same person, with ownership.
- (2) The usufruct is deemed not to have been extinguished to the extent that the owner has an interest of a legal nature in the continuation of the usufruct.

#### **Section 1064**

##### **Cancellation of usufruct in movable things**

In order to cancel by legal transaction usufruct in a movable thing, the declaration of the usufructuary to the owner or the grantor that they are abandoning the usufruct is sufficient.

#### **Section 1065**

##### **Adverse effect on right of usufruct**

If the right of the usufructuary is adversely affected, the provisions applying to claims arising from ownership apply accordingly to claims of the usufructuary.

#### **Section 1066**

##### **Usufruct in the share of a co-owner**

- (1) If there is a usufruct in the share of a co-owner, then the usufructuary exercises the rights that arise from the co-ownership of the co-owners with regard to the administration of the thing and the manner of its use.
- (2) The dissolution of the co-ownership may be required only jointly by the co-owners and the usufructuary.
- (3) If the co-ownership is dissolved, the usufructuary has a right to the usufruct in the objects that take the place of the share.

## **Section 1067**

### **Usufruct in consumable things**

- (1) If consumable things are the subject of the usufruct, then the usufructuary becomes the owner of the things; after the usufruct ends, the usufructuary is to compensate the grantor for the value that the things had at the time of the creation of usufruct. Both the grantor and the usufructuary may have the value determined, at their own cost, by experts.
- (2) The grantor may require that security be provided if the claim to compensation of the value is endangered.

## **Subtitle 2**

### **Usufruct in rights**

## **Section 1068**

### **Statutory definition of usufruct in rights**

- (1) The subject of the usufruct also may be a right.
- (2) The provisions on usufruct in things apply accordingly to usufruct in rights, except to the extent that sections 1069 to 1084 lead to a different conclusion.

## **Section 1069**

### **Creation**

- (1) The usufruct in a right is created in accordance with the provisions applying to the transfer of the right.
- (2) No usufruct may be created in a right that is non-transferable.

## **Section 1070**

### **Usufruct in a right to performance**

- (1) Where a right under which performance may be required is the subject of usufruct, the provisions applying to the legal relationship between the acquirer and the person obliged in the case of a transfer of the right apply accordingly to the legal relationship between the usufructuary and the person obliged.
- (2) Where the exercise of the usufruct is transferred to an administrator under section 1052, the transfer does not take effect in relation to the person obliged until they obtain knowledge of the judicial order made or are served with a notification of the judicial order. The same applies to the termination of the administration.

## **Section 1071**

### **Cancellation or alteration of the encumbered right**

- (1) A right subject to usufruct may be cancelled by legal transaction only with the approval of the usufructuary. Approval is to be declared to the person in whose favour it is given; it is irrevocable. The provision of section 876 sentence 3 remains unaffected.
- (2) The same applies in the case of an alteration of the right, to the extent that this adversely affects the usufruct.

## **Section 1072**

### **Termination of usufruct**

The termination of the usufruct, under the provisions of sections 1063 and 1064, occurs even if the right subject to the usufruct is not a right to a movable thing.

## **Section 1073**

### **Usufruct in a life annuity**

The usufructuary of a life annuity, a retirement security or a similar right is entitled to the individual benefits that may be demanded on the basis of the right.

## **Section 1074**

### **Usufruct in a claim; notice and collection**

The usufructuary of a claim is entitled to collect the claim and, if the due date is contingent on notice of termination being given by the creditor, to give notice of termination. The

usufructuary is to ensure proper collection. The usufructuary is not entitled to make other dispositions over the claim.

#### **Section 1075**

##### **Effect of performance**

- (1) Upon performance being made by the debtor to the usufructuary, the creditor acquires the object provided and the usufructuary acquires the usufruct in the object.
- (2) If consumable things are provided, the usufructuary acquires the ownership; the provision of section 1067 applies accordingly.

#### **Section 1076**

##### **Usufruct in claim bearing interest**

If an outstanding claim bearing interest is the subject of the usufruct, the provisions of sections 1077 to 1079 apply.

#### **Section 1077**

##### **Notice of termination and payment**

- (1) The debtor may pay the capital only to the usufructuary and the creditor jointly. Each of them may require that payment be made to them jointly; each may require, instead of payment, deposit for both of them.
- (2) The usufructuary and the creditor may give notice of termination only jointly. Notice of termination by the debtor is effective only if it is declared to the usufructuary and the creditor.

#### **Section 1078**

##### **Cooperation in collection**

Where the claim is due, the usufructuary and the creditor are reciprocally obliged to cooperate in collection. Where the due date depends on notice of termination being given, either party may demand the cooperation of the other in giving such notice, if collecting the debt is mandated by the rules of proper management of assets due to its safety being jeopardised.

#### **Section 1079**

##### **Investment of the capital**

The usufructuary and the creditor are reciprocally obliged to cooperate in having the collected capital invested such that it bears interest in accordance with the provisions applying to the investment of money held in trust for a ward and, concurrently, in having the usufruct in its regard being created for the usufructuary. The usufructuary determines the nature of the investment.

#### **Section 1080**

##### **Usufruct in a land charge or annuity land charge**

The provisions on usufruct in a claim also apply to usufruct in a land charge and in an annuity land charge.

#### **Section 1081**

##### **Usufruct in bearer instruments or instruments made out to order**

- (1) If a bearer instrument, or an instrument made out to order that is furnished with a blank endorsement, is the subject of usufruct, the usufructuary and the owner jointly are entitled to possession of the instrument and of the renewal coupon relating to the instrument. The usufructuary is entitled to possession of the interest coupons, annuity coupons or dividend coupons relating to the instrument.
- (2) To create the usufruct, the granting of co-possession is sufficient in place of the delivery of the instrument.

#### **Section 1082**

##### **Deposit**

The instrument and the renewal coupon, at the request of the usufructuary or the owner, is to be deposited at a depository institution with the stipulation that surrender may be demanded only jointly by the usufructuary and the owner.

### **Section 1083**

#### **Cooperation in collection**

(1) The usufructuary and the owner of the instrument are reciprocally obliged to cooperate for the purpose of collecting the capital due, of obtaining new interest coupons, annuity coupons or dividend coupons and of undertaking other measures required for the proper management of assets.

(2) In the case of the instrument being redeemed, the provisions of section 1079 apply. A premium paid on redemption is deemed to be part of the capital.

### **Section 1084**

#### **Consumable things**

If a bearer instrument, or an instrument made out to order that is furnished with a blank endorsement, is classified in accordance with section 92 as a consumable thing, the provisions of section 1067 apply.

### **Subtitle 3**

#### **Usufruct in assets**

### **Section 1085**

#### **Creation of usufruct in assets**

Usufruct in the assets of a person may be created only in such a way that the usufructuary obtains the usufruct in the individual objects constituting the assets. To the extent that the usufruct has been created, the provisions of sections 1086 to 1088 apply.

### **Section 1086**

#### **Rights of the creditors of the grantor**

The creditors of the grantor may demand satisfaction, insofar as their claims arose before the creation of the usufruct, from the objects subject to the usufruct notwithstanding the usufruct. If the usufructuary has obtained the ownership of consumable things, then the claim of the grantor to compensation for the value takes the place of the things; the usufructuary is obliged to provide compensation to the creditors without delay.

### **Section 1087**

#### **Relationship between usufructuary and grantor**

(1) The grantor may, if a claim is due that arose before the creation of the usufruct, require the usufructuary to return the objects necessary to satisfy the creditor. The grantor has the right of selection; however, they may select only the objects that are primarily suitable. To the extent that the objects returned are sufficient, the grantor is obliged in relation to the usufructuary to satisfy the creditor.

(2) The usufructuary may satisfy the obligation by providing the object owed. Where the object owed is not among the assets that are subject to the usufruct, the usufructuary is entitled, for the purpose of satisfying the creditor, to alienate an object from among the assets, if it is not possible without risk to await satisfaction by the grantor. In selecting it, the usufructuary is to give preference to an object that is suitable. If the usufructuary is obliged to provide compensation for the value of consumable things, then they may not effect an alienation.

### **Section 1088**

#### **Liability of the usufructuary**

(1) The creditors of the grantor whose claims were already subject to interest at the time of the grant may demand interest, for the duration of the usufruct, also from the usufructuary. The same applies to other recurrent payments that in the case of proper management are satisfied from the income from the assets, if the claim arose before the usufruct was granted.



(2) The liability of the usufructuary may not be excluded or restricted by agreement between the usufructuary and the grantor.

(3) The usufructuary is obliged in relation to the grantor to satisfy the creditors with regard to the claims set out in subsection (1). The grantor may require the return of objects for the purpose of satisfaction only if the usufructuary is in default in fulfilling this obligation.

#### **Section 1089**

##### **Usufruct in an inheritance**

The provisions of sections 1085 to 1088 apply accordingly to usufruct in an inheritance.

#### **Title 3**

##### **Restricted personal easements**

#### **Section 1090**

##### **Statutory definition of the restricted personal easement**

(1) A plot of land may be encumbered in such a way that the person for whose benefit the encumbrance is made is entitled to use the plot of land in individual respects, or that they are authorised in another way that may form the subject of an easement (restricted personal easement).

(2) The provisions of sections 1020 to 1024, 1026 to 1029 and 1061 apply accordingly.

#### **Section 1091**

##### **Scope**

The scope of a restricted personal easement is determined in case of doubt by the personal need of the person entitled.

#### **Section 1092**

##### **Non-transferability; ceding the exercise**

(1) A restricted personal easement is not transferable. The exercise of the easement may be ceded to another only if ceding the exercise is permitted.

(2) If a restricted personal easement or the right to be granted a restricted personal easement is owed to a legal person or a partnership having legal personality, then the provisions of sections 1059a to 1059d apply accordingly.

(3) If a legal person or a partnership having legal personality has the right to a restricted personal easement that entitles the holder to use a plot of land for facilities serving to conduct electricity, gas, district heating, water, sewage, oil or raw materials, including all associated installations that directly serve the conducting, for telecommunications installations, for installations to transport products between places of management of one or more private or public enterprises or for tram or railway installations, the easement is transferable. The transferability does not include the right to divide the easement according to the elements it authorises. Where one of the persons named in sentence 1 is entitled to a claim to be granted such a restricted personal easement, the claim is transferable. The provisions of sections 1059b to 1059d apply accordingly.

#### **Section 1093**

##### **Right of residence**

(1) The right to use a building or part of a building as a residence, to the exclusion of the owner, also may be granted as a restricted personal easement. The provisions applying to usufruct of sections 1031, 1034 and 1036, of section 1037 (1) and of sections 1041, 1042, 1044, 1049, 1050, 1057 and 1062 apply accordingly to this right.

(2) The person entitled is authorised to admit into their residence their family and the persons required for service befitting the entitled person's station and for the provision of care to them.

(3) If the right is restricted to a part of the building, the person entitled may share the use of the facilities and installations intended for the common use of the occupants.

**Division 5**  
**Right of preemption**

**Section 1094**

**Statutory contents of the in-rem right of preemption**

- (1) A plot of land may be encumbered in such a manner that the person in whose favour the encumbrance is created is entitled to a right of preemption against the owner.
- (2) The right of preemption also may be created to the benefit of the respective owner of another plot of land.

**Section 1095**

**Encumbrance of a fraction**

A fraction of a plot of land may be encumbered by a right of preemption only if it consists of the share of a co-owner.

**Section 1096**

**Application to accessories**

The right of preemption may be extended to the accessories that are sold with the plot of land. In case of doubt, it is to be presumed that the right of preemption is intended to extend to these accessories.

**Section 1097**

**Creation for one or more cases of sale**

The right of preemption is restricted to the case of sale by the owner who owns the plot of land at the time of the creation, or by the owner's heirs; however, it also may be created for more than one or for all cases of sale.

**Section 1098**

**Effect of a right of preemption**

- (1) The legal relationship between the person entitled and the person obliged is governed by the provisions of sections 463 to 473. The right of preemption also may be exercised if the plot of land is sold by the insolvency administrator by private agreement.
- (2) In relation to third parties, the right of preemption has the effect of a priority notice entered to secure the claim arising from the exercise of the right to transfer ownership.
- (3) Where a legal person or a partnership having legal personality is entitled to a right of preemption created under section 1094 (1), the provisions of sections 1059a to 1059d apply accordingly to the transfer of the right, if there is no agreement on its transferability.

**Section 1099**

**Notifications**

- (1) If a third party obtains ownership of the plot of land, the third party may, in the same way as the person obliged, notify the person entitled of the contents of the purchase agreement with the effect specified in section 469 (2).
- (2) The person obliged is to notify the new owner as soon as the right of preemption is exercised or its exercise is excluded.

**Section 1100**

**Rights of the purchaser**

The new owner may, if they are the purchaser or a successor in title of the purchaser, refuse to give their approval to the person entitled being entered in the Land Register as the owner and to the surrender of the plot of land until the purchase price agreed between the person obliged and the purchaser, insofar as it has been adjusted, is refunded to the new owner. If the person entitled achieves registration as owner, then the previous owner may demand refund of the adjusted purchase price in return for surrender of the plot of land.

**Section 1101**

**Release of the person entitled**

To the extent that the person entitled is required in accordance with section 1100 to refund the purchase price to the purchaser or to their successor in title, the person entitled is released from the obligation to pay the purchase price owed under the preemption.

#### **Section 1102**

##### **Release of the purchaser**

If the purchaser or their successor in title, as a result of the exercise of the right of preemption, loses ownership, the purchaser will be released, to the extent that the purchase price owed by them has not yet been adjusted, from their obligation; they may not demand repayment of the adjusted purchase price.

#### **Section 1103**

##### **Subjective in-rem right of preemption and personal right of preemption**

(1) A right of preemption existing to the benefit of the respective owner of a plot of land may not be separated from the ownership of this plot of land.

(2) A right of preemption existing to the benefit of a specific person may not be tied to the ownership of a plot of land.

#### **Section 1104**

##### **Exclusion of unknown entitled persons**

(1) Where the person entitled is unknown, their right may be excluded by way of the judicial call procedure if the prerequisites for the exclusion of a mortgage creditor specified in section 1170 are satisfied. The right of preemption is extinguished upon the exclusory order becoming final and binding.

(2) These provisions do not apply to a right of preemption which exists to the benefit of the respective owner of a plot of land.

#### **Division 6**

##### **Charges on land**

#### **Section 1105**

##### **Statutory contents of the charge on land**

(1) A plot of land may be encumbered in such a way that recurring acts of performance are to be made from the plot of land to the person in whose favour the encumbrance is created (charge on land). It is also possible to agree as the contents of the charge on land that the acts of performance to be made are adjusted to changed circumstances without notice if, based on the prerequisites set out in the agreement, the type and scope of the encumbrance of the land can be determined.

(2) The charge on land also may be created to the benefit of the respective owner of another plot of land.

#### **Section 1106**

##### **Encumbrance of a fraction**

A fraction of a plot of land may be encumbered by a charge on land only if it consists of the share of a co-owner.

#### **Section 1107**

##### **Individual payments**

The provisions governing the interest on a mortgage claim apply accordingly to the individual acts of performance.

#### **Section 1108**

##### **Personal liability of the owner**

(1) In addition, the owner is personally liable for the performance falling due during their ownership, unless otherwise provided.

(2) If the plot of land is divided, the owners of the individual parts are liable as joint and several debtors.

## **Section 1109**

### **Division of the dominant plot of land**

(1) If the plot of land of the person entitled is divided, then the charge on the land continues in existence for the individual parts. If the performance is divisible, then the shares of the owners are determined in the relationship of the size of the parts; if it is not divisible, then the provisions of section 432 apply. In case of doubt, the exercise of the right is permissible only in such a way that it does not become more burdensome for the owner of the encumbered plot of land.

(2) The person entitled may determine that the right is to be tied only to one of the parts. This determination is to be made to the Land Registry and requires entry in the Land Register; the provisions of sections 876 and 878 apply accordingly. If the person entitled alienates a part of the land without making this determination, then the right remains connected to the part that the person entitled retains.

(3) If the charge on land is beneficial to only one of the parts, it remains connected to this part only.

## **Section 1110**

### **Subjective in-rem charge on land**

A charge on land existing to the benefit of the respective owner of a plot of land may not be separated from the ownership of this plot of land.

## **Section 1111**

### **Personal charge on land**

(1) A charge on land existing to the benefit of a specific person may not be connected with the ownership of a plot of land.

(2) If a claim for an individual act of performance is not transferable, then the right may not be alienated or encumbered.

## **Section 1112**

### **Exclusion of unknown entitled persons**

If the person entitled is unknown, then the exclusion of their right is governed accordingly by the provisions of section 1104.

## **Division 7**

### **Mortgage, land charge, annuity land charge**

#### **Title 1**

#### **Mortgage**

## **Section 1113**

### **Statutory contents of the mortgage**

(1) A plot of land may be encumbered in such a way that the person in whose favour the encumbrance is created is to be paid a specific sum of money to satisfy a claim to which they are entitled out of the land (mortgage).

(2) The mortgage also may be created for a future or a conditional claim.

## **Section 1114**

### **Encumbrance of a fraction**

A fraction of a plot of land may be encumbered by a mortgage only if it consists of the share of a co-owner, except in the cases governed by section 3 (6) of the Land Register Code (*Grundbuchordnung*).

## **Section 1115**

### **Entry of the mortgage**

(1) In entering the mortgage in the Land Register, the creditor, the amount in money of the claim and, where the claim bears interest, the rate of interest, and if other collateral performance is to be made, the value in money of said collateral performance, must be

stated in the Land Register; in all other cases, in order to describe the claim, reference may be made to the approval of registration.

(2) In entering the mortgage in the Land Register for a loan by a credit institution, of whose articles of association the competent authority has given notice by publication, reference to the articles of association is sufficient to designate the collateral performance apart from the interest that is to be provided in accordance with the articles of association.

#### **Section 1116**

##### **Certificated and uncertificated mortgage**

(1) A mortgage certificate is issued on the mortgage.

(2) The issuance of the certificate may be excluded. This exclusion also may be effected subsequently. The exclusion requires agreement between the creditor and the owner as well as the entry in the Land Register; the provisions of section 873 (2) and of sections 876 and 878 apply accordingly.

(3) The exclusion of the issuance of the certificate may be cancelled; the cancellation is effected in the same way as the exclusion.

#### **Section 1117**

##### **Acquisition of the certificated mortgage**

(1) Unless issuance of a mortgage certificate has been excluded, the creditor acquires the mortgage only upon the certificate being handed over to them by the owner of the plot of land. The provisions of section 929 sentence 2 and sections 930 and 931 apply to the handover.

(2) The handover of the certificate may be replaced by agreement as to the creditor being entitled to have the Land Registry hand over the certificate to them.

(3) If the creditor is in possession of the certificate, it is presumed that handover has taken place.

#### **Section 1118**

##### **Liability for incidental claims**

By operation of the mortgage, the plot of land also is liable for the statutory interest on the claim and for the costs of calling it in and of the pursuit of rights for the purpose of obtaining satisfaction from the plot of land.

#### **Section 1119**

##### **Extension of liability for interest**

(1) If the claim is interest-free or if the rate of interest is less than five per cent, then the mortgage may, without the approval of the persons entitled who take equal or lower priority, be extended so that the plot of land is liable for interest of up to five per cent.

(2) The approval of these persons entitled likewise is not required for a modification of the time and place of payment.

#### **Section 1120**

##### **Extension to products, parts and accessories**

The mortgage extends to the products separated from the plot of land and to other components unless, by separation in accordance with sections 954 to 957, they devolved into the ownership of a person other than the owner or the owner-occupier of the plot of land, and also extends to the accessories of the plot of land to the exception of accessories that have not devolved into the ownership of the owner of the plot of land.

#### **Section 1121**

##### **Release from liability through alienation and removal**

(1) Products and other components of the plot of land as well as accessories are released from liability if they are alienated and removed from the plot of land before they are seized for the benefit of the creditor.

(2) Where the alienation occurs before the removal, the purchaser may not rely, in relation to the creditor, on their having been in good faith in respect of the mortgage. Where the purchaser removes the thing from the plot of land, a seizure effected prior to the removal is effective in relation to them only if they are not in good faith in respect of the seizure upon removal.

#### **Section 1122**

##### **Release from liability without alienation**

(1) Where the products or components have been separated, within the limits of what is required under proper management, from the plot of land, their liability is extinguished even without alienation if they are removed from the plot of land before they are seized, unless the removal takes place for a temporary purpose.

(2) Accessories are released from liability without alienation if they lose the quality of being accessories, within the limits of what is required under proper management, before their seizure.

#### **Section 1123**

##### **Extension to claim for rent or for usufructuary rent**

(1) If the plot of land is let on a lease or usufructuary lease, the mortgage extends to the claim for rent or for usufructuary rent.

(2) To the extent that the claim is due, it is released from liability upon the expiry of one year from the due date, unless it is attached to the benefit of the mortgage creditor prior to this date. If the rent or usufructuary rent is payable in advance, then the release does not extend to the rent or usufructuary rent for a time later than the calendar month current at the time of the attachment; if the attachment is effected after the fifteenth day of the month, the release also extends to the rent or the usufructuary rent for the following calendar month.

#### **Section 1124**

##### **Advance disposition over the rent or usufructuary rent**

(1) If the rent or usufructuary rent is collected before it is attached to the benefit of the mortgage creditor, or if it is alienated in another way prior to the attachment, the disposition is effective in relation to the mortgage creditor. If the disposition consists of the transfer of the claim to a third party, then the liability for the claim is extinguished; if a third party acquires a right to the claim, this right has priority over the mortgage.

(2) The disposition is ineffective in relation to the mortgage creditor to the extent that it relates to the rent or usufructuary rent for a time later than the calendar month current at the time of the attachment; however, if the attachment is made after the fifteenth day of the month, the disposition is effective insofar as it relates to the rent or usufructuary rent for the following calendar month.

(3) If the plot of land is alienated without the claim, this is equivalent to the transfer of the claim to a third party.

#### **Section 1125**

##### **Set-off against rent or usufructuary rent**

To the extent that the collection of the rent or usufructuary rent is ineffective in relation to the mortgage creditor, the lessee or the usufructuary lessee may not set off, in their relation to the mortgage creditor, a claim to which they are entitled against the lessor or the usufructuary lessor.

#### **Section 1126**

##### **Extension to recurring acts of performance**

If a right to recurring acts of performance is tied to the ownership of the plot of land, the mortgage extends to claims to these acts of performance. The provisions of section 1123 (2) sentence 1, section 1124 subsections (1) and (3) and section 1125 apply accordingly. A disposition made before the attachment in respect of a claim for an act of performance that

first becomes due three months after the attachment is ineffective in relation to the mortgage creditor.

#### **Section 1127**

##### **Extension to insurance claim**

- (1) If objects that are subject to the mortgage are covered by insurance for the owner or the owner-occupier of the plot of land, the mortgage extends to a claim against the insurer.
- (2) Liability for the claim against the insurer is extinguished if the insured object is restored to its original condition or a replacement is provided for it.

#### **Section 1128**

##### **Insurance on buildings**

- (1) If a building is insured, then the insurer may not pay the insured sum to the insured with effect in relation to the mortgage creditor until the insurer or the insured has notified the mortgage creditor that the damage has occurred and once one month has passed since the receipt of the notification. The mortgage creditor may, before the expiry of this period, raise an objection with the insurer with regard to the payment. The notification may be omitted if it is inadvisable; in this case the month is calculated from the point in time at which the insured sum becomes due.
- (2) Where the mortgage creditor has notified the insurer of their mortgage, the insurer may only pay to the insured, with effect in relation to the mortgage creditor, if the mortgage creditor has given their approval to the payment in writing.
- (3) In all other cases, the provisions governing a pledged claim apply; the insurer may not, however, plead that they were unaware of the mortgage evident from the Land Register.

#### **Section 1129**

##### **Other insurance against damage**

If an object other than a building is insured, then the liability for the claim against the insurer is determined in accordance with the provisions of section 1123 (2) sentence 1 and section 1124 subsections (1) and (3).

#### **Section 1130**

##### **Replacement clause**

If, under the insurance provisions, the insurer is obliged to pay only the insured sum to replace the insured object, then a payment to the insured in accordance with these provisions is effective in relation to the mortgage creditor.

#### **Section 1131**

##### **Addition of a plot of land**

Where a plot of land is added to another plot of land in the Land Register under section 890 (2), the mortgages in existence on this plot of land extend to the added plot of land. Rights encumbering the added plot of land have priority over these mortgages.

#### **Section 1132**

##### **Blanket mortgage**

- (1) If there is one mortgage on more than one plot of land for the claim (blanket mortgage), then each plot of land is liable for the entire claim. The creditor may, at their discretion, seek satisfaction from each plot of land as a whole or in part.
- (2) The creditor is entitled to apportion the amount of the claim between the individual plots of land in such a way that each plot of land is liable only for the apportioned amount. The provisions of sections 875, 876 and 878 apply accordingly to the apportionment.

#### **Section 1133**

##### **Danger to the security of the mortgage**

If, as a result of the deterioration of the plot of land, the security of the mortgage is endangered, then the creditor may set a reasonable time limit for the owner to remove the danger. After the expiry of the time limit, the creditor is entitled to seek satisfaction from the

plot of land immediately if the danger has not been removed by the improvement of the plot of land or by the creation of another mortgage. If the claim is interest-free, and is not yet due, the creditor is entitled only to the amount which, when the statutory interest for the period from payment until due date is added to it, equals the amount of the claim.

#### **Section 1134**

##### **Application for an injunction**

(1) If the owner or a third party influences the plot of land in such a way that there is the concern that a deterioration of the plot of land will endanger the security of the mortgage, the creditor may seek a prohibitory injunction.

(2) If the influence originates from the owner, the court is to order, upon application by the creditor, that the measures required to avert the danger be taken. The same applies if there is the concern that a deterioration will occur because the owner fails to take the necessary precautions against the influence of third parties or against other damage.

#### **Section 1135**

##### **Deterioration of accessories**

It is equivalent to a deterioration of the plot of land within the meaning of sections 1133 and 1134 if accessories to which the mortgage extends deteriorate, or if, contrary to the principles of proper management, they are removed from the plot of land.

#### **Section 1136**

##### **Restraint on disposition by legal transaction**

An agreement by which the owner enters into obligation in relation to the creditor not to alienate the plot of land or not to further encumber it is void.

#### **Section 1137**

##### **Defences of the owner**

(1) The owner may assert against the mortgage the defences that are available against the claim to a personal obligor, as well as those available to a surety under section 770. If the personal debtor dies, then the owner may not invoke the fact that the heir has only limited liability for the obligation.

(2) If the owner is not the personal debtor, then the owner does not lose the right to assert a defence by the latter waiving it.

#### **Section 1138**

##### **Presumption of legal force of the contents of the Land Register**

The provisions of sections 891 to 899 apply to the mortgage also with a view to the claim and the defences available to the owner in accordance with section 1137.

#### **Section 1139**

##### **Objection with regard to an uncertificated mortgage for a loan**

If, upon the creation of a mortgage for a loan, the issuance of a mortgage certificate is excluded, then an application by the owner to the Land Registry suffices to register an objection on the basis that the loan has not been made available, provided that the application is made before the expiry of one month after the mortgage has been entered. If the objection is entered within this month, then the entry has the same effect as if the objection had been entered at the same time as the mortgage.

#### **Section 1140**

##### **Mortgage certificate and inaccuracy of the Land Register**

Insofar as the inaccuracy of the Land Register is apparent from the mortgage certificate or from a memorandum on the certificate, the invocation of the provisions of sections 892 and 893 is excluded. An objection to an incorrect entry in the Land Register that is apparent from the certificate or from a memorandum on the certificate is equivalent to an objection entered in the Land Register.



#### **Section 1141**

##### **Notice of termination of the mortgage**

(1) Where the due date of the claim is contingent on notice of termination being given, the notice is effective in respect of the mortgage only if it is given by the creditor to the owner or by the owner to the creditor. For the benefit of the creditor, the person entered as owner in the Land Register is deemed to be the owner.

(2) If the owner has no residence within the territory of Germany, or if the prerequisites set out in section 132 (2) have been met, the local court within the district of which the plot of land is situated is to appoint, upon application by the creditor, a representative for the owner on whom the notice of the creditor can be served.

#### **Section 1142**

##### **Owner's right to provide satisfaction**

(1) The owner is entitled to satisfy the creditor if the claim against has fallen due in relation to the owner or if the personal debtor is entitled to perform.

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

#### **Section 1143**

##### **Devolution of claim**

(1) If the owner is not the personal debtor, then the claim, to the extent that the owner satisfies the creditor, devolves to the owner. The provisions of section 774 (1) governing a surety apply accordingly.

(2) If there is a blanket mortgage in relation to the claim, the provisions of section 1173 apply to it.

#### **Section 1144**

##### **Handover of documents**

The owner may, in return for satisfaction of the creditor, demand handover of the mortgage certificate and the other documents that are required for the correction of the Land Register or for the deletion of the mortgage.

#### **Section 1145**

##### **Partial satisfaction**

(1) If the owner provides only partial satisfaction to the creditor, then the owner is not entitled to demand that the mortgage certificate be handed over. The creditor is obliged to record the partial satisfaction on the certificate and to present the certificate to the Land Registry for the purpose of the correction of the Land Register or for deletion, or to the competent public authority or the notary responsible for the purpose of issuing a partial mortgage certificate for the owner.

(2) The provision of subsection (1) sentence 2 applies to interest and other collateral performance only if they are due later than in the calendar quarter in which the creditor is satisfied or in the following quarter. Costs for which the plot of land is liable under section 1118 are not governed by the provision.

#### **Section 1146**

##### **Default interest**

If the prerequisites for a debtor to be in default are met in relation to the owner, the creditor is entitled to default interest from the plot of land.

#### **Section 1147**

##### **Satisfaction by compulsory enforcement**

The satisfaction of the creditor from the plot of land and from the objects to which the mortgage extends is effected by compulsory enforcement.

#### **Section 1148**

##### **Fiction of ownership**

In pursuing the right arising from the mortgage, the person who is entered as owner in the Land Register is deemed, for the benefit of the creditor, to be the owner. The right of the unregistered owner to assert the objections to the mortgage to which they are entitled remains unaffected.

#### **Section 1149**

##### **Prohibited agreements on satisfaction**

The owner may not, as long as the claim has not fallen due in relation to them, grant to the creditor the right to demand transfer of the ownership of the plot of land for the purpose of obtaining satisfaction or to effect the alienation of the plot of land in any way other than by compulsory enforcement.

#### **Section 1150**

##### **Right of redemption of third parties**

If the creditor demands satisfaction from the plot of land, then the provisions of sections 268, 1144 and 1145 apply accordingly.

#### **Section 1151**

##### **Change of priority for partial mortgages**

If the claim is divided, the approval of the owner is not required to change the order of priority between the partial mortgages.

#### **Section 1152**

##### **Partial mortgage certificate**

In the case of the claim being divided, a partial mortgage certificate may be issued for each part unless the issuance of a mortgage certificate is excluded; the approval of the owner of the plot of land is not required. The partial mortgage certificate takes the place of the previous certificate for the part to which it relates.

#### **Section 1153**

##### **Transfer of mortgage and claim**

- (1) Upon the transfer of the claim, the mortgage devolves to the new creditor.
- (2) The claim may not be transferred without the mortgage; the mortgage may not be transferred without the claim.

#### **Section 1154**

##### **Assignment of the claim**

- (1) The assignment of the claim requires the declaration of assignment to be made in writing and the mortgage certificate to be handed over; the provision of section 1117 applies. Upon demand by the new creditor, the previous creditor is to have the declaration of assignment publicly certified at their expense.
- (2) The written form required for the declaration of assignment may be replaced by the entry of the assignment in the Land Register.
- (3) If the issuance of a mortgage certificate is excluded, the provisions of sections 873 and 878 apply accordingly to the assignment of the claim.

#### **Section 1155**

##### **Presumption of legal force of certified declarations of assignment**

If the right of the holder of the mortgage certificate as creditor arises from a consecutive series of publicly certified declarations of assignment that lead back to a registered creditor, the provisions of sections 891 to 899 apply in the same way as if the holder of the certificate were entered in the Land Register as a creditor. A judicial transfer order and a publicly certified acknowledgement of a transfer of the claim effected by operation of law are equivalent to a publicly certified declaration of assignment.

#### **Section 1156**

##### **Legal relationship between the owner and the new creditor**

The provisions of sections 406 to 408 governing the transfer of the claim do not apply to the legal relationship between the owner and the new creditor with regard to the mortgage. However, the new creditor must allow a notice of termination of the owner served on the previous creditor to be asserted against them unless the transfer is known to the owner or is entered in the Land Register at the time of the notice.

#### **Section 1157**

##### **Continuation of defences against the mortgage**

A defence which the owner is entitled to assert against the mortgage on the basis of the legal relationship existing between the owner and the previous creditor also may be relied on in relation to the new creditor. The provisions of sections 892, 894 to 899 and 1140 also apply to this defence.

#### **Section 1158**

##### **Future collateral performance**

To the extent that the claim is for interest or other collateral performance that does not fall due later than in the calendar quarter in which the owner obtains knowledge of the transfer, or in the following quarter, the provisions of sections 406 to 408 apply to the legal relationship between the owner and the new creditor; the creditor may not invoke the provisions of 892 against the objections that the owner is entitled to raise in accordance with sections 404, 406 to 408 and 1157.

#### **Section 1159**

##### **Arrears of collateral performance**

(1) To the extent that the claim is for arrears of interest or other collateral performance, the transfer and the legal relationship between the owner and the new creditor are governed by the general provisions that apply to the transfer of claims. The same applies to a claim for the reimbursement of costs for which the plot of land is liable in accordance with section 1118.

(2) The provision of section 892 does not apply to the claims designated in subsection (1).

#### **Section 1160**

##### **Enforcement of a certificated mortgage**

(1) The enforcement of a mortgage may be contested, unless the issuance of a mortgage certificate is excluded, if the creditor does not present the certificate; where the creditor is not entered in the Land Register, the instruments required under section 1155 likewise are to be presented.

(2) A notice of termination or a dunning letter given to the owner is ineffective if the creditor does not present the required documents as stipulated in subsection (1) and the owner rejects the notice or the dunning letter for this reason without undue delay.

(3) These provisions do not apply to the claims set out in section 1159.

#### **Section 1161**

##### **Enforcement of the claim**

If the owner is the personal debtor, then the provision of section 1160 also applies to the enforcement of the claim.

#### **Section 1162**

##### **Judicial call with regard to the mortgage certificate**

If the mortgage certificate has been lost or destroyed, then it may be declared invalid by way of the judicial call procedure.

#### **Section 1163**

##### **Owner mortgage**

(1) If the claim for which the mortgage is created fails to come into existence, the owner is entitled to the mortgage. If the claim is extinguished, the owner acquires the mortgage.

(2) A mortgage with regard to which the issuance of a mortgage certificate is not excluded belongs to the owner until the certificate is handed over to the creditor.

#### **Section 1164**

##### **Devolution of the mortgage to the debtor**

(1) If the personal debtor satisfies the creditor, the mortgage passes to the personal debtor to the extent to which they may demand compensation from the owner or from a predecessor in title of the owner. If the debtor is to be compensated only in part, the owner may not enforce the mortgage, to the extent that it has devolved to the owner, to the disadvantage of the mortgage of the debtor.

(2) If the claim and the debt are merged in one person, this is equivalent to satisfying the creditor.

#### **Section 1165**

##### **Discharge of the debtor**

If the creditor waives the mortgage, or if the creditor cancels it in accordance with section 1183, or grants priority to another right, the personal debtor is discharged to the extent that, without this disposition, they might have obtained compensation from the mortgage in accordance with section 1164.

#### **Section 1166**

##### **Notification of the debtor**

Where the personal debtor is entitled to demand compensation from the owner if they satisfy the creditor, then they may, if the creditor pursues a compulsory auction of the plot of land and does not notify them without undue delay, refuse to satisfy the creditor for a loss at the compulsory auction to the extent that they suffer damage as a result of the failure to notify. The notification may be omitted if it is inadvisable.

#### **Section 1167**

##### **Delivery of correction documents**

Where the personal debtor, if they satisfy the debtor, acquires the mortgage, or where, in the event of satisfaction, they have some other interest of a legal nature in a correction of the Land Register, they have the rights set out in sections 1144 and 1145.

#### **Section 1168**

##### **Waiver of the mortgage**

(1) If the creditor waives the mortgage, the owner acquires it.

(2) The waiver is to be declared to the Land Registry or to the owner and requires entry in the Land Register. The provisions of section 875 (2) and sections 876 and 878 apply accordingly.

(3) If the creditor waives the mortgage with regard to part of the claim, the owner has the rights set out in section 1145.

#### **Section 1169**

##### **Defence with a negative effect on a right**

If the owner is entitled to a defence that permanently excludes the enforcement of the mortgage, then the owner may demand that the creditor waive the mortgage.

#### **Section 1170**

##### **Exclusion of unknown creditors**

(1) Where the creditor is unknown, their right may be excluded by way of the judicial call procedure if 10 years have passed since the last entry in the Land Register with reference to the mortgage and the right of the creditor has not been recognised by the owner within this period in a manner suited under section 212 (1) no. 1 for the limitation period to recommence. If a payment period defined in calendar terms has been specified for the claim, then this period will not commence before the end of the payment date.

(2) Upon the exclusory order becoming final and binding, the owner acquires the mortgage. The mortgage certificate issued to the creditor becomes invalid.

#### **Section 1171**

##### **Exclusion by deposit**

(1) The right of the unknown creditor also may be excluded by way of the judicial call procedure if the owner is entitled to satisfy the creditor or to give notice of termination, and deposits the amount of the claim for the creditor, at the same time waiving the right of revocation. The deposit of interest is required only if the rate of interest is entered in the Land Register; interest for a period earlier than the fourth calendar year prior to the exclusory order becoming final and binding is not required to be deposited.

(2) Upon the exclusory order becoming final and binding, the creditor is deemed to have been satisfied, unless under the provisions on deposit satisfaction already has occurred. The mortgage certificate issued to the creditor becomes invalid.

(3) The right of the creditor to the deposited amount lapses upon the expiry of 30 years after the exclusory order has become final and binding if the creditor does not report to the depository institution before then; the depositor is entitled to revoke even if they have waived the right of revocation.

#### **Section 1172**

##### **Owner blanket mortgage**

(1) In the cases governed by section 1163, the owners of the encumbered plots of land are jointly entitled to a blanket mortgage.

(2) Each owner may, unless otherwise agreed, demand that the mortgage on their plot of land be restricted, in accordance with section 1132 (2), to the partial amount which is equivalent to the proportion between the value of their plot of land and the value of all of the plots of land, and that it be allotted to them with this restriction. The value is calculated deducting those encumbrances that have higher priority than the blanket mortgage.

#### **Section 1173**

##### **Satisfaction by one of the owners**

(1) Where the owner of one of the plots of land encumbered by a blanket mortgage satisfies the creditor, they acquire the mortgage on their plot of land; the mortgage on the other plots of land is extinguished. It is equivalent to the satisfaction of the creditor by the owner if the right of the creditor is transferred to the owner, or if the claim and debt are merged in the person of the owner.

(2) If the owner who satisfies the creditor is entitled to demand compensation from the owner of one of the other plots of land or from a predecessor in title of that owner, then the mortgage on the plot of land of this owner also devolves to the owner satisfying the creditor in the amount of the claim for compensation; it remains a blanket mortgage, together with the mortgage on the plot of land belonging to the owner satisfying the creditor.

#### **Section 1174**

##### **Satisfaction by the personal debtor**

(1) Where the personal debtor satisfies the creditor to whom a blanket mortgage is owed, or where, in a blanket mortgage, the claim and debt are merged in one person, then if the debtor is entitled to demand compensation only from the owner of one of the plots of land or from a predecessor in title of the owner, the mortgage on this plot of land devolves to the debtor; the mortgage on the remaining plots of land is extinguished.

(2) Where only partial compensation is payable to the debtor, and for this reason the mortgage devolves to the debtor only for a partial amount, the owner is to allow this amount to be counted towards the part of the remaining amount of the blanket mortgage to which the owner is entitled in accordance with section 1172.

#### **Section 1175**

##### **Waiver of the blanket mortgage**

- (1) Where a creditor waives the blanket mortgage, it devolves to the owners of the encumbered plots of land jointly; the provisions of section 1172 (2) apply. If the creditor waives the mortgage on one of the plots of land, the mortgage thereon is extinguished.  
(2) The same applies if the right of the creditor is excluded in accordance with section 1170.

#### **Section 1176**

##### **Owner partial mortgage; conflict clause**

Where the prerequisites set out in sections 1163, 1164, 1168 and 1172 to 1175 are met only in respect of a partial amount of the mortgage, the mortgage, which on the basis of these provisions devolves to the owner or to one of the owners or to the personal debtor, may not be enforced to the disadvantage of the mortgage that remains with the creditor.

#### **Section 1177**

##### **Owner land charge, owner mortgage**

- (1) If the mortgage and the ownership are merged in one person, and the owner is not also entitled to the claim, the mortgage is converted into a land charge. With regard to whether the loan bears interest, the rate of interest, period for payment, notice of termination and place of payment, the provisions laid down for the claim remain the relevant provisions.  
(2) If the claim is also owed to the owner, the rights of the owner under the mortgage are governed, as long as the merger exists, by the provisions applicable to a land charge of the owner.

#### **Section 1178**

##### **Mortgage for collateral performance and costs**

- (1) A mortgage for arrears of interest and other collateral performance as well as for costs that are payable to the creditor is extinguished if it is merged with the ownership in one person. Extinction does not take place as long as a third party has a claim for any such performance.  
(2) It is sufficient for a waiver of the mortgage for the performance set out in subsection (1) if the creditor makes a declaration to the owner. As long as a third party has a claim for such performance, the approval of the third party is required. Approval is to be declared to the person in whose favour it is given; it is irrevocable.

#### **Section 1179**

##### **Priority notice of right to deletion**

Where the owner agrees in relation to another to have the mortgage deleted if it is merged with the ownership in one person, a priority notice to secure the claim to deletion may be entered in the Land Register, if the person in whose favour the registration is to be made:

1. holds another right having equal or lower priority as a mortgage, land charge or annuity charge on the plot of land, or
2. is entitled to the grant of another such right or to the transfer of ownership of the plot of land; the claim also may be future or conditional.

#### **Section 1179a**

##### **Claim to deletion in the case of third party rights**

- (1) The creditor of a mortgage may demand of the owner that the latter arrange for the deletion of a mortgage having higher or equal priority if, at the time of registration of the mortgage of the creditor, it is merged with the ownership in one person or such merger occurs subsequently. If, after registration of the mortgage given precedence under sentence 1, the ownership devolved to another by way of singular succession, each owner is obliged to delete with regard to the mergers existing at the time of that owner's ownership. The claim to deletion is secured in the same way as if a priority notice had been entered in the Land Register for its security at the same time as the mortgage given precedence.  
(2) The deletion of a mortgage which is merged with the ownership in one person under section 1163 (1) sentence 1 may not be demanded under subsection (1) unless it appears

that the claim to be secured will no longer come into existence; however, the claim for deletion is available from this point in time on with regard to the mergers existing beforehand. A claim under subsection (1) is not constituted by the merger of a mortgage with ownership in accordance with section 1163 (2).

(3) If, in the case of a favoured mortgage, the prerequisites set out in section 1163 are met but the right has not been entered in the Land Register for the owner or their successor in title, the claim for deletion belongs to the registered creditor or their successor in title.

(4) If the priority of a mortgage is reduced, subsections (1) to (3) are to be applied accordingly to the deletion of the mortgage that is prior or equal in rank to it as a result of the change of priority, subject to the proviso that the time of the registration of the change of priority takes the place of the time of registration of the right with lower priority.

(5) If the creditor of a mortgage has a claim to deletion under the above provisions, it may be agreed that the exclusion of this claim is part of the contents of the mortgage; the exclusion may be restricted to a specific case of merger. The exclusion is to be stated in the Land Register with a designation of the mortgages which are wholly or partially exempted from the claim for deletion; if the exclusion has not been agreed for every case of merger, then, in order to define specifically the cases involved, reference may be made to the approval of registration. If the exclusion is cancelled, no claims to deletion arise from this for mergers which existed only prior to the cancellation.

#### **Section 1179b**

##### **Claim to deletion based on one's own right**

(1) A person who is entered in the Land Register as the creditor of a mortgage or is identified as the creditor in accordance with section 1155 may demand from the owner the deletion of the mortgage, if, at the time of its registration, it is merged with the ownership in one person or such a merger occurs subsequently.

(2) Section 1179a subsection (1) sentences 2 and 3 and subsections (2) and (5) is to be applied accordingly.

#### **Section 1180**

##### **Substitution for the claim**

(1) The claim for which the mortgage exists may be replaced by another claim. The alteration requires the agreement of the creditor and the owner, and registration in the Land Register; the provisions of section 873 (2) and sections 876 and 878 apply accordingly.

(2) If the claim that is to take the place of the previous claim does not belong to the previous mortgage creditor, their approval is required; this approval is to be declared to the Land Registry or to the person in whose favour it is given. The provisions of section 875 (2) and section 876 apply accordingly.

#### **Section 1181**

##### **Extinction by satisfaction from the plot of land**

(1) If the creditor is satisfied from the plot of land, the mortgage is extinguished.

(2) If the creditor is satisfied from one of the plots of land encumbered by a blanket mortgage, the other plots of land are also released.

(3) Satisfaction from the plot of land is equivalent to satisfaction from the objects to which the mortgage extends.

#### **Section 1182**

##### **Transfer in the case of satisfaction from the blanket mortgage**

To the extent that, in the case of a blanket mortgage, the owner of the plot of land from which the creditor is satisfied may demand compensation from the owner of one of the other plots of land or from a predecessor in title of this owner, the mortgage on the plot of land of this owner devolves to them. However, if the creditor is satisfied only in part, the mortgage may not be enforced to the disadvantage of the mortgage that remains to the creditor and, if

the plot of land is encumbered by an equal or lower-ranking right, it may not be enforced to the disadvantage of that right.

### **Section 1183**

#### **Cancellation of the mortgage**

For the cancellation of the mortgage by legal transaction, the approval of the owner is required. The approval is to be declared to the Land Registry or to the creditor; it is irrevocable.

### **Section 1184**

#### **Debt-securing mortgage**

- (1) A mortgage may be created in such a way that the creditor's right under the mortgage is determined solely by the claim and the creditor may not rely on the registration to prove (debt-securing mortgage).
- (2) The mortgage must be described as a debt-securing mortgage in the Land Register.

### **Section 1185**

#### **Uncertificated mortgage; inapplicable provisions**

- (1) In the case of a debt-securing mortgage, the issuance of a mortgage certificate is excluded.
- (2) The provisions of sections 1138, 1139, 1141 and 1156 do not apply.

### **Section 1186**

#### **Permitted conversions**

A debt-securing mortgage may be converted into an ordinary mortgage, and an ordinary mortgage into a debt-securing mortgage. The approval of persons with equal or lower-ranking rights is not necessary.

### **Section 1187**

#### **Debt-securing mortgage for bearer instruments and instruments made out to order**

Only a debt-securing mortgage may be created for a claim under a bearer bond, under a bill of exchange or under any other instrument that can be transferred by endorsement. The mortgage is deemed to be a debt-securing mortgage, even if it is not described as such in the Land Register. The provision of section 1154 (3) does not apply. There is no claim for the deletion of the mortgage in accordance with sections 1179a and 1179b.

### **Section 1188**

#### **Special provision for bearer bonds**

- (1) For the creation of a mortgage for a claim based on a bearer bond, a declaration of the owner to the Land Registry that they are creating the mortgage and registration in the Land Register are sufficient; the provision of section 878 applies.
- (2) The exclusion of the right of the creditor in accordance with section 1170 is permitted only if the presentation period named in section 801 has expired. If, within the period, the bond is presented or the claim based on the instrument has been asserted in court, the exclusion may not take place until the limitation period has expired.

### **Section 1189**

#### **Appointment of a Land Register representative**

- (1) In the case of a mortgage of the kind designated in section 1187, a representative may be appointed for the current creditor with power to make certain dispositions with regard to the mortgage with effect for and against every subsequent creditor, and to represent the creditor in the enforcement of the mortgage. The appointment of the representative requires a corresponding entry to be made in the Land Register.
- (2) If the owner is entitled to demand from the creditor a disposition that the representative is authorised to make, then they may demand that the representative make the disposition.



### **Section 1190**

#### **Maximum amount mortgage**

- (1) A mortgage may be created in such a way that only the maximum amount to which the plot of land is to be liable is determined, and apart from this the stipulation of the claim is reserved. The maximum amount must be entered in the Land Register.
- (2) If the claim bears interest, the interest is included in the maximum amount.
- (3) The mortgage is deemed to be a debt-securing mortgage, even if it is not described as such in the Land Register.
- (4) The claim may be transferred in accordance with the general provisions applying to the transfer of claims. If it is transferred under these provisions, the devolution of the mortgage is excluded.

### **Title 2**

#### **Land charge, annuity land charge**

##### **Subtitle 1**

##### **Land charge**

### **Section 1191**

#### **Statutory contents of the land charge**

- (1) A plot of land may be encumbered in such a way that the person in whose favour the encumbrance is created is paid a specific sum of money from the plot of land (land charge).
- (2) The encumbrance can be created in such a way that interest on the sum of money and other collateral performance are payable from the plot of land.

### **Section 1192**

#### **Applicable provisions**

- (1) The land charge is governed by the provisions on mortgages accordingly, unless the fact that the land charge requires the existence of a claim leads to a different conclusion.
  - (1a) If the land charge has been established as security for a claim (security land charge), defences to which the owner is entitled with regard to the land charge on the basis of the security contract with the previous creditor, or which emerge from the security contract, also may be imposed on any acquirer of the land charge; section 1157 sentence 2 does not apply in this respect. Section 1157 remains unaffected in other respects.
- (2) Interest on a land charge is governed by the provisions on interest on a mortgage claim.

### **Section 1193**

#### **Termination**

- (1) The principal of the land charge only falls due until after prior notice of termination. Both the owner and the creditor are entitled to give notice. The notice period is six months.
- (2) Diverging provisions are admissible. If the land charge serves as security for a monetary receivable, a provision in derogation from subsection (1) is not permissible.

### **Section 1194**

#### **Place of payment**

The payment of the principal and interest and other collateral performance, unless otherwise provided, is to be made at the place where the Land Registry has its seat.

### **Section 1195**

#### **Bearer land charge**

A land charge may be created in such a way that the land charge certificate is made out to the bearer. The provisions concerning bearer bonds apply accordingly to such a certificate.

### **Section 1196**

#### **Owner land charge**

- (1) A land charge also may be created for the owner.

(2) The creation of the land charge requires a declaration by the owner to the Land Registry that the land charge is to be entered in the Land Register for them as well as the registration; the provision of section 878 applies.

(3) A claim for deletion of the land charge in accordance with section 1179a or section 1179b exists only for such mergers of the land charge and the ownership in one person as occur after the land charge has belonged to a person other than the owner.

#### **Section 1197**

##### **Deviations from third party land charge**

(1) If the owner is the creditor, then they may not pursue compulsory enforcement for the purpose of their own satisfaction.

(2) The owner is entitled to interest only if the plot of land is seized on application by another for the purpose of judicially enforced receivership, and only for the duration of the receivership.

#### **Section 1198**

##### **Permitted conversions**

A mortgage may be converted into a land charge and a land charge into a mortgage. The approval of persons with equal or lower-ranking rights is not necessary.

#### **Subtitle 2**

##### **Annuity land charge**

#### **Section 1199**

##### **Statutory contents of the annuity land charge**

(1) A land charge may be created in such a way that a specific sum of money is payable from the plot of land on regularly recurring dates (annuity land charge).

(2) When the annuity land charge is created, the sum payable to redeem the annuity land charge must be specified. The redemption sum must be stated in the Land Register.

#### **Section 1200**

##### **Applicable provisions**

(1) The individual payments are governed by the provisions for mortgage interest, and the redemption sum by the provisions applying to the principal of a land charge, accordingly.

(2) The payment of the redemption sum to the creditor has the same effect as the payment of the principal of a land charge.

#### **Section 1201**

##### **Right of redemption**

(1) The owner has the right of redemption.

(2) The creditor may not be granted the right to demand redemption. In the case governed by section 1133 sentence 2 the creditor is entitled to demand the payment of the redemption sum from the plot of land.

#### **Section 1202**

##### **Termination**

(1) The owner may exercise the right of redemption only after giving previous notice. The notice period is six months, unless otherwise provided.

(2) A restriction of the right to give notice is admissible only to the extent that the owner may, after 30 years, give notice, observing the six-month notice period.

(3) If the owner has given notice, then after the expiry of the notice period the creditor may demand payment of the redemption sum from the plot of land.

#### **Section 1203**

##### **Permitted conversions**

An annuity land charge may be converted into an ordinary land charge, and an ordinary land charge into an annuity land charge. The approval of persons with equal or lower-ranking rights is not necessary.

## **Division 8**

### **Pledge of movable things and over rights**

#### **Title 1**

#### **Pledge of movable things**

##### **Section 1204**

##### **Statutory contents of the pledge of movable things**

- (1) A movable thing may be encumbered to secure a claim in such a way that the creditor is entitled to seek satisfaction from the thing (pledge).
- (2) A pledge also may be created for a future or a conditional claim.

##### **Section 1205**

##### **Creation**

- (1) To create a pledge, it is necessary for the owner to deliver the thing to the creditor and for both to agree that the creditor is to be entitled to the pledge. If the creditor is in possession of the thing, agreement on the creation of the pledge suffices.
- (2) The delivery of possession of a thing in the indirect possession of the owner may be replaced by the owner transferring indirect possession to the pledgee and notifying the possessor of the pledging.

##### **Section 1206**

##### **Replacement of delivery by granting joint possession**

Granting joint possession suffices instead of delivery of the thing if the thing is under the joint control of the creditor or, if it is in the possession of a third person, it may be surrendered only to the owner and the creditor jointly.

##### **Section 1207**

##### **Pledging by an unauthorised person**

If the thing does not belong to the pledgor, the provisions of sections 932, 934 and 935 governing the acquisition of ownership apply accordingly to the pledging.

##### **Section 1208**

##### **Acquisition of priority of rank in good faith**

If the thing is encumbered by the right of a third party, then the pledge takes priority over the right, unless the pledgee, at the time of acquisition of the pledge, is not in good faith in relation to the right. The provisions of section 932 (1) sentence 2, section 935 and of section 936 (3) apply accordingly.

##### **Section 1209**

##### **Priority of the pledge**

The priority of the pledge is determined by the time of its creation, even if it is created for a future or a conditional claim.

##### **Section 1210**

##### **Extent of liability of the pledge**

- (1) The pledged item is liable for the claim as it exists from time to time, in particular including interest and penalties for breach of contract. If a personal debtor is not the owner of the pledged item, the liability is not extended by a legal transaction entered into by the debtor after the pledging.
- (2) The pledged item is liable for the claims of the pledgee for reimbursement of outlays, for the costs of notice and the pursuit of rights to be reimbursed to the pledgee and for the costs of the sale of the pledged item.

### **Section 1211**

#### **Defences of the pledgor**

- (1) The pledgor may assert against the pledgee the defences which are available to a personal debtor against the claim, as well as those to which a surety is entitled under section 770. If the personal debtor dies, then the pledgor may not invoke the fact that their heir has only limited liability for the obligation.
- (2) If the pledgor is not the personal debtor, then they do not forfeit a defence by the personal debtor waiving it.

### **Section 1212**

#### **Extension to separated products**

The pledge extends to the products that are separated from the pledged item.

### **Section 1213**

#### **Pledge of emoluments**

- (1) The pledge may be created in such a way that the pledgee is entitled to take the emoluments of the pledged item.
- (2) If a thing which by its nature bears fruit is delivered to the pledgee for their sole possession, it is to be presumed in case of doubt that the pledgee is to be entitled to take the fruit.

### **Section 1214**

#### **Duties of the pledgee entitled to emoluments**

- (1) If the pledgee has the right to take the emoluments, then they are obliged to attend to the production of the emoluments and to render account.
- (2) The net yield of the emoluments is set off against the payment owed and, if costs and interest are payable, against these first.
- (3) Diverging provisions are admissible.

### **Section 1215**

#### **Duty of safekeeping**

The pledgee is obliged to keep the pledged item in safe custody.

### **Section 1216**

#### **Reimbursement of outlays**

If the pledgee makes outlays on the pledged item, the duty of reimbursement of the pledgor is determined under the provisions on voluntary agency without specific authorisation. The pledgee is entitled to remove an installation with which they have furnished the pledged item.

### **Section 1217**

#### **Violation of rights by the pledgee**

- (1) Where the pledgee violates the rights of the pledgor to a substantial degree and where they continue this injurious conduct notwithstanding a warning notice from the pledgor, the pledgor may demand that the pledged item be deposited at the cost of the pledgee or, if it is not suitable for deposit, that it be delivered to a custodian to be appointed by the court.
- (2) Instead of the deposit or the delivery of the thing to a custodian, the pledgor may demand the return of the pledged item in return for the satisfaction of the creditor. If the claim is interest-free and is not yet due, then the pledgee is entitled only to the amount which, with the addition of the statutory interest for the period from the payment until the due date, is equivalent to the amount of the claim.

### **Section 1218**

#### **Rights of the pledgor in the case of imminent spoilage**

- (1) If there is the concern that the pledged item will spoil or that a substantial reduction of its value will occur, the pledgor may demand the return of the pledged item in return for the provision of some other security; the provision of security by sureties is excluded.

(2) The pledgee is to notify the pledgor of the imminent spoilage without undue delay, unless notification is inadvisable.

#### **Section 1219**

##### **Rights of the pledgee in the case of imminent spoilage**

(1) If the security of the pledgee is jeopardised by the imminent spoilage of the pledged item or by the concern that it will suffer a substantial reduction of its value, then the pledgee may have the pledged item sold by public auction.

(2) The proceeds take the place of the pledged item. Upon demand by the pledgor, the proceeds are to be deposited.

#### **Section 1220**

##### **Warning of auction**

(1) The auction of the pledged item is permitted only after the pledgor has been warned of it; the warning may be omitted if the pledged item is vulnerable to spoilage and postponement of the auction entails danger. In the event of a reduction in value, it is necessary, apart from the warning, for the pledgee to determine a suitable time limit for the pledgor to provide other security and that this has expired.

(2) The pledgee is to notify the pledgor of the auction without undue delay; in the event of failure to do so, they are obliged to pay damages.

(3) The warning, the determination of a time limit and the notification may be omitted if they are inadvisable.

#### **Section 1221**

##### **Sale by private agreement**

If the pledged item has a stock exchange or market price, the pledgee may effect the sale by private agreement at the current price through a commercial broker officially authorised to effect such sales or through a person authorised to sell by public auction.

#### **Section 1222**

##### **Pledge of more than one thing**

If the pledge extends to more than one thing, each thing is liable for the entire claim.

#### **Section 1223**

##### **Duty to return the pledged item; right to redeem the pledged item**

(1) The pledgee is obliged to return the pledged item to the pledgor after the pledge is extinguished.

(2) The pledgor may demand the return of the pledged item in return for the satisfaction of the pledgee as soon as the debtor is entitled to perform.

#### **Section 1224**

##### **Satisfaction by deposit or set-off**

The satisfaction of the pledgee by the pledgor also may be given by deposit or by set-off.

#### **Section 1225**

##### **Devolution of claim to the pledgor**

(1) If the pledgor is not the personal debtor, then, insofar as they satisfy the pledgee, the claim passes to them. The provision of section 774 governing a surety applies accordingly.

#### **Section 1226**

##### **Limitation of compensation claims**

The compensation claims of the pledgor for alterations or deteriorations of the pledged item and the claims of the pledgee for the reimbursement of outlays or for leave to remove an installation are subject to a six-month limitation period. The provision of section 548 (1) sentence 2 and 3, (2) applies accordingly.

#### **Section 1227**

##### **Protection of the pledge**

If the right of the pledgee is adversely affected, then the claims of the pledgee are governed by the provisions applying to claims from ownership, accordingly.

#### **Section 1228**

##### **Satisfaction by sale of the pledged item**

- (1) The satisfaction of the pledgee from the pledged item is effected by sale.
- (2) The pledgee is entitled to effect the sale as soon as the claim is due as a whole or in part. If the object owed does not consist of money, the sale is not permitted until the claim has been converted into a money claim.

#### **Section 1229**

##### **Prohibition of a forfeiture agreement**

An agreement made before the right to sell comes into existence by which the ownership of the thing is to pass or be transferred to the pledgee if they are not satisfied or are not satisfied in good time is void.

#### **Section 1230**

##### **Selection of pledged item from more than one pledged item**

The pledgee may, unless otherwise provided, select from more than one pledged item those that are to be sold. They may only sell as many pledges as are required for their satisfaction.

#### **Section 1231**

##### **Surrender of pledged item for sale**

If the pledgee is not in sole possession of the pledged item, they may, after the right to sell comes into existence, demand the surrender of the pledged item for the purpose of sale. At the request of the pledgor, delivery to a joint custodian is to be effected instead of surrender; the custodian is to agree, when delivery is made, to make the pledged item available for sale.

#### **Section 1232**

##### **Lower-ranking pledgees**

The pledgee is not obliged to surrender the pledged item to a pledgee ranking behind them for the purpose of sale. If they are not in possession of the pledged item, then they may not, unless they themselves handle the sale, object to sale by a lower-ranking pledgee.

#### **Section 1233**

##### **Execution of the sale**

- (1) The sale of the pledged item is to be effected in accordance with the provisions of sections 1234 to 1240.
- (2) If the pledgee has obtained an enforceable judgment against the owner for their right of sale, they may also have the sale made in accordance with the provisions governing the sale of a pledged thing.

#### **Section 1234**

##### **Warning of sale; waiting period**

- (1) The pledgee is to warn the owner of the sale in advance and at the same time specify the amount of money for which the sale is to take place. The warning may be given only after the right of sale has arisen; it may be omitted if it is inadvisable.
- (2) The sale may not be effected until after the expiry of one month after the warning. If the warning is inadvisable, the month is calculated from the time when the right of sale arises.

#### **Section 1235**

##### **Public auction**

- (1) The sale of the pledged item is to be made by public auction.

(2) If the pledged item has a stock exchange or market price, the provision of section 1221 applies.

**Section 1236**  
**Place of auction**

The auction is to be held at the place at which the pledged item is kept. If an auction at the place of safekeeping is not expected to result in reasonable success, the pledged item is to be auctioned at another suitable place.

**Section 1237**  
**Notice by publication**

Notice of the time and place of the auction, with a general description of the pledged item, is to be given by publication. The owner and third parties who have rights in the pledged item are to be notified separately; the notification may be omitted if it is inadvisable.

**Section 1238**  
**Conditions of sale**

(1) The pledged item may be sold only subject to the condition that the purchaser immediately pays the sale price in cash and that they forfeit their rights if this does not take place.

(2) If the sale is effected without this provision, the sale price is to be seen as received by the pledgee; the rights of the pledgee against the buyer remain unaffected. If the immediate payment of the sale price is not made, the same applies, unless the reservation of the forfeiture of rights is invoked before the end of the auction.

**Section 1239**  
**Bidding by creditor and owner**

(1) The pledgee and the owner may join in the bidding at the auction. If the bid of the pledgee is accepted, they are deemed to have received the sale price.

(2) The bid of the owner may be rejected unless the amount is paid in cash. The same applies to the bid of the debtor if the pledged item is liable for the debt of another.

**Section 1240**  
**Things made of gold or silver**

(1) Things made of gold or silver may not be knocked down at less than the gold or silver value.

(2) If no sufficient bid is made, the sale may be effected by private agreement by a person authorised to sell by public auction at a price not less than the gold or silver value.

**Section 1241**  
**Notification of the owner**

The pledgee is to notify the owner of the sale of the pledged item and the result without undue delay, unless notification is inadvisable.

**Section 1242**  
**Effects of the lawful alienation**

(1) The lawful alienation of the pledged item gives the purchaser the same rights as if they had purchased the thing from the owner. This also applies if it is knocked down to the pledgee.

(2) Pledges of the thing are extinguished, even if the purchaser had knowledge of them. The same applies to a usufruct, unless it outranks all pledges in priority.

**Section 1243**  
**Unlawful alienation**

(1) The alienation of the pledged item is not lawful if the provisions of section 1228 (2), section 1230 sentence 2, section 1235, section 1237 sentence 1 or section 1240 are violated.

(2) Where the pledgee contravenes another provision governing the sale, they are obliged to pay damages if they are at fault.

**Section 1244**  
**Acquisition in good faith**

Where a thing is alienated as a pledged item, and the alienor is not entitled to a pledge or the requirements upon which the lawfulness of the alienation depends are not satisfied, the provisions of sections 932 to 934 and 936 apply accordingly, if the alienation was effected in accordance with section 1233 (2), or if the provisions of section 1235 or section 1240 (2) have been observed.

**Section 1245**  
**Deviating agreements**

(1) The owner and the pledgee may agree on a manner of sale of the pledged item that deviates from the provisions of sections 1234 to 1240. If a third party has a right in the pledged item which is extinguished by the alienation, then approval by this third party is required. Approval is to be declared to the person in whose favour it is given; it is irrevocable.

(2) The observation of the provisions of section 1235, section 1237 sentence 1 and section 1240 may not be waived before the right of sale comes into existence.

**Section 1246**  
**Deviation for reasons of equity**

(1) If a manner of sale of the pledged item deviating from the provisions of sections 1235 to 1240 corresponds with the interests of the parties concerned based on reasonably exercised discretion, each of them may demand that the sale be made in this manner.

(2) If an agreement is not reached, the court decides.

**Section 1247**  
**Proceeds of the pledged item**

To the extent that the pledgee is entitled to the proceeds from the pledged item for their satisfaction, the claim is deemed settled by the owner. In all other cases, the proceeds take the place of the pledged item.

**Section 1248**  
**Presumption of ownership**

When the pledged item is sold, the pledgor is deemed, for the benefit of the pledgee, to be the owner, unless the pledgee knows that the pledgor is not the owner.

**Section 1249**  
**Right of redemption**

A person, who through the alienation of the pledged item would forfeit a right in the pledged item, may satisfy the pledgee as soon as the debtor is entitled to perform. The provision of section 268 subsections (2) and (3) applies accordingly.

**Section 1250**  
**Transfer of claim**

(1) Upon the transfer of the claim, the pledge passes to the new creditor. The pledge may not be transferred without the claim.

(2) If, when the claim is transferred, the devolution of the pledge is excluded, the pledge is extinguished.

**Section 1251**  
**Effect of the devolution of the pledge**

(1) The new pledgee may demand from the previous pledgee the surrender of the pledged item.



(2) Upon obtaining possession, the new pledgee takes the place of the previous pledgee in relation to the duties connected with the pledge that are owed to the pledgor. If they fail to perform the duties, then the previous pledgee is liable for the damage to be compensated for by them in the same way as a surety who has waived the defence of failure to pursue remedies against the principal debtor. The liability of the previous pledgee does not come into existence if the claim passes to the new pledgee by operation of law or is assigned to them on the basis of a statutory obligation.

**Section 1252**  
**Extinction with the claim**

The pledge is extinguished together with the claim to which it relates.

**Section 1253**  
**Extinction by return**

(1) The pledge is extinguished if the pledgee returns the pledged item to the pledgor or to the owner. A reservation of the continuation of the pledge is ineffective.

(2) If the pledged item is in the possession of the pledgor or of the owner, there is a presumption that the pledged item has been returned to them by the pledgee. This presumption also applies if the pledged item is in the possession of a third party who obtained possession, after the creation of the pledge, from the pledgor or the owner.

**Section 1254**  
**Claim for return**

If there is a defence to the pledge that permanently excludes the enforcement of the pledge, the pledgor may demand the return of the pledged item. The owner has the same right.

**Section 1255**  
**Cancellation of the pledge**

(1) For the cancellation of the pledge by legal transaction, it is sufficient for the pledgee to declare to the pledgor or to the owner that they are giving up the pledge.

(2) If the pledge is encumbered by the right of a third party, then approval by the third party is required. Approval is to be declared to the person in whose favour it is given; it is irrevocable.

**Section 1256**  
**Coincidence of pledge and ownership**

(1) The pledge is extinguished if it coincides with ownership in the same person. There is no extinction as long as the claim for which the pledge exists is encumbered by the right of a third party.

(2) The pledge is not deemed to be extinguished if the owner has an interest of a legal nature in the continuation of the pledge.

**Section 1257**  
**Pledge by operation of law**

The provisions on a pledge created by legal transaction apply accordingly to a pledge created by operation of law.

**Section 1258**  
**Pledge of the share of a co-owner**

(1) If there is a pledge relating to the share of a co-owner, the pledgee exercises the rights that arise from the community of co-owners with regard to the management of the thing and the nature of its use.

(2) The dissolution of the community may, before the pledgee's right of sale comes into existence, be demanded only by the co-owner and the pledgee jointly. After the right of sale has come into existence, the pledgee may demand that the community be dissolved without a need for the approval of the co-owner; they are not obliged by an agreement by which the

co-owners have permanently or temporarily excluded the right to demand the dissolution of the community or have determined a period for notice of termination.

(3) If the community is dissolved, the pledgee is entitled to a pledge over the objects that take the place of the share.

(4) The right of the pledgee to sell the share remains unaffected.

#### **Section 1259**

##### **Realisation of a commercial pledged item**

If the owner and pledgee are traders, legal persons under public law or special funds under public law, they may agree when the pledge is created, with regard to the realisation of a pledged item that has a stock exchange or market price, that the pledgee may effect the sale by private agreement at its current price on their own or through third parties or that the ownership of the thing is to fall to the pledgee when the claim becomes payable. In this case, the claim is deemed to be settled by the owner in the amount of the stock exchange or market price applicable on the due date. Sections 1229 and 1233 to 1239 do not apply.

#### **Sections 1260 - 1272 (repealed)**

#### **Title 2**

#### **Pledge of rights**

#### **Section 1273**

##### **Statutory contents of the pledge of rights**

(1) The object of a pledge also may be a right.

(2) Pledge of rights is governed by the provisions on the pledge of movable things accordingly, except to the extent that sections 1274 to 1296 lead to a different conclusion. The application of the provisions of section 1208 and section 1213 (2) is excluded.

#### **Section 1274**

##### **Creation**

(1) A pledge of a right is created in accordance with the provisions governing the transfer of the right. If the delivery of the thing is required for the transfer of the right, the provisions of sections 1205 and 1206 apply.

(2) To the extent that a right is not transferable, no pledge may be created over the right.

#### **Section 1275**

##### **Pledge of right to performance**

If a right under which an act of performance may be demanded is the object of a pledge, the legal relationship between the pledgee and the person obliged is governed by the provisions that apply to the legal relationship between the purchaser and the person obliged in the event of the transfer of the right, and in the event of a court order made in accordance with section 1217 (1), by the provision under section 1070 (2), accordingly.

#### **Section 1276**

##### **Cancellation or alteration of the pledged right**

(1) A pledged right may be cancelled by legal transaction only with the approval of the pledgee. Approval is to be declared to the person in whose favour it is given; it is irrevocable. The provision of section 876 sentence 3 remains unaffected.

(2) The same applies in the event of an alteration of the right, to the extent that it interferes with the pledge.

#### **Section 1277**

##### **Satisfaction by compulsory enforcement**

The pledgee may seek satisfaction from the right only on the basis of an enforceable judgment in accordance with the provisions governing compulsory enforcement, unless otherwise provided. The provisions of section 1229 and section 1245 (2) remain unaffected.

**Section 1278**  
**Extinction by return**

If a right the pledging of which requires the delivery of a thing is the object of a pledge, the provision under section 1253 applies accordingly to the extinction of the pledge through the return of the thing.

**Section 1279**  
**Pledge of a claim**

The special provisions of sections 1280 to 1290 apply to the pledge of a claim. To the extent that a claim has a stock exchange or market price, the provision of section 1259 applies accordingly.

**Section 1280**  
**Notification of the debtor**

The pledging of a claim for whose transfer a contract of assignment suffices is effective only if the creditor gives notice thereof to the debtor.

**Section 1281**  
**Performance before the due date**

The debtor may pay only to the pledgee and the creditor jointly. Either of them may demand that payment be made to them jointly; either may demand that, instead of payment, the thing owed be deposited for both, or if it is not suitable for deposit, that it be delivered to a custodian to be appointed by the court.

**Section 1282**  
**Performance after the due date**

(1) If the prerequisites set out in section 1228 (2) have occurred, the pledgee is entitled to collect the claim and the debtor may pay only to the pledgee. The pledgee is entitled to collect a money claim only to the extent that it is necessary for their satisfaction. To the extent that they are entitled to collection, they may also demand that the money claim be assigned to them instead of payment.

(2) The pledgee has no right to make other dispositions of the claim; the right to seek satisfaction from the claim in accordance with section 1277 remains unaffected.

**Section 1283**  
**Termination**

(1) Where the due date of the pledged claim depends on a notice of termination, the creditor requires the approval of the pledgee for this notice only if the latter is entitled to receive the emoluments.

(2) The notice of the debtor is only effective if it is declared to the pledgee and the creditor.

(3) If the prerequisites set out in section 1228 (2) have occurred, then the pledgee is also entitled to give notice; for the notice of the debtor, a declaration made to the pledgee suffices.

**Section 1284**  
**Deviating agreements**

The provisions of sections 1281 to 1283 do not apply to the extent that the pledgee and the creditor agree otherwise.

**Section 1285**  
**Cooperation in collection**

(1) Where performance is to be made to the pledgee and the creditor jointly, they are reciprocally obliged to cooperate in the collection if the claim is due.

(2) Insofar as the pledgee is entitled to collect the claim without the cooperation of the creditor, the pledgee is to provide for collection in due form. The pledgee is to notify the creditor of the collection without undue delay, unless the notification is inadvisable.

#### **Section 1286**

##### **Duty of termination in the case of danger**

If the maturity of the pledged claim depends on notice, the pledgee may, unless they have the right to give notice, demand that the creditor give notice, if the collection of the claim is necessary under the rules of proper management of assets by reason of a danger to its safety. Subject to the same prerequisite, the creditor may demand from the pledgee their approval of the notice, to the extent that approval is required.

#### **Section 1287**

##### **Effect of performance**

Where the debtor performs under sections 1281 and 1282, then upon performance the creditor acquires the object provided and the pledgee a pledge over the object. Where performance consists of the transfer of the ownership of a plot of land, the pledgee acquires a debt-securing mortgage; if it consists of the transfer of ownership of a registered ship or a ship under construction, the pledgee acquires a ship mortgage.

#### **Section 1288**

##### **Investment of collected money**

(1) If a money claim is collected under section 1281, the pledgee and the creditor are reciprocally obliged to cooperate such that the collected amount, to the extent that this is appropriate without impairing the interests of the pledgee, is invested at interest in accordance with the provisions governing the investment of money held in trust for wards, and at the same time the pledge is created for the pledgee. The type of investment is determined by the creditor.

(2) If the collection is made under section 1282, the claim of the pledgee, to the extent that they are entitled to the collected amount for their satisfaction, is deemed settled by the creditor.

#### **Section 1289**

##### **Extension to the interest**

The pledge of a claim extends to the interest on the claim. The provisions of section 1123 (2) and sections 1124 and 1125 apply accordingly; the attachment is replaced by the notification by the pledgee to the debtor as to their exercising the right of collection.

#### **Section 1290**

##### **Collection in the case of multiple pledges**

If there is more than one pledge of a claim, only the pledgee whose pledge has priority over the remaining pledges is entitled to collect.

#### **Section 1291**

##### **Pledge of land charge or annuity land charge**

The provisions on the pledge of a claim also apply to the pledge of a land charge and of an annuity land charge.

#### **Section 1292**

##### **Pledging of instruments made out to order**

For the pledging of a bill of exchange or any other instrument that may be transferred by endorsement, agreement between the creditor and the pledgee and the delivery of the endorsed instrument are sufficient.

#### **Section 1293**

##### **Pledge of bearer instruments**

The pledge of a bearer instrument is governed by the provisions on the pledge of movable things.

#### **Section 1294**

##### **Collection and notice of termination**

If a bill of exchange, another instrument that may be transferred by endorsement or a bearer instrument is the object of a pledge, then even if the prerequisites set out in section 1228 (2) have not yet occurred, the pledgee is entitled to collection and, if notice is required, to give notice, and the debtor may pay only to the pledgee.

#### **Section 1295**

##### **Private sale of instruments made out to order**

Where a pledged instrument, transferable by endorsement, has a stock exchange or market price, the creditor is entitled, after the prerequisites set out in section 1228 (2) have occurred, to have the instrument sold under section 1221. Section 1259 applies accordingly.

#### **Section 1296**

##### **Extension to interest coupons**

The pledge of a security extends to the interest coupons, annuity coupons or dividend coupons belonging to the instrument only if they have been delivered to the pledgee. The pledgor may, unless otherwise provided, demand the surrender of the coupons, to the extent that they fall due before the prerequisites set out in section 1228 (2) have occurred.

#### **Book 4**

#### **Family law**

#### **Division 1**

#### **Civil marriage**

#### **Title 1**

#### **Engagement**

#### **Section 1297**

##### **No petition for a marriage to be entered into, nullity of a promise to pay a penalty**

- (1) No petition for a marriage to be entered into may be filed based on an engagement.
- (2) The promise to pay a penalty for the eventuality that the marriage is not entered into is void.

#### **Section 1298**

##### **Duty of compensation in the case of withdrawal**

- (1) If an engaged person withdraws from the engagement, they are to reimburse the other engaged person and the parents of the other engaged person, as well as third parties who acted in place of the parents, for the damage arising from the fact that they incurred outlays or liabilities in expectation of the marriage. They are to compensate the other engaged person also for the damage suffered by the latter because, in expectation of the marriage, they took other measures affecting their assets or their earnings.
- (2) The damage is to be compensated for only to the extent that the outlays, the entering into obligations and the other measures were reasonable in the circumstances.
- (3) The duty to compensate does not arise if there is a compelling reason for the withdrawal.

#### **Section 1299**

##### **Withdrawal by reason of fault of the other party**

If one engaged person causes the other to withdraw from the engagement by reason of the fault of the former, and this fault is a compelling reason for the withdrawal, then under section 1298 subsections (1) and (2) that person is obliged to pay damages.

#### **Section 1300**

**(repealed)**

#### **Section 1301**

##### **Return of the presents**

If the marriage does not take place, each engaged person may require the other to surrender what the former gave as a present or as a sign of the engagement, in accordance with the

provisions on the surrender of unjust enrichment. In case of doubt it is to be assumed that the claim for return is to be excluded if the engagement ends as a result of the death of one of the engaged persons.

**Section 1302**  
**Limitation**

The limitation period of the claims specified in sections 1298 to 1301 commences on the breaking off of the engagement.

**Title 2**  
**Entering into marriage**

**Subtitle 1**  
**Capacity to marry**

**Section 1303**  
**Marriageable age**

A marriage may not permissibly be entered into before the parties attain full age. A marriage cannot be effectively entered into with a person who has not yet attained the age of 16.

**Section 1304**  
**Incapacity to contract**

A person who is incapable of contracting cannot enter into a marriage.

**Section 1305**  
**(repealed)**

**Subtitle 2**  
**Impediments to marriage**

**Section 1306**  
**Existing marriage or life partnership**

A marriage may not be entered into if a marriage or a life partnership exists between one of the persons who intend to be married to each other and a third party.

**Section 1307**  
**Relationship by blood**

A marriage may not be entered into between relatives in direct line and between brothers and sisters of the whole blood and of the half blood. This continues to apply if the relationship is extinguished as the result of adoption.

**Section 1308**  
**Adoption**

- (1) As a general rule, a marriage is not to be entered into between persons whose relationship in the meaning of section 1307 was created by adoption. This does not apply if the adoption relationship has been dissolved.
- (2) The family court may, on application, grant exemption from this provision if the adoption created a collateral relationship between the applicant and their future spouse. As a rule, the exemption is to be refused if compelling reasons contravene the marriage's being entered into.

**Subtitle 3**  
**Certificate of no impediment**

**Section 1309**  
**Certificate of no impediment for foreigners**

- (1) A person who, with regard to the prerequisites for entering into a marriage, is subject to foreign law, except as provided by Article 13 (2) of the Introductory Act to the Civil Code

(*Einführungsgesetz zum Bürgerlichen Gesetzbuche*), as a general rule is not to enter into a marriage before they have furnished a certificate of the domestic authority of their home state that there is no impediment to the marriage under the law of that state. A certificate of the domestic authority includes a document within the meaning of Article 3 no. 1 (e) of Regulation (EU) 2016/1191 of the European Parliament and of the Council of 6 July 2016 on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union and amending Regulation (EU) No 1024/2012 (OJ L 200 of 26 July 2016, p. 1) as well as a written confirmation that is issued by another office under a treaty concluded with the home state of the person affected. The certificate becomes ineffective if the marriage is not entered into within six months after it is issued; if the certificate states a shorter period of validity, this will govern.

(2) The president of the higher regional court in the district of which the registry of births, deaths and marriages to whom the marriage has been notified has its seat may grant exemption from the requirement under subsection (1) sentence 1. As a rule, the exemption is to be granted only to stateless persons with their habitual residence abroad and nationals of states whose public authorities do not issue certificates of no impediment within the meaning of subsection (1). In special cases, it also may be granted to nationals of other states. The exemption is valid only for a period of six months.

(3) (repealed)

#### **Subtitle 4 Marriage**

#### **Section 1310**

#### **Competence of the registrar of births, deaths and marriages, curing defective marriages**

(1) The marriage is concluded only if the parties contracting the marriage declare before the registrar that they wish to enter into the marriage. The registrar may not refuse to cooperate in the conclusion of the marriage if the prerequisites for concluding the marriage are met. The registrar must refuse to cooperate if

1. it is obvious that the marriage would be voidable under section 1314 (2), or
2. the marriage intended to be entered into would be ineffective pursuant to Article 13 (3) of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*) or the annulment of the marriage is an available option.

(2) A registrar includes a person who, without being a registrar, publicly exercised the office of a registrar and entered the marriage in the marriage register.

(3) A marriage also is deemed to have been concluded if the spouses have declared that they intend to be married to each other and

1. the registrar has entered the marriage in the marriage register,
2. the registrar, in the context of recording of the birth of a child of the spouses, has entered a reference to the marriage in the register of births, or
3. the registrar has received from the spouses a family-law declaration which requires an existing marriage in order to be valid and the spouses have been issued with a certificate in this regard that is provided in statutory provisions

and the spouses have lived together as spouses for 10 years since then or until the death of one of the spouses, but for a minimum of five years.

#### **Section 1311 Personal declaration**

The parties contracting the marriage must make the declarations under section 1310 (1) in person with both of them being present at the same time. The declarations may not be made subject to a condition or a stipulation as to time.

**Section 1312**  
**Marriage ceremony**

On the occasion of the marriage, the registrar as a rule is to ask the parties contracting the marriage separately whether they intend to enter into marriage with each other and, after the parties contracting the marriage have answered this question in the affirmative, state that they are now, by operation of law, lawfully joined spouses. The conclusion of the marriage may be effected in the presence of one or two witnesses if the parties contracting the marriage so wish.

**Title 3**  
**Annulment of marriage**

**Section 1313**  
**Annulment by judicial decision**

A marriage may be annulled only by a judicial decision on petition. The marriage is dissolved upon the decision becoming final and binding. The prerequisites under which a petition for annulment may be made are set out in the following provisions.

**Section 1314**  
**Grounds of annulment**

(1) A marriage may be annulled if it was concluded:

1. contrary to section 1303 sentence 1, with a minor who, at the time the marriage was entered into, had reached the age of 16, or
2. contrary to sections 1303, 1304, 1306, 1307 and 1311.

(2) In addition, a marriage may be annulled if

1. a spouse was in a state of unconsciousness or temporary mental disturbance at the time the marriage was concluded;
2. a spouse did not know, at the time the marriage was concluded, that a marriage was taking place;
3. a spouse was induced to enter into the marriage by deceit as to circumstances that, had they been aware of the factual position and correctly appreciated the nature of marriage, would have prevented that spouse from entering into the marriage; this does not apply where the deceit relates to financial circumstances or was committed by a third party without the knowledge of the other spouse;
4. a spouse was unlawfully induced to enter into the marriage by duress;
5. both spouses were in agreement at the time the marriage was concluded that they did not intend to create a duty under section 1353 (1).

**Section 1315**  
**Exclusion of annulment**

(1) An annulment of the marriage is excluded

1. in the case of a violation of section 1303 sentence 1 if
  - a) the minor spouse, after having attained full age, has indicated that they intend to continue the marriage (confirmation), or if,



b) due to exceptional circumstances, the annulment of the marriage would constitute such grave hardship for the minor spouse that, as an exception, the continuance of the marriage seems to be mandated;

2. in the case of a breach of section 1304, if the spouse, after the incapacity to contract ends, has indicated that they intend to continue the marriage (confirmation);

3. in the case governed by section 1314 (2) no. 1, if the spouse, after the unconsciousness or the mental disturbance ends, has indicated that they intend to continue the marriage (confirmation);

4. in the cases governed by section 1314 (2) nos. 2 to 4, if the spouse, after discovery of the mistake or the deceit or after the duress has ended, has indicated that they intend to continue the marriage (confirmation);

5. in the cases governed by section 1314 (2) no. 5, if the spouses, after the marriage, lived together as spouses.

The confirmation of a person who is incapable of contracting is ineffective.

(2) An annulment of the marriage is further excluded

1. in the case of a violation of section 1306, if, before the new marriage is concluded, the dissolution by divorce or the annulment of the former marriage or the annulment of the life partnership is pronounced and this pronouncement becomes final and binding after the new marriage was concluded;

2. in the case of a breach of section 1311, if the spouses, after concluding the marriage, lived together as spouses for five years, or, if one of them died earlier, until the death of that spouse, but for a minimum of three years, unless a petition for annulment had been made when the five year comes to an end or at the time of the death.

### **Section 1316** **Entitlement to petition**

(1) The following persons are entitled to file a petition:

1. in the case of a violation of section 1303 sentence 1, sections 1304, 1306, 1307 and 1311, and in the cases governed by section 1314 (2) nos. 1 and 5, either spouse, the competent administrative authority and, in the cases governed by section 1306, the third person, as well. The competent administrative authority is determined by statutory instrument of the *Land* governments. The *Land* governments may transfer the authorisation under sentence 2 to the competent supreme *Land* authorities by statutory instrument;

2. in the cases governed by section 1314 (2) nos. 2 to 4, the spouse named there.

(2) For a spouse who is incapable of contracting, the petition may be filed only by their legal representative. In the case of a violation of section 1303 sentence 1, a minor spouse may file the petition only without a representative; they do not need the approval of their legal representative for this.

(3) In the case of a violation of sections 1304, 1306 and 1307, and in the cases governed by section 1314 (2) nos. 1 and 5, the competent administrative authority as a rule is to file the petition, unless the annulment of the marriage would constitute such a severe hardship for one spouse or for the children of the marriage that, exceptionally, it seems advisable to maintain the marriage. In the case of a violation of section 1303 sentence 1, the competent administrative authority must file the petition unless the minor spouse in the meantime has attained full age and has indicated that they intend to continue the marriage.

### **Section 1317** **Period for filing the petition**

(1) In the cases governed by section 1314 (2) nos. 2 and 3, the petition may be filed only within one year, and in the cases governed by section 1314 (2) no. 4, it may be filed only within three years. The period for filing begins on the discovery of the mistake or the deceit or upon the duress having ended; however, the period for the legal representative of a spouse who is incapable of contracting does not begin before the date on which they become aware of the circumstances that cause the period to commence. Section 206 and section 210 (1) sentence 1 are to be applied accordingly to the running of the period.

(2) If the legal representative of a spouse without capacity to contract does not file the petition in good time, the spouse may file the petition themselves within six months after the incapacity to contract comes to an end.

(3) If the marriage has been dissolved already, the petition no longer may be filed.

### **Section 1318**

#### **Consequences of annulment**

(1) The consequences of the annulment of a marriage are governed only in the following cases by the provisions on divorce.

(2) The provisions of sections 1569 to 1586b are to be applied accordingly

1. to the benefit of a spouse who, in the case of a violation of sections 1303, 1304, 1306, 1307 or section 1311, or in the cases governed by section 1314 (2) no. 1 or 2, was not aware, at conclusion of the marriage, that the marriage was voidable, or who has been deceived or threatened, in the cases governed by section 1314 (2) no. 3 or 4, by the other spouse or with the other spouse's knowledge;

2. to the benefit of both spouses in the case of a violation of section 1306, 1307 or section 1311, if both spouses knew of the voidability; this does not apply in the case of a breach of section 1306, to the extent that the claim of a spouse to maintenance would adversely affect a corresponding claim of the third person.

The provisions on maintenance by reason of the care for or child-rearing of a child of the spouses also apply here, accordingly, to the extent that a refusal of maintenance would be grossly inequitable with regard to the concerns of the child.

(3) Sections 1363 to 1390 and section 1587 apply, accordingly, to the extent that this would not be grossly inequitable with regard to the circumstances given at conclusion of the marriage or in the case of a breach of section 1306 with regard to the concerns of the third person.

(4) Sections 1568a and 1568b apply accordingly; here, particular account is to be taken of the circumstances given at conclusion of the marriage, and in the case of a breach of section 1306 of the concerns of the third person.

(5) Section 1931 does not apply to the benefit of a spouse who, in the case of a breach of sections 1304, 1306, 1307 or section 1311 or in the case governed by section 1314 (2) no. 1, knew at conclusion of the marriage that the marriage was voidable.

### **Title 4**

#### **Remarriage after declaration of death**

### **Section 1319**

#### **Annulment of the previous marriage**

(1) Where a spouse, after the other spouse has been declared dead, enters into a new marriage, then, if the spouse declared dead is still alive, the new marriage may be annulled for breach of section 1306 only if both spouses knew at conclusion of the marriage that the spouse declared dead was still alive at the date of the declaration of death.

(2) On conclusion of the new marriage, the earlier marriage is dissolved, unless both spouses of the new marriage knew at conclusion of the marriage that the spouse declared dead was still alive at the date of the declaration of death. It remains dissolved even if the declaration of death is set aside.

### **Section 1320**

#### **Annulment of the new marriage**

(1) If the spouse declared dead is still alive, then notwithstanding section 1319, their former spouse may petition for the annulment of the new marriage, unless they knew at conclusion of the marriage that the spouse declared dead was still alive at the date of the declaration of death. The annulment may be petitioned for only within one year. The period begins on the date on which the spouse of the former marriage obtained knowledge that the spouse declared dead is still alive. Section 1317 (1) sentence 3 and subsection (2) applies accordingly.

(2) The consequences of the annulment are governed by section 1318 accordingly.

### **Sections 1321 - 1352**

**(repealed)**

#### **Title 5**

#### **Effects of marriage in general**

### **Section 1353**

#### **Conjugal union**

(1) Marriage is entered into for life by two persons of the opposite sex or of the same sex. The spouses have a mutual duty of conjugal union; they are responsible for each other.

(2) A spouse is not obliged to comply with the demand of the other spouse to create the union if the demand constitutes an abuse of their right or if the marriage has broken down.

### **Section 1354**

**(repealed)**

### **Section 1355**

#### **Family name**

(1) As a rule, the spouses are to determine a common family name (family name). The spouses use the family name they have determined as such. If the spouses do not determine a family name, they will continue using the names they used at the time of concluding the marriage also after conclusion of the marriage.

(2) The spouses may choose the birth name of a spouse or the name a spouse was using at the time of the declaration on the determination of the family name as their family name by declaration to the registry of births, deaths and marriages.

(3) As a rule, the declaration on the determination of the family name is to be made at conclusion of the marriage. If the declaration is made later, it must be publicly certified.

(4) A spouse whose name does not become the family name may, by declaration to the registry of births, deaths and marriages, prepend or append to the family name their birth name or the name they are using at the time of the declaration on the determination of the family name. This does not apply if the family name consists of more than one name. If the name of one spouse consists of more than one name, only one of these names may be prepended or appended. The declaration may be revoked vis-à-vis the registry of births, deaths and marriages; in this case, a new declaration under sentence 1 is not admissible. If the declaration is not made before a German registry of births, deaths and marriages at conclusion of marriage, the declaration and the revocation must be publicly certified.

(5) The widowed or divorced spouse retains the family name. They may, by declaration to the registry of births, deaths and marriages, reassume their birth name or the name they were using until the determination of the family name, or prepend or append to the family name their birth name or the name they were using at the time of the determination of the family name. Subsection (4) applies accordingly.

(6) Birth name means the name that is to be entered in the birth certificate of a spouse at the date of the declaration to the registry of births, deaths and marriages.

### **Section 1356**

#### **Household management, gainful employment**

- (1) The spouses provide for the household management in mutual agreement. If the household management is left to one of the spouses, that spouse manages the household on their own responsibility.
- (2) Both spouses are entitled to pursue gainful employment. In the choice and pursuit of their gainful employment, they are to give due consideration to the concerns of the other spouse and the family.

### **Section 1357**

#### **Transactions to provide the necessities of life**

- (1) Each spouse is entitled to enter into transactions serving to appropriately provide the necessities of life of the family, with effect also for the other spouse. Such transactions entitle and oblige both spouses, unless the circumstances lead to a different conclusion.
- (2) One spouse may restrict or exclude the entitlement of the other spouse to enter into transactions with effect for them; if there is no adequate reason for the restriction or exclusion, the family court is to set it aside on application. In relation to third parties, the restriction or exclusion is effective only subject to the stipulations of section 1412.
- (3) Subsection (1) does not apply if the spouses live apart.

### **Section 1358**

**(repealed)**

### **Section 1359**

#### **Scope of duty of care**

In the performance of the duties arising from the marriage relationship, the spouses are answerable to each other only for the care they customarily exercise in their own affairs.

### **Section 1360**

#### **Duty of family maintenance**

The spouses are reciprocally obliged to appropriately maintain the family through their work and with their assets. If the household management is left to one spouse, that spouse as a rule performs their duty of contributing to family maintenance through work by managing the household.

### **Section 1360a**

#### **Scope of the obligation to maintain**

- (1) The reasonable maintenance of the family includes everything that is necessary, depending on the circumstances of the spouses, to pay the costs of the household and to satisfy the personal needs of the spouses and the necessities of life of the joint children entitled to maintenance.
- (2) Maintenance is to be provided in the manner mandated by the conjugal union. The spouses are reciprocally obliged to advance for a reasonable period of time the means necessary for the collective maintenance of the family.
- (3) The provisions of sections 1613 to 1615 governing the duty of relatives to provide maintenance are to be applied accordingly.
- (4) If a spouse is not in a position to bear the costs of a legal dispute which relates to a personal matter, the other spouse has a duty to advance the spouse these costs, insofar as this is equitable. The same applies to the costs of defence in criminal proceedings in which a spouse is the defendant.

### **Section 1360b**

#### **Overpayment**

If a spouse makes a larger contribution to the maintenance of the family than they are obliged to, then in case of doubt it is to be assumed that they do not intend to demand reimbursement from the other spouse.

### **Section 1361**

#### **Maintenance when spouses are living apart**

- (1) If the spouses are living apart, one spouse may demand from the other the maintenance appropriate with regard to the life circumstances as well as the gainful employment and financial circumstances of the spouses; for outlays resulting from injury to body and health, section 1610a applies. If divorce proceedings are pending between the spouses living apart, then maintenance, from the date on which the proceedings become pending, also includes the costs of appropriate insurance for old age and for reduced earning capacity.
- (2) The spouse who is not pursuing gainful employment may be required to earn their own maintenance through gainful employment only if this can be expected of them in view of their personal circumstances, in particular by reason of earlier gainful employment, taking into account the duration of the marriage, and having regard to the financial circumstances of both spouses.
- (3) The provision of section 1579 nos. 2 to 8 on the restriction or refusal of maintenance by reason of gross inequity is to be applied accordingly.
- (4) The day-to-day maintenance is to be rendered by making periodical payments. The periodical payments are to be paid monthly in advance. The person obliged owes the full monthly amount even if the person entitled dies in the course of the month. Section 1360a subsections (3) and (4) and sections 1360b and 1605 are to be applied accordingly.

### **Section 1361a**

#### **Allocation of household effects when spouses are living apart**

- (1) If the spouses are living apart, either of them may require the other spouse to surrender to them the household objects belonging to them. However, they have a duty to make them available to the other spouse for the latter's use to the extent that the latter needs them to maintain a separate household and insofar as, under the circumstances of the case, so making them available is equitable.
- (2) Household objects belonging to the spouses jointly are allocated between them in accordance with the principles of equity.
- (3) If the spouses cannot agree, the competent court decides. The court may determine a reasonable payment for the use of the household objects.
- (4) The property relations remain unaffected unless the spouses agree otherwise.

### **Section 1361b**

#### **Matrimonial residence when spouses are living apart**

- (1) If the spouses are living apart or if one of them wishes to live apart, one spouse may demand that the other make available to them the matrimonial residence or part of the matrimonial residence for their sole use, to the extent that this is necessary, also taking into consideration the concerns of the other spouse, in order to avoid an inequitable hardship. An inequitable hardship may also exist if the best interests of children living in the household are adversely affected. If one spouse alone or together with a third party is entitled to the ownership of or a heritable building right or usufruct in the plot of land on which the matrimonial residence is situated, special account is to be taken of this; similar provisions apply to title to residential premises, a permanent residential right and an in-rem right of habitation running with the land.
- (2) If the spouse against whom the application is directed has unlawfully and intentionally injured the body, health, liberty or sexual self-determination of the other spouse or unlawfully threatened such an injury or injury to life, then as a general rule the entire residence is to be made available for sole use. The claim to the residence being so made available is excluded only if there is no concern that further injuries and unlawful threats will ensue, unless the injured spouse cannot reasonably be required to continue living together with the other by reason of the severity of the act.
- (3) If the matrimonial residence has been made available to one spouse for the latter's use, as a whole or in part, the other spouse is to refrain from everything that is suited to render

more difficult or frustrate the exercise of this right of use. The may demand payment for the use from the spouse with the right of use, insofar as this is equitable.

(4) If, after the spouses commence living apart in the meaning of section 1567 (1), a spouse moves from the matrimonial residence, and if within six months after moving out they have not notified the other spouse of a serious intention to return, it is irrebuttably presumed that they have made available the matrimonial residence to the spouse who remained in it for the latter's sole right of use.

### **Section 1362**

#### **Presumption of ownership**

(1) It is presumed to the benefit of the creditors of one of the spouses that the movable things that are in the possession of one of the spouses or both of them belong to the debtor. This presumption does not apply if the spouses are living apart and the things are in the possession of the spouse who is not the debtor. Bearer instruments as well as instruments made out to order and furnished with a blank endorsement are treated in the same way as movable things.

(2) It is presumed of the things intended exclusively for the personal use of a spouse, as between the spouses and between the spouses and the creditors, that they belong to the spouse for whose use they are intended.

### **Title 6**

#### **Matrimonial property regime**

##### **Subtitle 1**

#### **Statutory property regime**

### **Section 1363**

#### **Community of accrued gains**

(1) The spouses live under the property regime of community of accrued gains unless they agree otherwise by marriage contract.

(2) The respective assets of the spouses do not become their common assets; the same applies to assets that one spouse acquires after marriage. The accrued gains that the spouses acquire in the marriage, however, are equalised if the community of accrued gains ends.

### **Section 1364**

#### **Management of assets**

Each spouse manages their assets independently; however, they are restricted in the management of their assets in accordance with the following provisions.

### **Section 1365**

#### **Disposition over assets as a whole**

(1) A spouse may enter into obligation only with the consent of the other spouse to dispose over their assets as a whole. Where a spouse has entered into this obligation without the approval of the other spouse, they may comply with the obligation only if the other spouse consents.

(2) Where the transaction is in keeping with the principles of proper management, the family court, on application by the spouse, may substitute the approval of the other spouse if the latter refuses it without adequate cause or if they are prevented by illness or absence from making a declaration and delay entails risk.

### **Section 1366**

#### **Ratification of contracts**

(1) A contract that a spouse concludes without the necessary consent of the other spouse is effective if the spouse ratifies it.

(2) Until the ratification, the third party may revoke the contract. If the third party was aware that the spouse concluding the contract is married, then they may revoke only if the spouse

untruthfully claimed that the other spouse had consented; the third party may not revoke even though this case is given if they were aware at conclusion of the contract that the other spouse had not consented.

(3) Where the third party demands that the spouse obtain the required ratification from the other spouse, the latter may declare ratification only to the third party; if the latter had made a declaration to their spouse already prior to the demand, the declaration becomes ineffective. The ratification may be made only within two weeks after receipt of the demand; if it is not made, it is deemed to have been refused. If the family court substitutes the ratification, its order is effective only if the spouse communicates it to the third party within the two-week period; failing this, the ratification is deemed to have been refused.

(4) If ratification is refused, the contract is ineffective.

### **Section 1367**

#### **Unilateral legal transactions**

A unilateral legal transaction that is entered into without the necessary consent is ineffective.

### **Section 1368**

#### **Asserting the ineffectiveness**

If a spouse, without the necessary approval of the other spouse, disposes over his or her assets, the other spouse as well is entitled to assert in court the rights arising from the ineffectiveness of the disposition against the third party.

### **Section 1369**

#### **Dispositions over household objects**

(1) A spouse may dispose over objects of the household of the spouses belonging to him or her and may agree to such a disposition only if the other spouse consents.

(2) The family court, on application by the spouse, may substitute the approval of the other spouse if the latter refuses it without adequate cause or is prevented by illness or absence from making a declaration.

(3) The provisions of sections 1366 to 1368 apply accordingly.

### **Section 1370**

**(repealed)**

### **Section 1371**

#### **Equalisation of accrued gains in the case of death**

(1) If the property regime ends by reason of a spouse's death, then the equalisation of the accrued gains is effected by the intestate portion of the surviving spouse being increased by one quarter of the inheritance; it is irrelevant in this context whether the spouses in the individual case achieved accrued gains.

(2) If the surviving spouse does not become an heir and if they also are not entitled to a legacy, they may demand equalisation of the accrued gains in accordance the provisions of sections 1373 to 1383 and section 1390; the compulsory portion of the surviving spouse or of another person entitled to a compulsory portion is determined in this case based on the intestate portion of the spouse before it is increased.

(3) Where the surviving spouse disclaims the inheritance, then they may demand the compulsory portion in addition to the equalisation of the accrued gains even if they would have no entitlement to this under the provisions of the law of succession; this does not apply if the surviving spouse has waived their right of intestate succession or their right to a compulsory portion by a contract with their spouse.

(4) Where descendants of the deceased spouse exist who are entitled to inherit, and who are not descended from the marriage ended by the death of this spouse, the surviving spouse has a duty to grant these descendants the means for a reasonable education, if and to the extent that they need these, from the quarter additionally granted under subsection (1).

### **Section 1372**

#### **Equalisation of accrued gains in other cases**

If the property regime is ended in another way than by reason of a spouse's death, the accrued gains are equalised under the provisions of sections 1373 to 1390.

### **Section 1373**

#### **Accrued gains**

Accrued gains means the amount by which the final assets of a spouse exceed the initial assets.

### **Section 1374**

#### **Initial assets**

(1) Initial assets means the assets that belong to a spouse at the beginning of the property regime after deduction of the liabilities.

(2) Assets that a spouse acquires after the beginning of the property regime as a result of death or with regard to a future right of succession, by donation or as advancements, are added to the initial assets after deduction of the liabilities, to the extent that in the circumstances they are not to be seen as income.

(3) Liabilities are to be deducted beyond the amount of the assets.

### **Section 1375**

#### **Final assets**

(1) Final assets means the assets that belong to a spouse at the end of the property regime after deduction of the liabilities. Liabilities are to be deducted beyond the amount of the assets.

(2) The final assets of a spouse are increased by the amount by which these assets are reduced as a result of the fact that a spouse, after the beginning of the property regime,

1. made gratuitous dispositions by which they were not complying with a moral duty or showing consideration for decency,
2. squandered assets, or
3. performed acts with the intention of placing the other spouse at a disadvantage.

If the final assets of a spouse are less than the assets which they stated in the disclosure at the time of separation, this spouse is to present and prove that the reduction of assets was not caused by acts within the meaning of numbers 1 to 3 of sentence 1.

(3) The amount by which the assets are reduced is not added to the final assets if the reduction was effected at least 10 years before the end of the property regime or if the other spouse was in agreement with the gratuitous disposition or the squandering.

### **Section 1376**

#### **Ascertainment of the value of the initial and final assets**

(1) The calculation of the initial assets is based on the value that the assets in existence at the beginning of the property regime had at that date and that the assets to be added to the initial assets had at the date of their acquisition.

(2) The calculation of the final assets is based on the value that the assets in existence at the end of the property regime had at that date and that a reduction of assets to be included in the computation of the final assets had at the date when the reduction occurred.

(3) The above provisions apply accordingly for the valuation of liabilities.

(4) An agricultural or forestry enterprise which is to be taken into account in the calculation of the initial assets and the final assets is to be recognised at the capitalised value of the anticipated yield if the owner is laid claim to under section 1378 (1) and if it can be expected that the enterprise is continued or recommenced by the owner or a descendant; the provision of section 2049 (2) applies.



### **Section 1377**

#### **List of initial assets**

- (1) If the spouses have jointly drawn up a list recording the inventory and the value of the initial assets belonging to one spouse and the objects to be included in the computation of these assets, it is presumed, as between the spouses, that the list is correct.
- (2) Each spouse may require that the other spouse cooperate in drawing up the list. The drawing up of the list is governed by the provisions of section 1035 applying to usufruct. Each spouse may, at their own cost, have the value of the assets and the liabilities determined by experts.
- (3) To the extent that no list has been drawn up, it is presumed that the final assets of a spouse represent their accrued gains.

### **Section 1378**

#### **Equalisation claim**

- (1) If the accrued gains of one spouse exceed the accrued gains of the other spouse, then half of the surplus is due to the other spouse as an equalisation claim.
- (2) The amount of the equalisation claim is limited by the value of the assets that remain, after deduction of the liabilities, at the end of the property regime. The limitation of the equalisation claim resulting from sentence 1 increases in the cases governed by section 1375 (2) sentence 1 to include the amount to be included in the computation of the final assets.
- (3) The equalisation claim arises upon the property regime ending and from this date on, it is inheritable and transferable. An agreement on the equalisation of the accrued gains that the spouses enter into, during proceedings instituted to dissolve the marriage, for the eventuality of the dissolution of the marriage, is to be recorded by a notary; section 127a also applies to an agreement that is recorded in proceedings on family matters before the court hearing the matter. In all other cases, neither spouse may enter into obligation before the end of the property regime to dispose over the equalisation claim.
- (4) (repealed)

### **Section 1379**

#### **Duty of information**

- (1) If the property regime has come to an end, or if a spouse has filed for divorce, for the annulment of the marriage or for the premature equalisation of the accrued gains in conjunction with the premature suspension of the community of accrued gains, each spouse may
  1. demand information from the other spouse regarding the assets at the time of suspension;
  2. demand information from the other spouse regarding the assets insofar as they are material to the initial and final assets.

Documentation is to be provided on demand. Each spouse may demand to be involved in the drawing up of the list to be submitted to them under section 260 and that the value of the assets and the liabilities be determined. They may also demand that the list be drawn up at their cost by the competent authority or by a responsible official or notary.

- (2) If the spouses are separated, each spouse may demand information from the other spouse regarding the assets at the time of separation. Subsection (1) sentences 2 to 4 applies accordingly.

### **Section 1380**

#### **Set-off of advancements**

- (1) That is set off against the equalisation claim of a spouse what the spouse is given by the other spouse by *inter vivos* legal transaction with the provision that it is to be set off against the equalisation claim. In case of doubt it is to be assumed that it is intended to set off what

has been given if its value exceeds the value of occasional gifts that are customary in keeping with the life circumstances of the spouses.

(2) In calculating the equalisation claim, the value of the disposition is added to the accrued gains of the spouse who made the disposition. The value is determined as per the date on which the object is given.

#### **Section 1381**

##### **Refusal of satisfaction for gross inequity**

- (1) The debtor may refuse to satisfy the equalisation claim to the extent that in the circumstances of the case, the equalisation of accrued gains would be grossly inequitable.
- (2) Gross inequity may be given in particular if the spouse who achieved the smaller amount of accrued gains for a long period of time culpably failed to discharge their financial duties arising from the marital relationship.

#### **Section 1382**

##### **Deferment**

- (1) On application, the family court will defer an equalisation claim, to the extent that it is not disputed by the debtor, if immediate payment would occur at an inopportune time, also taking into account the interests of the creditor. Immediate payment also would occur at an inopportune time if it would cause long-term deterioration in the housing conditions or other aspects of the life circumstances of the joint children of the spouses.
- (2) The debtor is to pay interest on a deferred claim.
- (3) On application, the family court may order that the debtor is to provide security for a deferred claim.
- (4) The family court decides at its reasonably exercised discretion on the amount and due date of the interest and on the nature and scope of the security provided.
- (5) To the extent that a legal dispute on the equalisation claim becomes pending, the debtor may make an application for deferment only in those proceedings.
- (6) The family court may, on application, set aside or alter a final and binding decision if the circumstances have changed substantially since the decision.

#### **Section 1383**

##### **Transfer of assets**

- (1) On application by the creditor, the family court may order that the debtor is to transfer certain objects of their assets to the creditor, to be set off against the equalisation claim if this is necessary to avoid gross inequity for the creditor and if it reasonably can be required of the debtor to accept this; the decision is to stipulate the amount that is set off against the equalisation claim.
- (2) In the application, the creditor must designate the objects the transfer of which they are seeking.
- (3) Section 1382 (5) applies accordingly.

#### **Section 1384**

##### **Cut-off date for computing the accrued gains and the amount of the equalisation claim in the case of divorce**

If the marriage is dissolved by divorce, then the date on which the divorce petition became pending at court takes the place of the date on which the property regime ends in computing the accrued gains and in determining the amount of the equalisation claim.

#### **Section 1385**

##### **Premature equalisation of accrued gains of the spouse entitled to an equalisation claim in case of premature cancellation of the community of accrued gains**

The spouse entitled to an equalisation claim may demand early equalisation of the accrued gains in case of a premature cancellation of the community of accrued gains

1. if the spouses have lived apart for at least three years,
2. if there is the fear that acts of the nature designated in section 1365 or section 1375 (2) will occur and this leads to the concern that a considerable danger to the satisfaction of the equalisation claim is given,
3. the other spouse for a long period of time culpably failed to discharge their financial duties arising from the marital relationship and it is to be assumed that they will not discharge them in future either, or
4. the other spouse persistently refuses without adequate reason, or has persistently refused without adequate reason until the petition for information was filed, to provide information on the inventory of their assets.

#### **Section 1386**

##### **Premature suspension of the community of accrued gains**

Each spouse may demand the premature suspension of the community of accrued gains by applying section 1385 accordingly.

#### **Section 1387**

##### **Cut-off date for computing the accrued gains and amount of the equalisation claim in the case of premature equalisation or premature suspension**

In the cases governed by sections 1385 and 1386, the date on which the corresponding petitions are filed takes the place of the date on which the property regime ends in computing the accrued gains and in determining the amount of the equalisation claim.

#### **Section 1388**

##### **Occurrence of separation of property**

Upon the decision becoming final and binding that prematurely sets aside the community of accrued gains, separation of property ensues.

#### **Section 1389 (repealed)**

#### **Section 1390**

##### **Claims against third parties of the person entitled to equalisation**

(1) The spouse entitled to equalisation may demand from a third party compensation for the value of a gratuitous disposition of the spouse obliged to perform equalisation to the third party if

1. the spouse obliged to perform equalisation has made the gratuitous disposition to the third party intending to place the spouse entitled to equalisation at a disadvantage, and
2. the amount of the equalisation claim exceeds the value of the assets, after deduction of the obligations on ending of the property regime, available to the spouse obliged to perform equalisation.

The compensation for the value of the benefit obtained is effected in accordance with the provisions on the surrender of unjust enrichment. The third party may avoid payment by surrendering the benefit obtained. The spouse obliged to perform equalisation and the third party are liable as joint and several debtors.

(2) The same applies to other legal transactions if the intention to place the spouse at a disadvantage was known to the third party.

(3) The limitation period of the claim commences upon the property regime ending. If the property regime ends by reason of a spouse's death, the limitation is not suspended as a result of the fact that the claim cannot be asserted until the spouse has disclaimed the inheritance or a legacy.

(4) (repealed)

**Sections 1391 - 1407  
(repealed)**

**Subtitle 2  
Contractual property regime**

**Chapter 1  
General provisions**

**Section 1408  
Marriage contract, freedom of contract**

(1) The spouses may provide for their matrimonial property arrangements by contract (marriage contract), and particularly may terminate or alter the matrimonial property regime also after they have concluded the marriage.

(2) If the spouses conclude agreements on the equalisation of pension rights in a marriage contract, sections 6 and 8 of the Equalisation of Pension Rights Act (*Versorgungsausgleichsgesetz*) are applicable in this respect.

**Section 1409  
Restriction of freedom of contract**

The matrimonial property regime may not be determined by reference to law that no longer is valid or to foreign law.

**Section 1410  
Form**

The marriage contract must be recorded by a notary with both parties being present at the same time.

**Section 1411  
Marriage contracts of persons placed under the care of a custodian**

(1) A person under custodianship may enter into a marriage contract only with the approval of their custodian to the extent that a reservation of consent has been ordered for this matter. The approval by the custodian requires ratification by the custodianship court if the equalisation of the accrued gains is excluded or restricted or if the community of property is agreed or set aside. The custodian may not enter into a marriage contract for a person under custodianship who is capable of contracting.

(2) For a spouse who is incapable of contracting, the custodian enters into the marriage contract; the custodian may not agree on or terminate community of property. The custodian may conclude the marriage contract only based on ratification by the custodianship court.

**Section 1412  
Effect in relation to third parties**

(1) Where the spouses have excluded or altered the statutory matrimonial property regime, they may derive from this, in relation to a third party, objections to a legal transaction that was entered into between one of them and the third party only if the marriage contract has been entered in the matrimonial property register of the competent local court or was known to the third party when the legal transaction was entered into; objections to a final and binding judgment which has been pronounced between one of the spouses and the third party are admissible only if the marriage contract was registered or known to the third party at the time when the legal dispute was first pending at court.

(2) The same applies if the spouses set aside or alter by marriage contract a provision made regarding their matrimonial property arrangements that is entered in the matrimonial property register.

### **Section 1413**

#### **Revocation of permission to manage assets**

If a spouse permits their assets to be managed by the other spouse, then the right to withdraw the permission at any time may be excluded or restricted only by marriage contract; nonetheless, revocation for a compelling reason remains admissible.

### **Chapter 2**

#### **Separation of property**

### **Section 1414**

#### **Commencement of separation of property**

If the spouses exclude the statutory property regime or terminate it, separation of property takes effect, unless the marriage contract leads to a different conclusion. The same applies if the equalisation of the accrued gains is excluded or community of property is terminated.

### **Chapter 3**

#### **Community of property**

### **Subchapter 1**

#### **General provisions**

### **Section 1415**

#### **Agreement by marriage contract**

If the spouses, by marriage contract, agree on community of property, the following provisions apply.

### **Section 1416**

#### **Common matrimonial property**

(1) As the result of the community of property, the assets owned by each spouse, respectively, become assets jointly owned by both spouses (common matrimonial property). The common matrimonial property also includes the assets that one of the spouses acquires during the period of community of property.

(2) The individual objects become joint property; it is not necessary to transfer them by legal transaction.

(3) If a right that is entered in the Land Register or may be entered in the Land Register becomes common matrimonial property, each spouse may require the other to cooperate in correcting the Land Register. Similar provisions apply if a right that is registered in the ship register or in the ship construction register becomes common matrimonial property.

### **Section 1417**

#### **Separate property**

(1) The separate property is excluded from the common matrimonial property.

(2) Separate property is the objects that may not be transferred by legal transaction.

(3) Each spouse manages their separate property independently. They manage it for the account of the common matrimonial property.

### **Section 1418**

#### **Reserved property**

(1) The reserved property is excluded from the common matrimonial property.

(2) Reserved property consists of the objects

1. that by marriage contract are declared the reserved property of a spouse,
2. that a spouse acquires as a result of death or that are given to the spouse by a third party free of charge, if the testator specified by testamentary disposition or the third party specified when making the disposition that the acquisition is to be reserved property,

3. that a spouse acquires on the basis of a right that is part of their reserved property or as compensation for the destruction of, damage to or removal of an object that is part of the reserved property or by a legal transaction that relates to the reserved property.

(3) Each spouse manages their reserved property independently. They manage it for their own account.

(4) If assets are part of the reserved property, this is effective against third parties only in accordance with section 1412.

#### **Section 1419** **Joint ownership**

(1) A spouse may not dispose over their share of the common matrimonial property and over the individual objects that are part of the common matrimonial property; they are not entitled to demand partition.

(2) The debtor may set off a claim against a claim forming part of the common matrimonial property only if the debtor is entitled to demand that the claim be discharged from the common matrimonial property.

#### **Section 1420** **Use for maintenance**

The income that falls within the common matrimonial property is to be used for the maintenance of the family before the income that falls within the reserved property, and the capital of the common matrimonial property is to be used for the maintenance of the family before the capital of the reserved property or the separate property.

#### **Section 1421** **Management of the common matrimonial property**

In the marriage contract in which they agree on community of property, the spouses as a rule are to specify which of the spouses manages the common matrimonial property or whether it is managed by both of them jointly. If the marriage contract contains no provision on this, the spouses jointly manage the common matrimonial property.

#### **Subchapter 2** **Management of the common matrimonial property by one spouse**

#### **Section 1422** **Subject matter of right of management**

The spouse who manages the common matrimonial property is entitled in particular to take possession of the things belonging to the common matrimonial property and to dispose over the common matrimonial property; the spouse conducts legal disputes that relate to the common matrimonial property in their own name. The other spouse is not personally obliged by the management acts.

#### **Section 1423** **Disposition over the common matrimonial property as a whole**

The spouse who manages the common matrimonial property may enter into obligation only with the consent of the other spouse to dispose over the common matrimonial property as a whole. Where the spouse has entered into this obligation without the approval of the other spouse, they may comply with the obligation only if the other spouse consents.

#### **Section 1424** **Disposition over plots of land, ships or ships under construction**

The spouse who manages the common matrimonial property may agree only with the consent of the other spouse to dispose over a plot of land that is part of the common matrimonial property; furthermore, the spouse may enter into obligation to so dispose over it

only with the consent of the other spouse. The same applies if a registered ship or ship under construction is part of the common matrimonial property.

#### **Section 1425 Donations**

(1) The spouse who manages the common matrimonial property may make donations of objects from the common matrimonial property only with the consent of the other spouse; where a spouse has promised, without the approval of the other spouse, to make donations of objects from the common matrimonial property, they may fulfil this promise only if the other spouse consents. The same applies to a promise of donation that does not relate to the common matrimonial property.

(2) Donations that are made to comply with a moral duty or to show consideration for decency are exempt.

#### **Section 1426 Substitution of the approval of the other spouse**

Where a transaction that under sections 1423 and 1424 may be entered into only with the consent of the other spouse is necessary for the proper management of the common matrimonial property, the family court, on application, may substitute the approval of the other spouse if the latter refuses it without adequate cause or is prevented by illness or absence from making a declaration and delay entails risk.

#### **Section 1427 Legal consequences of lack of consent**

(1) If the spouse who manages the common matrimonial property enters into a legal transaction without the necessary consent of the other spouse, the provisions of section 1366 subsections (1), (3) and (4) and of section 1367 apply accordingly.

(2) A contract may be revoked by the third party until the ratification. Where they knew that the spouse was living under community of property, they may revoke only if the spouse untruthfully claimed that the other spouse had consented; in this case too, the third party may not revoke if they were aware at the contract's conclusion that the other spouse had not consented.

#### **Section 1428 Dispositions without approval**

If the spouse who manages the common matrimonial property disposes without the necessary approval of the other spouse of a right that is part of the common matrimonial property, the other spouse may assert the right against third parties in court; the spouse who manages the common matrimonial property need not cooperate in this.

#### **Section 1429 Emergency right of management**

Where the spouse who manages the common matrimonial property is prevented by illness or absence from entering into a legal transaction that relates to the common matrimonial property, the other spouse may undertake the legal transaction if delay entails risk; when doing this, the other spouse may act either in their own name or in the name of the managing spouse. The same applies to conducting a legal dispute which relates to the common matrimonial property.

#### **Section 1430 Substitution of the approval of the managing spouse**

If the spouse who manages the common matrimonial property refuses, without adequate cause, their approval to a legal transaction which the other spouse must undertake in order to properly attend to their personal affairs, but which they cannot without this approval undertake with effect for the common matrimonial property, the family court may, on application, substitute the approval.

### **Section 1431**

#### **Independent trade or business**

(1) If the spouse who manages the common matrimonial property has consented to the other spouse operating an independent trade or business, then their approval of such legal transactions and legal disputes as the business operations entail is not required. Unilateral legal transactions which relate to the trade or business are to be entered into with the spouse who operates the trade or business.

(2) If the spouse who manages the common matrimonial property knows that the other spouse is operating a trade or business, and if they have filed no objection to this, this is equivalent to consent.

(3) Against third parties, an objection and the revocation of the consent are effective only under section 1412.

### **Section 1432**

#### **Acceptance of an inheritance; refusal of offer to enter into contract or of donation**

(1) If an inheritance or a legacy has accrued to the spouse who does not manage the common matrimonial property, only they are entitled to accept or disclaim the inheritance or the legacy; the approval of the other spouse is not necessary. The same applies to the waiver of the compulsory portion or to the equalisation of accrued gains, and also of the refusal of an offer to enter into a contract or of a donation.

(2) The spouse who does not manage the common matrimonial property may file an inventory of an inheritance that accrues to him or her without the approval of the other spouse.

### **Section 1433**

#### **Continuation of a legal dispute**

The spouse who does not manage the common matrimonial property may continue a legal dispute, without the approval of the other spouse, that was pending before a court at the beginning of the community of property.

### **Section 1434**

#### **Unjust enrichment of the common matrimonial property**

If a legal transaction that a spouse undertakes without the required approval of the other spouse enriches the common matrimonial property, the enrichment is to be returned from the common matrimonial property under the provisions on unjust enrichment.

### **Section 1435**

#### **Duties of the managing spouse**

The spouse is to manage the common matrimonial property properly. They are to inform the other spouse of the management and, on request, give them information on the status of the management. Where the common matrimonial property is reduced, the spouse must provide compensation to the common matrimonial property if the spouse is at fault for the loss or brought it about by a legal transaction which they undertook without the required approval of the other spouse.

### **Section 1436**

#### **Managing spouse under custodianship**

If the management of the common matrimonial property falls within the scope of functions of a spouse's custodian, then the custodian is to represent the spouse in the rights and duties which arise from the management of the common matrimonial property. This applies also if the other spouse is appointed as custodian.

### **Section 1437**

#### **Obligations of the common matrimonial property; personal liability**

(1) The creditors of the spouse who manages the common matrimonial property and, to the extent sections 1438 to 1440 do not lead to a different conclusion, the creditors of the other



spouse in addition may require satisfaction from the common matrimonial property (obligations of the common matrimonial property).

(2) The spouse who manages the common matrimonial property also is personally liable as a joint and several debtor for the obligations of the other spouse that are obligations of the common matrimonial property. The liability lapses upon termination of the community of property if the obligations, as between the spouses, are incumbent on the other spouse.

#### **Section 1438**

##### **Liability of the common matrimonial property**

(1) The common matrimonial property is liable for an obligation arising from a legal transaction that is entered into during the period of community of property only if the spouse who manages the common matrimonial property enters into the legal transaction or if they approve it or if the legal transaction is effective for the common matrimonial property without their approval.

(2) The common matrimonial property is liable for the costs of a legal dispute even if the judgment is not effective in relation to the common matrimonial property.

#### **Section 1439**

##### **No liability on acquisition of an inheritance**

The common matrimonial property is not liable for obligations that arise as a result of the acquisition of an inheritance if the spouse who is an heir does not manage the common matrimonial property and acquires the inheritance during the period of community of property as reserved property or as separate property; the same applies on the acquisition of a legacy.

#### **Section 1440**

##### **Liability for reserved or separate property**

The common matrimonial property is not liable for an obligation arising in the person of that spouse who does not manage the common matrimonial property during the period of community of property as the result of a right that is part of the reserved property or the separate property or of the possession of a thing that belongs to such property. However, the common matrimonial property is liable if the right or the thing is part of a trade or business which the spouse independently operates with the consent of the other spouse, or if the obligation is part of the burdens of the separate property that are customarily paid from the income.

#### **Section 1441**

##### **Liability as between the spouses**

As between the spouses, the following obligations of the common matrimonial property fall on the spouse as whose personal obligations they arise:

1. the obligations arising from a tort which they commit after the commencement of the community of property, or from criminal proceedings that are conducted against them with regard to such an act;
2. the obligations arising from a legal relationship that relates to their reserved property or their separate property, even if they arose before the commencement of the community of property or before the time at which the property became reserved property or separate property;
3. the costs of a legal dispute about one of the obligations set out in nos. 1 and 2.

#### **Section 1442**

##### **Obligations of the separate property and of a trade or business**

The provisions of section 1441 nos. 2 and 3 do not apply if the obligations are part of the burdens of the separate property which are customarily paid from the income. Nor do the provisions apply if the obligations arise from the operation of a trade or business that is

conducted for the account of the common matrimonial property or as the result of a right or of the possession of a thing that belongs to such a trade or business.

**Section 1443**  
**Costs of litigation**

- (1) As between the spouses, the costs of a legal dispute that the spouses conduct against each other are borne by the spouse who is to bear them under general provisions of law.
- (2) If the spouse who does not manage the common matrimonial property conducts a legal dispute against a third party, the costs of the legal dispute, as between the spouses, are borne by that spouse. However, the costs are borne by the common matrimonial property if the judgment takes effect against the common matrimonial property or if the legal dispute relates to a personal matter or a common matrimonial property obligation of the spouse and the disbursement of the costs is appropriate in the circumstances; section 1441 no. 3 and section 1442 remain unaffected.

**Section 1444**  
**Costs of the advancement of a child**

- (1) If the spouse who manages the common matrimonial property promises or grants an advancement to a joint child of the spouses, then as between the spouses that spouse bears the costs of the advancement to the extent that they exceed the degree that is appropriate for the common matrimonial property.
- (2) If the spouse who manages the common matrimonial property promises or grants an advancement to a child that is not a child of the spouses, then as between the spouses the father or mother bears the costs of the advancement; for the spouse who does not manage the common matrimonial property, however, this applies only to the extent that they approve or that the advancement does not exceed the degree that is appropriate for the common matrimonial property.

**Section 1445**  
**Equalisation between reserved property, separate property and common matrimonial property**

- (1) If the spouse who manages the common matrimonial property appropriates common matrimonial property to their reserved property or their separate property, they are to provide compensation to the common matrimonial property for the value of the property applied.
- (2) If the spouse appropriates reserved property or separate property to the common matrimonial property, they may demand compensation from the common matrimonial property.

**Section 1446**  
**Due date of the equalisation claim**

- (1) Whatever the spouse who manages the common matrimonial property owes to the common matrimonial property they need pay only after the termination of the community of property; whatever they may claim from the common matrimonial property they may claim only after the termination of the community of property.
- (2) Whatever the spouse who does not manage the common matrimonial property owes to the common matrimonial property or whatever they owe to the reserved property or separate property of the other spouse they need not pay until after the termination of the community of property; however, they are to discharge the debt before this to the extent that their reserved property and their separate property suffice to do so.

**Section 1447**  
**Petition of the non-managing spouse for termination**

The spouse who does not manage the common matrimonial property may file a petition for the termination of the community of property

1. if their future rights may be substantially endangered by the fact that the other spouse is incapable of managing the common matrimonial property or abuses their right to manage the common matrimonial property,
2. if the other spouse has breached their duty to contribute to the family maintenance and there is the concern that the maintenance will be significantly endangered in the future,
3. if the common matrimonial property is over-indebted by obligations that arose as obligations constituted by the person of the other spouse to such an extent that a later acquisition by the spouse who does not manage the common matrimonial property is substantially endangered,
4. if the management of the common matrimonial property falls under the scope of functions of the other spouse's custodian.

#### **Section 1448**

##### **Petition of the managing spouse for termination**

The spouse who manages the common matrimonial property may file a petition for the termination of the community of property if the common matrimonial property, as a result of obligations of the other spouse which fall on the latter as between the spouses, is over-indebted to such a degree that a later acquisition is substantially endangered.

#### **Section 1449**

##### **Effect of the judicial termination decision**

- (1) Upon the judicial decision becoming final and binding, the community of property is terminated; separation of property applies for the future.
- (2) Against third parties, the termination of the community of property is effective only under section 1412.

#### **Subchapter 3**

##### **Joint management of the common matrimonial property by the spouses**

#### **Section 1450**

##### **Joint management by the spouses**

- (1) If the common matrimonial property is jointly managed by the spouses, the spouses are in particular entitled only jointly to alienate the common matrimonial property and to conduct legal disputes that relate to the common matrimonial property. The possession of the things that are part of the common matrimonial property is the right of the spouses jointly.
- (2) Where a declaration of intent is to be made to the spouses, it is sufficient if it is made to one spouse.

#### **Section 1451**

##### **Duty of both spouses to cooperate**

Each spouse is obliged to the other to cooperate in measures that are necessary for due management of the common matrimonial property.

#### **Section 1452**

##### **Substitution of approval**

- (1) Where, for the proper management of the common matrimonial property, it is necessary for a legal transaction to be entered into or a legal dispute to be conducted, the family court, on the application of a spouse, may substitute the approval of the other spouse if the latter refuses it without adequate cause.
- (2) The provision of subsection (1) also applies if the proper management of the personal affairs of a spouse requires a legal transaction that the spouse cannot enter into with effect for the common matrimonial property without the approval of the other spouse.

### **Section 1453**

#### **Disposition without consent**

(1) If a spouse, without the required consent of the other spouse, disposes of the common matrimonial property, the provisions of section 1366 subsections (1), (3) and (4) and of section 1367 apply accordingly.

(2) A contract may be revoked by the third party until the ratification. Where the third party knew that the spouse was living under community of property, they may revoke only if the spouse untruthfully claimed that the other spouse had consented; in this case too, the third party may not revoke if they were aware at the contract's conclusion that the other spouse had not consented.

### **Section 1454**

#### **Emergency right of management**

Where a spouse is prevented by illness or absence from cooperating in a legal transaction that relates to the common matrimonial property, the other spouse may enter into the legal transaction if delay entails risk; when doing this, they may act either in their own name or in the name of both spouses. The same applies to conducting a legal dispute which relates to the common matrimonial property.

### **Section 1455**

#### **Acts of management without the cooperation of the other spouse**

Each spouse may, without the cooperation of the other spouse,

1. accept or disclaim an inheritance that has accrued to them or a legacy that has accrued to them,
2. waive their compulsory portion or the equalisation of accrued gains,
3. file an inventory of an inheritance that has accrued to them or to the other spouse, unless the inheritance that has accrued to the other spouse is part of the other spouse's reserved property or separate property,
4. refuse to enter into a contract offered to them or a donation made to them,
5. enter into a legal transaction in relation to the common matrimonial property as against the other spouse,
6. assert a right in court against the other spouse that is part of the common matrimonial property,
7. continue a legal dispute that was pending at court when the community of property commenced,
8. assert a right in court against a third party that is part of the common matrimonial property if the other spouse disposed over the right without the necessary approval,
9. assert a right in court to object to compulsory enforcement against the common matrimonial property,
10. take the necessary measures to preserve the common matrimonial property if delay entails risk.

### **Section 1456**

#### **Independent trade or business**

(1) If a spouse has consented to the other spouse operating an independent trade or business, their approval of such legal transactions and legal disputes as the business operations entail is not required. Unilateral legal transactions which relate to the trade or business are to be entered into with the spouse who operates the trade or business.

(2) If a spouse knows that the other spouse is operating a trade or business, and if they have raised no objection to this, this is equivalent to consent.

(3) An objection and the revocation of consent are effective in relation to third parties only subject to section 1412.

#### **Section 1457**

##### **Unjust enrichment of the common matrimonial property**

If a legal transaction that a spouse undertakes without the required approval of the other spouse enriches the common matrimonial property, the enrichment is to be surrendered from the common matrimonial property according to the provisions on unjust enrichment.

#### **Section 1458**

**(repealed)**

#### **Section 1459**

##### **Obligations of the common matrimonial property; personal liability**

(1) The creditors of a spouse, may, to the extent that sections 1460 to 1462 do not lead to a different conclusion, require satisfaction from the common matrimonial property (obligations of the common matrimonial property).

(2) For the obligations of the common matrimonial property, the spouses are also personally liable as joint and several debtors. If the obligations, as between the spouses, fall on one of the spouses, the obligation of the other spouse expires on the termination of the community of property.

#### **Section 1460**

##### **Liability of the common matrimonial property**

(1) The common matrimonial property is liable for an obligation arising from a legal transaction that a spouse enters into during the period of community of property only if the other spouse approves the legal transaction or if the legal transaction is effective for the common matrimonial property without their approval.

(2) The common matrimonial property is liable for the costs of a legal dispute even if the judgment is not effective in relation to the common matrimonial property.

#### **Section 1461**

##### **No liability on acquisition of an inheritance**

The common matrimonial property is not liable for the obligations of one spouse which arise as a result of the acquisition of an inheritance or of a legacy if the spouse acquires the inheritance or the legacy during the period of community of property as reserved property or as separate property.

#### **Section 1462**

##### **Liability for reserved or separate property**

The common matrimonial property is not liable for an obligation of a spouse which comes into existence during the period of community of property as the result of a right that is part of the reserved property or the separate property or of the possession of a thing that is part of the reserved property or of the separate property. However, the common matrimonial property is liable if the right or the thing is part of a trade or business which a spouse operates independently with the consent of the other spouse, or if the obligation is one of the burdens of the separate property that are customarily paid from the income.

#### **Section 1463**

##### **Liability as between the spouses**

As between the spouses, the following obligations of the common matrimonial property fall on the spouse as whose personal obligations they arise:

1. the obligations arising from a tort which they commit after the commencement of the community of property, or from criminal proceedings that are conducted against them with regard to such an act;
2. the obligations arising from a legal relationship that relates to their reserved property or their separate property, even if they arose before the commencement of the community of property or before the time at which the property became reserved property or separate property;
3. the costs of a legal dispute about one of the obligations set out in nos. 1 and 2.

#### **Section 1464**

##### **Obligations of the separate property and of a trade or business**

The provisions of section 1463 nos. 2 and 3 do not apply if the obligations are part of the burdens of the separate property which are customarily paid from the income. Nor do the provisions apply if the obligations arise from the operation of a trade or business that is conducted for the account of the common matrimonial property or as the result of a right or of the possession of a thing that belongs to such a trade or business.

#### **Section 1465**

##### **Costs of litigation**

- (1) As between the spouses, the costs of a legal dispute that the spouses conduct against each other are borne by the spouse who is to bear them under general provisions of law.
- (2) If a spouse conducts a legal dispute against a third party, the costs of the legal dispute, as between the spouses, are borne by the spouse who conducts the legal dispute. However, the costs are borne by the common matrimonial property if the judgment takes effect against the common matrimonial property or if the legal dispute relates to a personal matter or a common matrimonial property obligation of the spouse and the disbursement of the costs is appropriate in the circumstances; section 1463 no. 3 and section 1464 remain unaffected.

#### **Section 1466**

##### **Costs of the advancement of a child that is not a child of the spouses**

As between the spouses, the costs of the advancement of a child that is not a child of the spouses are borne by the father or mother of the child.

#### **Section 1467**

##### **Equalisation between reserved property, separate property and common matrimonial property**

- (1) If a spouse appropriates common matrimonial property to their reserved property or their separate property, they are to provide compensation to the common matrimonial property for the value of the property so appropriated.
- (2) If a spouse appropriates reserved property or separate property to the common matrimonial property, they may demand compensation from the common matrimonial property.

#### **Section 1468**

##### **Due date of the equalisation claim**

Whatever a spouse owes to the common matrimonial property or whatever they owe to the reserved property or separate property of the other spouse they need not pay until after the termination of the community of property; however, they are to discharge the debt before this to the extent that their reserved property and their separate property suffice to do so.

#### **Section 1469**

##### **Petition for termination**

Each spouse may file a petition for the termination of the community of property,

1. if their future rights may be substantially endangered as a result of the fact that the other spouse, without their cooperation, undertakes acts of management that may be undertaken only jointly,
2. if the other spouse, without adequate cause, persistently refuses to cooperate in the proper management of the common matrimonial property,
3. if the other spouse has breached their duty to contribute to the family maintenance and there is the concern that the maintenance will be significantly endangered in the future,
4. if the common matrimonial property is over-indebted by obligations that arose as obligations constituted by the person of the other spouse, and are borne by the latter as between the spouses, to such an extent that its later acquisition is substantially endangered,
5. if the exercise of a right of the other spouse that arises from the community of property falls within the scope of functions of a custodian.

#### **Section 1470**

##### **Effect of the judicial termination decision**

- (1) Upon the judicial decision becoming final and binding, the community of property is terminated; separation of property applies for the future.
- (2) Against third parties, the termination of the community of property is effective only under section 1412.

#### **Subchapter 4**

##### **Partitioning of the common matrimonial property**

#### **Section 1471**

##### **Beginning of the partitioning**

- (1) After the termination of the community of property, the spouses partition the common matrimonial property.
- (2) Until the partitioning, the provisions of section 1419 govern the common matrimonial property.

#### **Section 1472**

##### **Joint management of the common matrimonial property**

- (1) Until the partitioning, the spouses manage the common matrimonial property jointly.
- (2) Each spouse may manage the common matrimonial property in the same way as before the termination of the community of property until they become aware of the termination or ought to be aware of it. A third party may not rely on this if, in entering into a transaction, they are aware or ought to be aware that the community of property has ended.
- (3) Each spouse is obliged to the other to cooperate in measures that are necessary for the proper management of the common matrimonial property; each spouse may take the measures that are necessary for preservation alone.
- (4) If the community of property ends as the result of the death of one spouse, then the surviving spouse is to carry out the transactions that are necessary for proper management and cannot be postponed without risk until the heir can make other provision. This duty does not exist if the deceased spouse managed the common matrimonial property alone.

#### **Section 1473**

##### **Direct substitution**

- (1) Whatever is acquired on the basis of a right that is part of the common matrimonial property or as compensation for the destruction of an object forming part of the common matrimonial property, its damage or the deprivation of its possession, or whatever is

acquired by a legal transaction that relates to the common matrimonial property, becomes common matrimonial property.

(2) If a claim that is acquired by legal transaction is part of the common matrimonial property, the debtor need not allow this to be asserted against them until they become aware that the claim is part of the common matrimonial property; the provisions of sections 406 to 408 are to be applied accordingly.

#### **Section 1474**

##### **Implementation of the partitioning**

The spouses effect the partitioning, unless they agree otherwise, as stipulated in sections 1475 to 1481.

#### **Section 1475**

##### **Discharge of the obligations of the common matrimonial property**

(1) The spouses are to first discharge the obligations of the common matrimonial property. If an obligation is not yet payable or if it is disputed, the spouses must retain whatever is necessary to discharge this obligation.

(2) If a common matrimonial property obligation, as between the spouses, falls on one of the spouses alone, the latter may not require that the obligation be discharged from the common matrimonial property.

(3) The common matrimonial property is to be converted into money, to the extent that this is necessary, in order to discharge the obligations of the common matrimonial property.

#### **Section 1476**

##### **Division of the surplus**

(1) The surplus that remains after the discharge of the obligations of the common matrimonial property is due to the spouses in equal shares.

(2) Each spouse must allow to be credited against their share whatever they are to provide to the common matrimonial property as compensation. To the extent that they do not provide compensation in this way, they remain obliged to the other spouse.

#### **Section 1477**

##### **Implementation of the division**

(1) The surplus is divided under the provisions on co-ownership.

(2) Each spouse, on repayment of the value, may take the things that are intended exclusively for their personal use, in particular clothes, jewellery and tools. The same applies to the objects which a spouse has brought into the community of property or acquired during the period of community of property as a result of succession, as a legacy or with regard to a future right of succession, by donation or as an advancement.

#### **Section 1478**

##### **Partitioning after divorce**

(1) Where the marriage has been dissolved by divorce before the partitioning is finished, then at the request of one spouse, each of them is to be provided compensation for the value of what they contributed to the community of property; if the value of the common matrimonial property is not sufficient for this, the shortfall is to be borne by the spouses in the proportion of the value of what they brought in.

(2) The following are to be regarded as having been brought in:

1. the objects that belonged to one spouse when the community of property commenced,
2. the objects which a spouse acquired as a result of death or with regard to a future right of succession, by donation or as an advancement, unless the acquisition, in the circumstances, was to be regarded as income,



3. the rights which are extinguished on the death of a spouse or whose acquisition is conditional on the death of a spouse.

(3) The value of the items brought in is assessed according to the date at which they were brought in.

#### **Section 1479**

##### **Partitioning after judicial termination decision**

Where the community of property is terminated by judicial decision on the basis of sections 1447 and 1448 or of section 1469, the spouse who obtained the judicial decision may require that the partitioning be carried out in such a way as if the claim to partitioning had become pending at court at the time when the petition for termination of the community of property was filed.

#### **Section 1480**

##### **Liability to third parties after the division**

If the common matrimonial property is divided before a common matrimonial property obligation has been discharged, the spouse who, at the time of the division, did not have such a liability is also personally liable to the creditor as a joint and several debtor. Their liability is limited to the objects allocated to them; the provisions of sections 1990 and 1991 that govern the liability of the heir are to be applied accordingly.

#### **Section 1481**

##### **Liability of the spouses to each other**

(1) If the common matrimonial property is divided before the discharge of a common matrimonial property obligation which, as between the spouses, falls on the common matrimonial property, the spouse who managed the common matrimonial property alone during the period of community of property is answerable to the other spouse that the other spouse is not claimed on, either for half of the obligation or for the surplus beyond what is obtained from the common matrimonial property.

(2) If the spouses managed the common matrimonial property jointly during the period of community of property, each spouse is answerable to the other that the other spouse is not claimed on by the creditor for more than half of the obligation.

(3) If the obligation, as between the spouses, falls on one of the spouses, the latter is answerable to the other that the other spouse is not claimed on by the creditor.

#### **Section 1482**

##### **Dissolution of marriage by death**

If the marriage is dissolved by the death of a spouse, the share of the deceased spouse in the common matrimonial property is part of their estate. The succession of the deceased spouse takes place under the general provisions of law.

#### **Subchapter 5**

##### **Continued community of property**

#### **Section 1483**

##### **Occurrence of continued community of property**

(1) The spouses may agree by marriage contract that the community of property, after the death of a spouse, is continued between the surviving spouse and the descendants of the spouses. If the spouses make such an agreement, the community of property is continued with the descendants of the spouses who are heirs in the case of intestate succession. The share of the deceased spouse in the common matrimonial property is not part of the estate; in all other cases, the succession of the deceased spouse takes place under the general provisions of law.

(2) Where, in addition to the descendants of the spouses, there are other descendants, their rights of succession and their shares of the inheritance are determined as if there had been no continued community of property.

#### **Section 1484**

##### **Refusal of continued community of property**

- (1) The surviving spouse may refuse the continuation of the community of property.
- (2) The refusal is governed by the provisions governing the disclaimer of an inheritance of sections 1943 to 1947, 1950, 1952, 1954 to 1957 and 1959 accordingly. In the event of refusal by the custodian of the surviving spouse, ratification by the custodianship court is required.
- (3) If the spouse refuses the continuation of the community of property, the same applies as in the case governed by section 1482.

#### **Section 1485**

##### **Common matrimonial property**

- (1) The common matrimonial property of the continued community of property consists of the common matrimonial property, to the extent that it does not devolve under section 1483 (2) to a descendant who is not entitled to a share, and of the assets that the surviving spouse acquires from the estate of the deceased spouse or after the beginning of the continued community of property.
- (2) The assets which a joint descendant of the spouses has at the time when the continued community of property begins or acquires later is not part of the common matrimonial property.
- (3) The common matrimonial property is governed accordingly by the provision for marital community of property of section 1416 subsections (2) and (3).

#### **Section 1486**

##### **Reserved property; separate property**

- (1) Reserved property of the surviving spouse is what the spouse previously had as reserved property or what the spouse acquires as reserved property under section 1418 (2) nos. 2 and 3.
- (2) Separate property of the surviving spouse is what the spouse previously had as separate property or what the spouse acquires as separate property.

#### **Section 1487**

##### **Legal position of the spouse and the descendants**

- (1) The rights and obligations of the surviving spouse and of the descendants entitled to a share with regard to the common matrimonial property of the continued community of property are determined by the provisions applying to marital community of property of sections 1419, 1422 to 1428, 1434, of section 1435 sentences 1 and 3, and of sections 1436 and 1445; the surviving spouse has the legal position of the spouse who manages the common matrimonial property alone, and the descendants entitled to a share have the legal position of the other spouse.
- (2) What the surviving spouse owes to the common matrimonial property or may claim from the common matrimonial property is payable only after the termination of the continued community of property.

#### **Section 1488**

##### **Obligations of the common matrimonial property**

Obligations of the common matrimonial property of the continued community of property are the obligations of the surviving spouse and such obligations of the deceased spouse as were obligations of the common matrimonial property of the marital community of property.

#### **Section 1489**

##### **Personal liability for the obligations of the common matrimonial property**

- (1) The surviving spouse is personally liable for the obligations of the common matrimonial property of the continued community of property.
- (2) To the extent that the personal liability applies to the surviving spouse only as a result of the occurrence of the continued community of property, the provisions governing the liability

of the heir for the obligations of the estate apply accordingly; the estate is replaced by the common matrimonial property with the inventory that it has at the time when the continued community of property commences.

(3) No personal liability of the descendants entitled to a share for the obligations of the deceased spouse or of the surviving spouse is created by the continued community of property.

#### **Section 1490** **Death of a descendant**

Where a descendant entitled to a share dies, their share of the common matrimonial property is not part of their estate. Where the descendant has descendants who would be entitled to a share if the descendant entitled to a share had not survived the deceased spouse, the descendants take their place. If they have no such descendants, their share accrues to the other descendants entitled to a share and, if there are no such descendants, to the surviving spouse.

#### **Section 1491** **Waiver by a descendant**

(1) A descendant entitled to a share may waive their share of the common matrimonial property. The waiver is made by declaration to the court with jurisdiction over the estate of the deceased spouse; the declaration is to be made in publicly certified form. As a rule, the probate court is to give notification of the declaration to the surviving spouse and the other descendants entitled to a share.

(2) The waiver also may be made by contract with the surviving spouse and the other descendants entitled to a share. The contract is to be recorded by a notary.

(3) If the descendant is under parental custody or under guardianship, the waiver requires ratification by the family court. In the event of a waiver by the custodian of the descendant, the ratification by the custodianship court is required.

(4) The waiver has the same effects as if the person waiving had died without descendants at the time of the waiver.

#### **Section 1492** **Termination by the surviving spouse**

(1) The surviving spouse may terminate the continued community of property at any time. The termination is made by declaration to the court with jurisdiction over the estate of the deceased spouse; the declaration is to be made in publicly certified form. As a rule, the probate court is to notify the descendants entitled to a share and, if the surviving spouse is the legal representative of one of the descendants, the family court of the declaration; if custodianship exists, the custodianship court is to be notified of the declaration.

(2) The termination also may be effected by contract between the surviving spouse and the descendants entitled to a share. The contract is to be recorded by a notary.

(3) In the event of termination by the custodian of the surviving spouse, the ratification by the custodianship court is required.

#### **Section 1493** **Remarriage or establishment of a life partnership by the surviving spouse**

(1) The continued community of property ends when the surviving spouse remarries or establishes a life partnership.

(2) The surviving spouse is to notify the family court, if a descendant entitled to a share is minor, of their intention to remarry, submit a list of the common matrimonial property, terminate the community of property and bring about the partitioning. The family court may permit the community of property not to be terminated until conclusion of marriage and the partitioning not to take place until a later date. Sentences 1 and 2 also apply if care for the assets of a descendant entitled to a share is part of the scope of functions of a custodian; in this case, the custodianship court replaces the family court.

(3) The registry of births, deaths and marriages with which the intention to conclude the marriage has been filed notifies the family court of the filing.

#### **Section 1494**

##### **Death of the surviving spouse**

- (1) The continued community of property ends on the death of the surviving spouse.
- (2) If the surviving spouse is declared to be dead, or if the date of their death is established under the provisions of the Missing Persons Act (*Verschollenheitsgesetz*), the continued community of property ends at the time that is deemed to be the time of death.

#### **Section 1495**

##### **Petition of a descendant for termination**

A descendant entitled to a share may file a petition, against the surviving spouse, for the termination of the continued community of property

1. if their future rights may be substantially endangered by the fact that the other spouse is incapable of managing the common matrimonial property or abuses their right to manage the common matrimonial property,
2. if the surviving spouse has breached their duty to grant maintenance to the descendant and there is the concern that the maintenance will be significantly endangered in the future
3. if the management of the common matrimonial property falls under the scope of functions of the surviving spouse's custodian,
4. if the surviving spouse has forfeited parental custody for the descendant or, if they had been entitled to it, would have forfeited it.

#### **Section 1496**

##### **Effect of the judicial termination decision**

The termination of the continued community of property takes effect in the cases governed by section 1495 upon the judicial decision becoming final and binding. It takes effect for all descendants, even if the judicial decision was pronounced in response to the petition of one of the descendants.

#### **Section 1497**

##### **Legal relationship until partitioning**

- (1) After the termination of the continued community of property, the surviving spouse and the descendants partition the common matrimonial property.
- (2) Until the partitioning, their legal relationship with regard to the common matrimonial property is governed by sections 1419, 1472 and 1473.

#### **Section 1498**

##### **Implementation of the partitioning**

The partitioning is governed by the provisions of sections 1475, 1476, section 1477 (1), sections 1479 and 1480 and section 1481 subsections (1) and (3); the place of the spouse who managed the common matrimonial property alone is taken by the surviving spouse, and the position of the other spouse is taken by the descendants entitled to a share. The duty set out in section 1476 (2) sentence 2 exists only for the surviving spouse.

#### **Section 1499**

##### **Obligations borne by the surviving spouse**

In the partitioning, the following is incumbent on the surviving spouse:

1. the obligations of the common matrimonial property for which they were responsible at the beginning of the continued community of property for which the common matrimonial property was not liable or which they bore as between the spouses;

2. the obligations of the common matrimonial property that arise after the beginning of the continued community of property which, if they had arisen as the surviving spouse's personal expenses during the period of marital community of property, would have fallen on the surviving spouse as between the spouses;

3. an advancement which they promised or granted to a descendant entitled to a share in excess of the amount corresponding to the common matrimonial property or which they promised or granted to a descendant not entitled to a share.

#### **Section 1500**

##### **Obligations borne by the descendants**

(1) In carrying out the partitioning, the descendants entitled to a share must allow to be credited against their share any obligations of the deceased spouse that the latter bore as between the spouses to the extent that the surviving spouse has not been able to obtain repayment from the heir of the deceased spouse.

(2) In the same way, the descendants entitled to a share are to allow whatever the deceased spouse was obliged to reimburse to the common matrimonial property to be set off against them.

#### **Section 1501**

##### **Set-off of lump sum payments**

(1) If a descendant entitled to a share has been granted a lump sum payment from the common matrimonial property for waiving their share, the payment is included in the common matrimonial property when partitioning takes place and is set off against the half due to the descendants.

(2) The surviving spouse may, even before the termination of the continued community of property, enter into an agreement to a different effect with the other descendants entitled to a share. The agreement is to be recorded by a notary; it is also effective in relation to the descendants who enter the continued community of property only at a later date.

#### **Section 1502**

##### **Right of surviving spouse to assume assets**

(1) The surviving spouse is entitled to assume the common matrimonial property or individual objects that are part of it in return for compensation of the value. The right does not devolve to the heir.

(2) If the continued community of property, on the basis of section 1495, is set aside by judicial decision, the surviving spouse does not have the right set out in subsection (1). In this case, the descendants entitled to a share may assume those objects, in return for compensation of the value, that the deceased spouse would be entitled to assume under section 1477 (2). The right may be exercised by them only jointly.

#### **Section 1503**

##### **Division among the descendants**

(1) More than one descendant entitled to a share take parts of the half of the common matrimonial property that accrues to them in accordance with the proportion of the shares to which they would be entitled in the case of intestate succession as heirs of the deceased spouse if the latter had not died until the time of the termination of the continued community of property.

(2) What they have received previously is set off under the provisions governing set-off among descendants, except to the extent that such a set-off was effected when the estate of the deceased spouse was divided.

(3) If a descendant who has waived their share has been granted a lump sum payment from the common matrimonial property, this sum is borne by the descendants who are benefited by the waiver.

#### **Section 1504**

##### **Adjustment of liability between descendants**

To the extent that the descendants entitled to a share under section 1480 are liable to the common matrimonial property creditors, they are liable as between each other in the proportion of their shares to the common matrimonial property. The liability is restricted to the objects allotted to them; the provisions of sections 1990 and 1991 that govern the liability of the heir apply accordingly.

#### **Section 1505**

##### **Supplementation of the share of a descendant**

The provisions on the right to supplement the compulsory share are applied accordingly to the benefit of a descendant entitled to a share; the termination of the continued community of property takes the place of the devolution of the inheritance, the share of the descendant in the common matrimonial property at the time of termination is deemed to be the intestate portion, and half of the value of this share is treated as the compulsory portion.

#### **Section 1506**

##### **Unworthiness to receive a share**

If a descendant of the spouses is unworthy to inherit, then they are also unworthy to receive a share of the common matrimonial property. The provisions on unworthiness to inherit apply accordingly.

#### **Section 1507**

##### **Certificate on continuation of the community of property**

The probate court, on application, is to grant the surviving spouse a certificate confirming the continuation of the community of property. The provisions on the certificate of inheritance apply accordingly.

#### **Section 1508**

(repealed)

#### **Section 1509**

##### **Exclusion of the continued community of property by testamentary disposition**

Each spouse may, for the eventuality that the marriage is dissolved by their death, exclude by testamentary disposition the continuation of the community of property if they are entitled to deprive the other spouse of the compulsory portion or to file a petition for the termination of the community of property. The same applies if the spouse is entitled to petition for the annulment of the marriage and has filed the petition. The exclusion is governed by the provisions on the removal of the compulsory portion, accordingly.

#### **Section 1510**

##### **Effect of exclusion**

If the continuation of the community of property is excluded, the same applies as in the case governed by section 1482.

#### **Section 1511**

##### **Exclusion of a descendant**

(1) Each spouse may, for the eventuality that the marriage is dissolved by their death, by testamentary disposition exclude a descendant of the spouses from the continued community of property.

(2) The excluded descendant may, notwithstanding their right of succession, require payment from the common matrimonial property of the continued community of property of the amount that would be due to them from the common matrimonial property of the marital community of property as a compulsory share if the continued community of property had not commenced. The provisions governing the claim to a compulsory portion apply accordingly.

(3) In the partitioning, the amount paid to the excluded descendant is charged to the descendants entitled to a share under section 1501. As between the descendants, it is charged to the descendants who are benefited by the exclusion.

#### **Section 1512**

##### **Reduction of the share**

Each spouse may, for the eventuality that on their death the continued community of property occurs, by testamentary disposition reduce the share of the common matrimonial property to which a descendant entitled to a share has a claim after the end of the continued community of property by up to one half.

#### **Section 1513**

##### **Deprivation of the share**

(1) Each spouse may, for the eventuality that on their death the continued community of property occurs, by testamentary disposition deprive a descendant entitled to a share of the share of the common matrimonial property to which that descendant is entitled after the end of the continued community of property if the spouse is entitled to deprive the descendant of their compulsory share. The provision of section 2336 subsections (2) and (3) applies accordingly.

(2) If the spouse is entitled under section 2338 to restrict the descendant's right to a compulsory share, they may subject the share of the descendant in the common matrimonial property to a corresponding restriction.

#### **Section 1514**

##### **Disposition of the amount withheld**

Each spouse may also give to a third party by testamentary disposition the amount of which they deprive a descendant under section 1512 or under section 1513 (1).

#### **Section 1515**

##### **Right of a descendant and of the spouse to assume assets**

(1) Each spouse may direct by testamentary disposition, for the eventuality that on their death the continued community of property occurs, that a descendant entitled to a share is to have the right, when the division takes place, to assume the common matrimonial property or individual objects forming part of it in return for compensation of the value.

(2) If a farm is part of the common matrimonial property, it may be directed that as a rule, the farm is to be recognised at the capitalised value of the anticipated yield or at a price that is at least as high as said capitalised value. The provisions of section 2049 governing succession apply.

(3) The right to take over the farm at the value or price set out in subsection (2) also may be granted to the surviving spouse.

#### **Section 1516**

##### **Approval of the other spouse**

(1) For the dispositions of a spouse set out in section 1511 to 1515 to be effective, the approval of the other spouse is required.

(2) The approval may not be given through an agent. The declaration of approval is to be recorded by a notary. The approval is irrevocable.

(3) The spouses may also make the dispositions set out in sections 1511 to 1515 in a joint will.

#### **Section 1517**

##### **Waiver of their share by a descendant**

(1) The effectiveness of a contract by which a descendant of the spouses agrees with one of the spouses to waive their share of the common matrimonial property of the continued community of property or by which such a waiver is revoked for the eventuality that the

marriage is dissolved by the death of that spouse is subject to the approval of the other spouse. The approval is governed by the provision of section 1516 (2) sentences 3 and 4.

(2) The provisions applying to the waiver of an inheritance apply accordingly.

#### **Section 1518**

##### **Mandatory law**

Arrangements that conflict with the provisions of sections 1483 to 1517 may not be made by the spouses, either by testamentary disposition or by contract. The right of the spouses to cancel by marriage contract that contract in which they agreed on continued community of property remains unaffected.

#### **Chapter 4**

### **Optional Regime of the Community of Accrued Gains**

#### **Section 1519**

##### **Agreement by marriage contract**

The provisions contained in the Agreement of 4 February 2010 between the Federal Republic of Germany and the French Republic on the Optional Matrimonial Property Regime of the Community of Accrued Gains apply if the spouses agree on the optional matrimonial property regime of the community of accrued gains by marriage contract. Section 1368 applies accordingly. Section 1412 is not to be applied.

#### **Section 1520 to 1557**

##### **(repealed)**

#### **Subtitle 3**

##### **Matrimonial property register**

#### **Section 1558**

##### **Competent court of registration**

(1) The entries in the matrimonial property register are to be made at every local court in the district of which even only one of the spouses has their habitual residence.

(2) The *Land* governments are authorised to transfer the competence to keep the register, by statutory instrument, to one local court for the districts of more than one local court. The *Land* governments may, by statutory instrument, transfer the authorisation to the *Land* departments of justice.

#### **Section 1559**

##### **Change of habitual residence**

If a spouse, after the entry, moves their habitual residence to another district, the entry must be repeated in the register of that district. The earlier entry is deemed to have been repeated if a spouse changes their habitual residence back to the earlier district.

#### **Section 1560**

##### **Application for entry**

As a rule, an entry in the register is to be made only on application and only to the extent that it is applied for. The application is to be filed in a publicly certified form.

#### **Section 1561**

##### **Requirements for application**

(1) The application of both spouses is necessary for entry; each spouse is obliged to the other to cooperate.

(2) The application of one spouse is sufficient

1. to enter a marriage contract or a change in the marital property regime arrangements of the spouses based on a judicial decision if, together with the application, the marriage contract or the decision, bearing a certificate as to its having become final and binding, is submitted;
2. to repeat an entry in the register of another district if,



together with the application, a publicly certified copy of the earlier entry issued after the termination of the previous residence is submitted;

3. to enter the objection to the independent operation of a trade or business by the other spouse and to enter the revocation of the consent, if the spouses live in community of property and the spouse who makes the application manages the common matrimonial property alone or jointly with the other spouse;

4. to enter the restriction or exclusion of the entitlement of the other spouse to perform transactions with effect for the applicant (section 1357 (2)).

(3) (repealed)

### **Section 1562**

#### **Notice by publication**

(1) The local court is to give notice of the entry by publication in the newspaper specified for its notices.

(2) If a change of the matrimonial property regime is entered, then the notice by publication is to be restricted to the designation of the matrimonial property regime and, where this is defined differently from the statutory provisions, to a general designation of the difference.

### **Section 1563**

#### **Inspection of the register; application of Regulation (EU) 2016/679 in registry proceedings**

(1) Every person is permitted to inspect the register. A copy of the entries may be requested; on request, the copy is to be certified.

(2) The rights enshrined in Article 15 of Regulation (EU) 2016/679 are granted in accordance with subsection (1) by inspection of the register. The registry court has no obligation to inform persons whose personal data are stored in the matrimonial property register or in the registry files as to the disclosure to third parties of said data.

(3) In all other regards, section 79a (2) and 3 applies accordingly.

### **Title 7**

#### **Divorce**

#### **Subtitle 1**

#### **Grounds of divorce**

### **Section 1564**

#### **Divorce by judicial decision**

A marriage may be dissolved by divorce only by judicial decision on the petition of one or both spouses. The marriage is dissolved upon the decision becoming final and binding. The prerequisites based on which a petition for divorce may be made are set out in the following provisions.

### **Section 1565**

#### **Breakdown of marriage**

(1) A marriage may be dissolved by divorce if it has broken down. The marriage has broken down if the conjugal union of the spouses no longer exists and it cannot be expected that the spouses restore it.

(2) Where the spouses have not yet lived apart for one year, the marriage may be dissolved by divorce only if the continuation of the marriage would be an unreasonable hardship for the petitioner for reasons constituted by the person of the other spouse.

### **Section 1566**

#### **Presumption of breakdown**

(1) It is irrebuttably presumed that the marriage has broken down if the spouses have lived apart for a year and both spouses petition for divorce or the respondent consents to divorce.

(2) It is irrebuttably presumed that the marriage has broken down if the spouses have lived apart for three years.

**Section 1567**  
**Living apart**

(1) The spouses are living apart if there is no domestic community between them and a spouse recognisably does not intend to create this because they reject the conjugal union. Domestic community also no longer exists if the spouses live apart in the matrimonial residence.

(2) Living together for a short period which is intended to reconcile the spouses does not interrupt or suspend the periods laid down in section 1566.

**Section 1568**  
**Hardship clause**

(1) As a rule, the marriage is not to be dissolved by divorce, although it has broken down, if and for as long as the maintenance of the marriage, in the interest of minor children of the family, is, exceptionally, necessary for particular reasons or if and as long as divorce, by reason of extraordinary circumstances, would constitute such a severe hardship for the respondent, who rejects it, that the maintenance of the marriage, exceptionally, appears to be advisable, even taking into account the concerns of the petitioner.

(2) (repealed)

**Subtitle 1a**

**Treatment of the matrimonial residence and of the household objects on the occasion of divorce**

**Section 1568a**  
**Matrimonial residence**

(1) One spouse may demand, on the occasion of divorce, that the other spouse make available to them the matrimonial residence for their use if they depend to a greater degree than the other spouse on such use, taking account of the best interests of the children living in the household and of the circumstances of the spouses, or if so making it available is equitable for other reasons.

(2) If one spouse, alone or together with a third party, is the owner of the plot of land on which the matrimonial residence is located, or if one spouse, alone or together with a third party, enjoys usufruct or the heritable building right to the plot of land or an in-rem right of habitation running with the land, the other spouse may only demand that it be made available if this is necessary to avoid an inequitable hardship. The same applies to the title to residential premises and a permanent residential right.

(3) The spouse to whom the residence is made available accedes to the lease relationship entered into by the spouse obliged to make available the matrimonial residence for use, in the latter's stead,

1. at the time of receipt by the landlord of the spouses' notification as to the residence being made available, or

2. upon the final decision in the procedure to allocate the residence becoming final and binding

or continues alone a lease relationship entered into by both spouses. Section 563 (4) applies accordingly.

(4) A spouse may only demand the establishment of a lease relationship regarding a residence which the spouses have on the basis of a service or employment relationship existing between one of them and a third party if the third party consents or this is necessary in order to avert a severe hardship.

(5) If no lease relationship exists with regard to the matrimonial residence, then both the spouse who has a claim to its being made available for use and the person entitled to the

tenancy may demand the establishment of a lease relationship at conditions that are customary locally. Subject to the prerequisites set out in section 575 (1), or if the establishment of an indefinite lease relationship is inequitable on consideration of the legitimate interests of the landlord, the landlord may demand a suitable time-limit to be set on the lease relationship. If no agreement is reached with regard to the amount of the rent, the landlord may demand a suitable rent, in cases of doubt the rent which is customary locally.

(6) In the cases governed by subsections (3) and (5), the right to enter a lease relationship or to its establishment ceases to exist one year after the final decision in the divorce case has become final and binding if it was not legally asserted prior to this date.

#### **Section 1568b** **Household objects**

(1) Each spouse may demand that, on the occasion of the divorce, the other spouse make available to them the jointly-owned household objects and make them the owner if they depend to a greater degree than the other spouse on using them, taking into consideration the best interests of the children living in the household and of the circumstances of the spouses, or if this is equitable for other reasons.

(2) Household objects which were acquired during the marriage for the joint household for purposes of distribution are deemed joint assets of the spouses unless the sole ownership of the spouse is established.

(3) The spouse who assigns their ownership pursuant to subsection (1) may demand a suitable compensation payment.

#### **Subtitle 2** **Maintenance of the divorced spouse**

##### **Chapter 1** **Principle**

#### **Section 1569** **Principle of personal responsibility**

After divorce, each spouse is responsible for providing for their own maintenance. If they are incapable of doing so, they have a claim for maintenance against the other spouse only under the following provisions.

##### **Chapter 2** **Entitlement to maintenance**

#### **Section 1570** **Maintenance to care for a child**

(1) A divorced spouse may demand maintenance from the other, for the care for or child-rearing of a child of the spouses, for at least three years after the birth. The duration of the claim to maintenance is extended as long as and to the extent that this is equitable. Here, the concerns of the child and the existing possibilities of childcare are to be taken into account.

(2) The duration of the maintenance claim is further extended if, taking into account the arrangement of childcare and gainful employment in the marriage and the duration of the marriage, this is equitable.

#### **Section 1571** **Maintenance by reason of old age**

A divorced spouse may demand maintenance of the other to the extent that, at the date

1. of the divorce,
2. of the end of the care for or child-rearing of a child of the spouses or

3. of the lapse of the prerequisites for a claim to maintenance under sections 1572 and 1573

the pursuit of gainful employment may no longer be expected of them by reason of their age.

### **Section 1572**

#### **Maintenance for illness or infirmity**

A divorced spouse may demand maintenance of the other, as long as and to the extent that, from the date

1. of the divorce,
2. of the end of the care for or child-rearing of a child of the spouses or
3. of the end of training, further training or retraining, or
4. of the lapse of the prerequisites for a claim to maintenance under section 1573

onwards no gainful employment may be expected of them by reason of illness or other infirmities or weakness of their physical or mental capacity.

### **Section 1573**

#### **Maintenance for unemployment and topping-up maintenance**

(1) To the extent that a divorced spouse has no maintenance claim under sections 1570 to 1572, they may nevertheless demand maintenance as long as and to the extent that they are not able to find appropriate gainful employment after the divorce.

(2) If the income from appropriate gainful employment is not sufficient for complete maintenance (section 1578), they may, to the extent that they do not already have a maintenance claim under sections 1570 to 1572, demand the amount of the difference between the income and full maintenance.

(3) Subsections (1) and (2) apply accordingly if maintenance was to be granted under sections 1570 to 1572 and 1575 but the prerequisites of this provision have ceased to exist.

(4) The divorced spouse may also demand maintenance if the income from appropriate gainful employment ceases because the spouse, despite their efforts, had not succeeded in securing the maintenance with lasting effect by means of the gainful employment after the divorce. If the divorced spouse had succeeded in securing part of the maintenance with lasting effect, they may demand the amount of the difference between the maintenance secured with lasting effect and the full maintenance.

(5) (repealed)

### **Section 1574**

#### **Appropriate gainful employment**

(1) The divorced spouse is under a duty to pursue gainful employment that is appropriate for them.

(2) Gainful employment is appropriate if it suits the training, the skills, a former employment, the age and the state of health of the divorced spouse, to the extent that such work would not be inequitable with regard to the life circumstances in the marriage. In considering the life circumstances in the marriage, particular account is to be taken of the duration of the marriage and the duration of the care for or child-rearing of a child of the spouses.

(3) To the extent that it is necessary in order to take up appropriate gainful employment, the divorced spouse is under a duty to undertake training, further training or retraining, if successful completion of the training is to be expected.

### **Section 1575**

#### **Training, further training or retraining**

(1) A divorced spouse who in expectation of the marriage or during the marriage did not undertake education at school or vocational training or who broke this off may demand maintenance of the other spouse if they take up this or corresponding training as soon as

possible in order to pursue an appropriate gainful employment that secures maintenance with lasting effect and if successful completion of the training is to be expected. The claim exists at maximum for the period of time in which such training is normally completed; here, delays in the training that result from the marriage are to be taken into account.

(2) Similar provisions apply if the divorced spouse undertakes further training or retraining in order to compensate for disadvantages that arose as a result of the marriage.

(3) If the divorced spouse, after the completion of the training, further training or retraining, demands maintenance under section 1573, then in determining the appropriate gainful employment for them (section 1574 (2)), the higher level of education attained is not taken into account.

### **Section 1576**

#### **Maintenance for reasons of equity**

A divorced spouse may demand maintenance from the other to the extent that and as long as they, for other grave reasons, cannot be expected to pursue gainful employment and the refusal of maintenance, taking into account the concerns of both spouses, would be grossly inequitable. The mere fact that grave reasons led to the breakdown of the marriage does not mean that they may be taken into account.

### **Section 1577**

#### **Indigence**

(1) The divorced spouse may not demand the maintenance under sections 1570 to 1573, 1575 and 1576 as long as and to the extent that they are able to maintain themselves from their income and their assets.

(2) Income is not to be taken into account to the extent that the person obliged is not paying the full maintenance (sections 1578 and 1578b). Income that exceeds the full maintenance is to be taken into account to the extent that this is equitable, with regard to the financial circumstances of both spouses.

(3) The person entitled need not realise the basic assets to the extent that the realisation would be uneconomical or, taking into account the financial circumstances of both spouses, inequitable.

(4) If at the date of the divorce it was to be expected that the maintenance of the person entitled would be secured with lasting effect from their assets, but the assets subsequently no longer exist, there is no claim to maintenance. This does not apply if at the time when the assets cease to exist the spouse cannot be expected to pursue gainful employment by reason of the care for or child-rearing of a child of the spouses.

### **Section 1578**

#### **Amount of maintenance**

(1) The amount of maintenance is determined in accordance with the marital life circumstances. The maintenance comprises all the necessities of life.

(2) Necessities of life also include the costs of appropriate insurance in the case of illness and need for long-term care and the costs of school education or vocational training, further training or retraining under sections 1574 and 1575.

(3) If the divorced spouse has a maintenance claim under sections 1570 to 1573 or section 1576, then necessities of life also include the costs of appropriate insurance for old age and for reduced earning capacity.

### **Section 1578a**

#### **Presumption of cover in the case of additional expenditure resulting from injury**

For outlays resulting from injury to body or health, section 1610a applies.

### **Section 1578b**

#### **Reduction and time limitation of maintenance on grounds of inequity**

(1) The maintenance claim of the divorced spouse is to be reduced to cover the reasonable necessities of life where an assessment of the maintenance claim oriented to the marital life

circumstances would be inequitable even if the concerns of a child of the spouses entrusted to the person entitled in order to be cared for or brought up were observed. Here, particular account is to be taken of how far, as a result of the marriage, disadvantages have occurred with regard to the possibility of taking care of one's own maintenance or a reduction of the maintenance claim would be unfair, consideration being given to the duration of the marriage. Disadvantages within the meaning of sentence 2 may result above all from the duration of the care for or child-rearing of a child of the spouses, as well as from the organisation of household management and gainful employment during the marriage.

(2) The maintenance claim of the divorced spouse is to be limited in time where a maintenance claim without time limitation would be inequitable even if the concerns of a child of the spouses entrusted to the person entitled in order to be cared for or brought up were observed. Subsection (1) sentences 2 and 3 applies accordingly.

(3) The reduction and time limitation of the maintenance claim may be combined.

### **Section 1579**

#### **Restriction or refusal of maintenance for gross inequity**

A maintenance claim is to be refused, reduced or restricted in time to the extent that it would be grossly inequitable for the person obliged to be claimed on, even if the concerns of a child of the spouses entrusted to the person entitled in order to be cared for or brought up were observed, because

1. the marriage was of short duration; here, account is to be taken of the time in which the person entitled may demand maintenance for the care for or child-rearing of a child of the spouses under section 1570,
2. the person entitled lives in a stable long-term form of union,
3. the person entitled has committed a major criminal offence or a serious intentional minor offence against the person obliged or against a close relative of the person obliged,
4. the person entitled frivolously brought about their own indigence,
5. the person entitled frivolously disregarded serious property interests of the person obliged,
6. the person entitled, before the parties lived apart, for a long period grossly violated their duty to contribute to the family maintenance,
7. the person entitled is clearly responsible for manifestly serious misconduct towards the person obliged, or
8. there is another reason that is just as serious as the reasons set out in nos. 1 to 7.

### **Section 1580**

#### **Duty of information**

The divorced spouses are reciprocally obliged to provide, on request, information on their income and their assets. Section 1605 is to be applied accordingly.

### **Chapter 3**

#### **Ability to pay and priority**

### **Section 1581**

#### **Ability to pay**

If the person obliged, with regard to their gainful employment and financial circumstances, taking into account their other duties, is incapable without endangering their own appropriate maintenance of paying maintenance to the person entitled, they need pay maintenance only

to the extent that is equitable, taking into account the needs as well as the gainful employment and financial circumstances of the divorced spouses. They need not realise the basic assets to the extent that the realisation would be uneconomical or, taking into account the financial circumstances of both spouses, inequitable.

#### **Section 1582**

##### **Priority of the divorced spouse where more than one person is entitled to maintenance**

If there is more than one person entitled to maintenance, the priority of the divorced spouse is governed by section 1609.

#### **Section 1583**

##### **Influence of the matrimonial property regime**

If the person obliged, in the case of a remarriage, lives in the matrimonial property regime of community of property with their new spouse, section 1604 is to be applied accordingly.

#### **Section 1584**

##### **Priority of more than one person liable for maintenance**

The divorced spouse liable for maintenance is liable before the relatives of the person entitled. However, to the extent that the person obliged is not able to pay, the relatives are liable before the divorced spouse. Section 1607 subsections (2) and (4) applies accordingly.

### **Chapter 4**

#### **Form of the maintenance claim**

#### **Section 1585**

##### **Nature of maintenance payment**

(1) The day-to-day maintenance is to be rendered by making periodical payments. The periodical payments are to be paid monthly in advance. The person obliged owes the full monthly amount even if the maintenance claim expires in the course of the month as a result of remarriage or death of the person entitled.

(2) Instead of the periodical payments, the person entitled may demand a lump sum as capital, if there is a compelling reason and the person obliged is not inequitably burdened by this.

#### **Section 1585a**

##### **Provision of security**

(1) On request, the person obliged is to provide security. The duty to provide security does not apply if there is no reason to assume that the payment of maintenance is endangered or if the person obliged would be inequitably burdened by the provision of security. As a rule, the amount for which security is to be provided is not to exceed the periodical payments for one year, except to the extent that, in the particular circumstances of the cases, a higher amount of security appears appropriate.

(2) The nature of the security to be provided is determined according to the circumstances; the restriction of section 232 does not apply.

#### **Section 1585b**

##### **Maintenance for the past**

(1) By reason of special need (section 1613 (2)), the person entitled may demand maintenance for the past.

(2) In all other cases, the person entitled may claim performance or damages for non-performance for the past only pursuant to section 1613 subsection (1).

(3) For a period lying more than one year before pendency, performance or damages for non-performance may be claimed only if it is to be assumed that the person obliged intentionally avoided performance.

### **Section 1585c**

#### **Agreements on maintenance**

The spouses may make agreements on the obligation to maintain for the time after the divorce. An agreement that is entered into before the divorce becomes final and binding is to be recorded by a notary. Section 127a also applies to an agreement that is recorded in matrimonial proceedings before the trial court.

### **Chapter 5**

#### **End of the maintenance claim**

### **Section 1586**

#### **Remarriage, establishment of a life partnership or death of the person entitled**

(1) The claim to maintenance expires on the remarriage of, on the establishment of a life partnership by or on the death of the person entitled.

(2) Claims to performance or damages for non-performance for the past continue in effect. The same applies to the claim for the monthly payment due at the time of the remarriage, the establishment of a life partnership or the death.

### **Section 1586a**

#### **Revival of the maintenance claim**

(1) Where a divorced spouse enters into a new marriage or life partnership and where the marriage or life partnership is then dissolved, they may demand maintenance under section 1570 from the former spouse if they have to care for or to bring up a child from the former marriage or life partnership.

(2) The spouse in the marriage dissolved later is liable before the spouse of the marriage dissolved earlier. Sentence 1 applies accordingly to life partnerships.

### **Section 1586b**

#### **Obligation not extinguished on death of the person obliged**

(1) On the death of the person obliged, the obligation to maintain passes to the heir as a liability of the estate. The restrictions under section 1581 do not apply. However, the heir is not liable beyond a sum that corresponds to the compulsory portion which would be due to the person entitled if the marriage had not been dissolved by divorce.

(2) In the calculation of the compulsory portion, special elements resulting from the matrimonial property regime under which the divorced spouses lived are not taken into account.

### **Subtitle 3**

#### **Equalisation of pension rights**

### **Section 1587**

#### **Reference to the Equalisation of Pension Rights Act (*Versorgungsausgleichsgesetz*)**

In accordance with the Pension Equalisation Act, an equalisation takes place between the divorced spouses of rights existing in Germany or elsewhere, in particular of the statutory pensions insurance, from other standard security systems such as civil servants pensions or pensions of a professional group, from company pensions or from private old-age and invalidity pensions.

### **Title 8**

#### **Church duties**

### **Section 1588**

#### **(no heading)**

The church duties with regard to the marriage are not affected by the provisions of this Division.



**Division 2  
Relationship**

**Title 1  
General provisions**

**Section 1589  
Relationship by blood**

- (1) Persons one of whom is descended from the other are related lineally. Persons who are not related in direct line but who are descended from the same third person are related collaterally. The degree of relationship is determined by the number of intermediate births.  
(2) (repealed)

**Section 1590  
Relationship by marriage**

- (1) The relatives of a spouse are related to the other spouse by marriage. The line and the degree of the relationship by marriage are determined according to the line and the degree of the intermediate relationship by blood.  
(2) Relationship by marriage continues even if the marriage by which it was created has been dissolved.

**Title 2  
Descent**

**Section 1591  
Maternity**

The mother of a child is the woman who gave birth to it.

**Section 1592  
Paternity**

The father of a child is the man

1. who is married to the mother of the child at the date of the birth,
2. who has acknowledged paternity or
3. whose paternity has been judicially established under section 1600d or section 182 (1) of the Act on the Procedure in Family Matters and in Matters of Non-contentious Jurisdiction (*Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit*).

**Section 1593  
Paternity in the case of dissolution of the marriage by death**

Section 1592 no. 1 applies accordingly if the marriage has been dissolved by death and within 300 days after the dissolution a child is born. If it is certain that the child was conceived more than 300 days before its birth, this period of time will be the relevant period. If a woman who has entered into a further marriage gives birth to a child that would be both the child of the former husband under sentences 1 and 2 and the child of the new husband under section 1592 no. 1, it is to be regarded only as the child of the new husband. If the paternity is challenged and if it is finally and bindingly established that the new husband is not the father of the child, then it is the child of the former husband.

**Section 1594  
Acknowledgement of paternity**

- (1) The legal effects of acknowledgement may, unless the statute leads to a different conclusion, be asserted only from the date on which the acknowledgement becomes effective.

- (2) An acknowledgement of paternity is not effective as long as the paternity of another man is in effect.
- (3) An acknowledgement subject to a condition or a stipulation as to time is ineffective.
- (4) The acknowledgement is admissible even before the birth of the child.

#### **Section 1595**

##### **Need for approval of the acknowledgement**

- (1) The acknowledgement requires the approval of the mother.
- (2) The acknowledgement also requires the approval of the child if the mother does not have parental custody in this respect.
- (3) The approval is governed by section 1594 subsections (3) and (4) accordingly.

#### **Section 1596**

##### **Acknowledgement and approval in the case of lack of capacity to contract or limited capacity to contract**

- (1) A person whose capacity to contract is limited may only acknowledge without a representative. The approval of the legal representative is required. For a person who has no capacity to contract, the legal representative may acknowledge, with ratification by the family court; if the legal representative is a custodian, ratification by the custodianship court is required. The approval of the mother is governed accordingly by sentences 1 to 3.
- (2) For a child that is incapable of contracting or has not yet attained the age of 14, only the legal representative may approve the acknowledgement. In all other cases, a child that has limited capacity to contract can only give approval without a representative; this requires the approval of the legal representative.
- (3) A person under custodianship who is capable of contracting may only acknowledge or give approval without a representative; section 1903 remains unaffected.
- (4) Acknowledgement and approval may not be declared by an authorised representative.

#### **Section 1597**

##### **Formal requirements; revocation**

- (1) Acknowledgement and approval is to be recorded by a notary.
- (2) Certified copies of the acknowledgement and of all declarations that are important for the effectiveness of the acknowledgement are to be sent to the father, the mother and the child, and to the registry of births, deaths and marriages.
- (3) The man may revoke the acknowledgement if it has not yet become effective one year after the recording. The revocation is governed by subsections (1) and (2) and section 1594 (3) and section 1596 subsections (1), (3) and (4) accordingly.

#### **Section 1597a**

##### **Prohibition of wrongful acknowledgment of paternity**

- (1) Paternity may not be acknowledged for the specific purpose of creating the legal prerequisites for permitted entry into the country or for the permitted residence of the child, the acknowledging party, or the mother, and also not in order to create the legal prerequisites for the permitted entry or for the permitted residence of the child by acquiring German citizenship for the child pursuant to section 4 subsection (1) or subsection (3) sentence 1 of the Nationality Act (*Staatsangehörigkeitsgesetz*) (wrongful acknowledgment of paternity).
- (2) Where there are specific indications that paternity has been wrongfully acknowledged, the administrative authority recording acknowledgments or the registry clerk is to inform the administrative authority having competence pursuant to section 85a of the Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory (*Aufenthaltsgesetz*) after having heard the party acknowledging paternity and the mother and is to suspend the recording of the acknowledgment. A sign of specific indications existing is in particular:

1. the fact that the person acknowledging paternity or the mother or the child are required to leave the country and this obligation is enforceable,
2. the fact that the person acknowledging paternity or the mother or the child has filed a request for asylum and is a citizen of a safe country of origin pursuant to section 29a of the Asylum Act (*Asylgesetz*),
3. the fact that any personal relationship between the person acknowledging paternity and the mother or the child is lacking,
4. the suspicion that the person acknowledging paternity has acknowledged paternity, in several instances, of children from different foreign mothers and in each case has created the legal prerequisites for the permitted entry or the permitted residence of the child or of the mother by so acknowledging paternity, also in those cases in which the child has acquired German citizenship by the acknowledgment, or
5. the suspicion that the person acknowledging paternity or the mother has been granted or promised a material benefit in return for acknowledging paternity or for approving the acknowledgment.

The administrative authority recording the acknowledgment or the registry clerk is to inform the person acknowledging paternity, the mother and the registry of the fact that the recording of the acknowledgment is being suspended. Where the administrative authority having competence pursuant to section 85a of the Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory (*Aufenthaltsgesetz*) has determined pursuant to section 85a (1) of said Act that a wrongful acknowledgment of paternity exists and this decision is unappealable, the recording of the acknowledgment is to be refused. (3) For as long as the recording of the acknowledgment is suspended in accordance with subsection (2) sentence 1, the acknowledgment may not effectively be recorded by some other administrative authority recording acknowledgments, nor may it be recorded by a registry clerk. The same applies if the prerequisites of subsection (2) sentence 4 are given. (4) Subsections (1) to (3) apply accordingly to the approval of the mother pursuant to section 1595 (1).

(5) An acknowledgment of paternity cannot be wrongful if the person acknowledging paternity is the biological father of the child to be acknowledged.

#### **Section 1598**

##### **Ineffectiveness of acknowledgement, approval and revocation**

(1) Acknowledgement, approval and revocation are ineffective only if they do not satisfy the requirements pursuant to section 1594 subsections (2) to (4) and sections 1595 to 1597.

Acknowledgment and approval are ineffective also in the case governed by section 1597a (3) and in the case governed by section 1597a (4) in conjunction with subsection (3).

(2) Where five years have passed since the entry in a German register of civil status, the acknowledgement is effective, even if it does not satisfy the requirements of the above provisions.

#### **Section 1598a**

##### **Claim to consent to a genetic examination to clarify natural parentage**

(1) To clarify the natural parentage of the child,

1. the father may require mother and child,
2. the mother may require father and child, and
3. the child may require both parents

to consent to a genetic paternity test and to acquiesce in the taking of a genetic sample appropriate for the test. The sample must be taken in compliance with the recognised principles of science.

(2) On the application of a person entitled to clarify, the family court is to substitute consent that has not been given and order acquiescence in the taking of a sample.

(3) The court suspends the proceedings if and as long as the clarification of the natural parentage would result in a considerable adverse effect on the best interests of the minor child which would be unreasonable for the child even taking into account the concerns of the person entitled to clarify.

(4) A person who has consented to a genetic paternity test and has given a genetic sample may require the person entitled to clarify who has had a paternity test made to permit inspection of the genetic paternity test report or to provide a copy. The family court decides disputes arising from the claim under sentence 1.

### **Section 1599**

#### **Non-existence of paternity**

(1) Section 1592 nos. 1 and 2 and section 1593 do not apply if, by reason of contestation, it has been finally and bindingly established that the man is not the father of the child.

(2) Section 1592 no. 1 and section 1593 also do not apply if the child is born after a divorce petition is pending at court and a third person, at the latest before the end of one year after the order granting the divorce petition has become final and binding, acknowledges paternity; section 1594 (2) is not to be applied. In addition to the declarations necessary under sections 1595 and 1596, the acknowledgement requires the approval of the man who is married to the mother at the date of the birth; this approval is governed accordingly by section 1594 subsections (3) and (4), section 1596 subsection (1), sentences 1 to 3, subsections (3) and (4), section 1597 subsections (1) and (2) and section 1598 (1). The acknowledgement becomes effective at the earliest when the order granting the petition for divorce becomes final and binding.

### **Section 1600**

#### **Persons entitled to contest**

(1) The following are entitled to contest the paternity:

1. the man whose paternity exists under section 1592 nos. 1 and 2 and section 1593,
2. the man who declares in lieu of an oath that he had sexual intercourse with the mother of the child during the period of conception,
3. the mother and
4. the child.

(2) The contestation under subsection (1) no. 2 requires that there be no social and family relationship between the child and the child's father within the meaning of subsection (1) no. 1, nor was there a social and family relationship at the time of the latter's death, and that the person contesting is the natural father of the child.

(3) A social and family relationship under subsection (2) exists if the father, in the meaning of subsection (1) no. 1, has or had actual responsibility for the child at the relevant point in time. There is as a rule an assumption of actual responsibility if the father in the meaning of subsection (1) no. 1 is married to the mother of the child or lived together with the child for a long period in domestic community.

(4) If the child, with the consent of the man and the mother, was conceived by means of artificial insemination by sperm donation from a third person, the contestation of paternity by the man or the mother is excluded.

### **Section 1600a**

#### **Personal contestation; contestation in the case of lack of capacity to contract or limited capacity to contract**

(1) The contestation may not be made through an authorised representative.

(2) The persons entitled to contest in the meaning of section 1600 (1) nos. 1 to 3 may contest the paternity only without a representative. This also applies if they have limited capacity to contract; they do not need the approval of their legal representatives for this. If they have no capacity to contract, only their legal representative may contest.

(3) For a child that is incapable of contracting or has limited capacity to contract, only the legal representative may contest.

(4) The contestation through the legal representative is admissible only if it serves the best interests of the person represented.

(5) A person under custodianship who is capable of contracting may contest the paternity only without a representative.

#### **Section 1600b Contestation periods**

(1) The paternity may be contested at court within two years. The period commences on the date on which the person entitled learns of the circumstances that argue against the paternity; the existence of a social and family relationship in the meaning of section 1600 (2) first alternative does not prevent the period from running.

(1a) (repealed)

(2) The period does not commence before the birth of the child, nor before the acknowledgement has become effective. In the cases governed by section 1593 sentence 4 the period does not begin before the decision finding that the new husband of the mother is not the father of the child has become final and binding.

(3) If the legal representative of a minor child did not contest the paternity in good time, the child may contest it itself after it has attained full age. In this case, the period does not begin before the minor becomes of full age, nor before the date on which the child learns of the circumstances that argue against the paternity.

(4) If the legal representative of a person incapable of contracting did not contest the paternity in good time, the person entitled to contest may himself contest after the lack of capacity to contract comes to an end. Subsection (3) sentence 2 applies accordingly.

(5) The period is suspended by the commencement of proceedings under section 1598a subsection (2); section 204 subsection (2) applies accordingly. The period is also suspended as long as the person entitled to contest is unlawfully prevented from contestation by threat. In all other cases, section 204 (1) nos. 4, 8, 13, 14 and (2), as well as sections 206 and 210, are to be applied accordingly.

(6) If the child obtains knowledge of circumstances on the basis of which the consequences of the paternity are unreasonable for it, the period of subsection (1) sentence 1 commences again for the child on this date.

#### **Section 1600c Presumption of paternity in contestation proceedings**

(1) In the proceedings to contest the paternity, it is presumed that the child is the descendant of the man whose paternity exists under section 1592 nos. 1 and 2 and section 1593.

(2) The presumption under subsection (1) does not apply if the man who has acknowledged paternity contests the paternity and his acknowledgement suffers from a defect in the intention under section 119 (1) and section 123; in this case, section 1600d subsections (2) and (3) are to be applied accordingly.

#### **Section 1600d Court determination of paternity**

(1) If there is no paternity as defined in section 1592 nos. 1 and 2 and section 1593, the paternity is to be determined by the court.

(2) In the proceedings for the court determination of paternity, it is presumed that the father is the man who had sexual intercourse with the mother during the period of conception. The presumption does not apply if there are serious doubts as to the paternity.

(3) The period of conception is considered to be the time from the 300th to the 181st day before the birth of the child, including both the 300th and the 181st days. If it is certain that the child was conceived outside the period set out in sentence 1, that deviating period of time is considered to be the period of conception.

(4) Where the child is conceived by artificial insemination, under the auspices of a physician in a medical care facility within the meaning of section 1a no. 9 of the Transplantation Act (*Transplantationsgesetz*), with heterologous sperm made available by the donor to an extraction facility within the meaning of section 2 (1) sentence 1 of the Sperm Donor Register Act (*Samenspendenregistergesetz*), the sperm donor may not be determined as the father of that child

(5) The legal effects of paternity may be asserted, unless the statute leads to a different conclusion, only from the date on which they are established.

### **Title 3 Obligation to maintain**

#### **Subtitle 1 General provisions**

##### **Section 1601 Persons with an obligation to maintain**

Lineal relatives are under an obligation to maintain each other.

##### **Section 1602 Indigence**

(1) Only a person who is incapable of maintaining himself or herself is entitled to maintenance.

(2) A minor child may demand from its parents, even if it has assets, the payment of maintenance to the extent that the income of its assets and the yield of its work are not sufficient for maintenance.

##### **Section 1603 Ability to pay**

(1) A person who, taking into account their other duties, is incapable of paying maintenance without endangering their reasonable maintenance has no obligation to maintain.

(2) If parents are in this situation, they are obliged to their minor children to use all available funds equally for their maintenance and the maintenance of the children. Unmarried children of full age are equivalent to the minor children, until these attain the age of 21, as long as they live in the household of the parents or of one parent and are in general education. This obligation does not arise if another relative with an obligation to maintain is available; nor does it arise with regard to a child whose maintenance can be paid from its basic assets.

##### **Section 1604 Influence of the matrimonial property regime**

Where the person with an obligation to maintain lives under the matrimonial property regime of community of property, their obligation to maintain in relation to relatives is determined as if the common matrimonial property belonged to them. Where both persons living under the matrimonial property regime of community of property have indigent relatives, the maintenance is to be paid from the common matrimonial property as if the indigent relatives had that relationship with both persons under obligation to maintain on which the obligation to maintain of the person obliged is based.

##### **Section 1605 Duty of information**

(1) Lineal relatives are reciprocally obliged, on request, to supply information on their income and their assets, to the extent that this is necessary to establish a maintenance claim or a maintenance obligation. On the amount of the income, on request, supporting documents, in

particular certificates from the employer, are to be submitted. Sections 260 and 261 are to be applied accordingly.

(2) Before the end of a two-year period, information may be demanded again only if it is satisfactorily demonstrated that the person with a duty to give information later acquired a substantially higher income or further assets.

#### **Section 1606**

##### **Order of priority of more than one person obliged**

(1) The descendants are obliged to maintain before the ascendants.

(2) Among the descendants and among the ascendants, the closer relatives are liable before the more distant relatives.

(3) More than one equally close relative are liable on a pro rata basis on the basis of their gainful employment and financial circumstances. The parent who is caring for a minor child fulfils their obligation to contribute to the maintenance of the child as a rule by caring for and rearing the child.

#### **Section 1607**

##### **Substituted liability and statutory devolution of claim**

(1) To the extent that a relative, on the basis of section 1603, has no obligation to maintain, the relative liable after them is to pay maintenance.

(2) The same applies if the prosecution of rights against a relative within the territory of Germany is excluded or substantially more difficult. The claim against such a relative, to the extent that another relative obliged under subsection (1) pays the maintenance, passes to the latter.

(3) The maintenance claim of a child against a parent, to the extent that, subject to the prerequisites set out in subsection (2) sentence 1, another relative who is not liable for maintenance, or the spouse of the other parent, pays maintenance in place of the parent, passes to the latter. Sentence 1 applies accordingly if a third person pays the child maintenance as father.

(4) The devolution of the maintenance claim may not be asserted to the disadvantage of the person entitled to maintenance.

#### **Section 1608**

##### **Liability of the spouse or life partner**

(1) The spouse of an indigent person is liable before that person's relatives. However, to the extent that the spouse, taking into account their other duties, is incapable of paying maintenance without endangering their reasonable maintenance, the relatives are liable before the spouse. Section 1607 subsections (2) and (4) applies accordingly. The life partner of the indigent person is liable in the same way as a spouse.

(2) (repealed)

#### **Section 1609**

##### **Priority of more than person entitled to maintenance**

If there is more than one person entitled to maintenance and if the person liable for maintenance is incapable of paying maintenance to all, the following order of priority applies:

1. minor children and children within the meaning of section 1603 (2) sentence 2,
2. parents who are entitled to maintenance for the care of a child, or would be so entitled in the case of a divorce, and spouses and divorced spouses in the case of a long marriage; if it is determined that the marriage was long, account also is to be taken of disadvantages within the meaning of section 1578b (1) sentences 2 and 3
3. spouses and divorced spouses who do not fall under no. 2,
4. children who do not fall under no. 1,

5. grandchildren and more distant descendants,
6. parents,
7. further ascendants; among these, the more closely related take precedence over the more distantly related.

**Section 1610**  
**Amount of maintenance**

- (1) The amount of maintenance to be paid is determined according to the position in life of the indigent person (appropriate maintenance).
- (2) The maintenance includes all the necessities of life, including the costs of appropriate training for a profession, and in the case of a person needing education, also the costs of education.

**Section 1610a**

**Presumption of cover in the case of additional expenditure resulting from injury**

If social security benefits are claimed for outlays as the result of injury to body or health, then when a maintenance claim is determined, it is presumed that the costs of the outlays are not less than the amount of these social security benefits.

**Section 1611**  
**Restriction or end of obligation**

- (1) If the person entitled to maintenance has become indigent as a result of their moral fault, if they have grossly neglected their own obligation to maintain towards the person liable for maintenance or intentionally committed severe misconduct against the person liable for maintenance or a close relative of the person liable for maintenance, the person liable for maintenance need pay a contribution to maintenance only in the amount that is equitable. The obligation lapses completely if it would be grossly inequitable for the person liable for maintenance to be claimed on.
- (2) The provisions of subsection (1) are not to be applied to the obligation of parents to maintain their minor children.
- (3) The indigent person may not, by reason of a restriction of their claim arising under these provisions, claim on other persons liable for maintenance.

**Section 1612**  
**Nature of maintenance payment**

- (1) The maintenance is to be rendered by making pecuniary payments. The person liable for maintenance may request that they be allowed to render the maintenance in another form if special reasons justify this.
- (2) If parents are obliged to pay maintenance to an unmarried child, they may determine in what form and for what period in advance the maintenance is to be paid, provided due consideration is given to the concerns of the child. If the child is a minor, a parent who does not have care for the person of the child may make a determination only for the time in which the child is taken into the household of the parent.
- (3) Periodical payments are to be paid monthly in advance. The person obliged owes the full monthly amount even if the person entitled dies in the course of the month.

**Section 1612a**  
**Minimum maintenance of minor children; authorisation to issue statutory instruments**

(1) A minor child may demand from one parent, with whom it does not live together in one household, maintenance as a percentage of the applicable minimum maintenance. The minimum maintenance is based on the material subsistence level of the minor child, which is to be exempted from taxes. The monthly rate, depending on the age of the child, is

1. for the time until the child attains the age of 6 (first age bracket) 87 per cent,



2. for the time from the age of 7 until the child attains the age of 12 (second age bracket) 100 per cent and
  3. for the time from the age of 13 on (third age bracket) 117 per cent
- of the material subsistence level of the minor child, which is to be exempted from taxes.
- (2) The percentage is to be limited to one decimal place; every further decimal place resulting is not taken into account. The amount resulting from the calculation of the maintenance is to be rounded up to whole euros.
- (3) The maintenance of a higher age bracket applies from the beginning of the month in which the child reaches the relevant age.
- (4) The Federal Ministry of Justice and Consumer Protection (*Bundesministerium der Justiz und für Verbraucherschutz*) is to determine by statutory instrument, which does not require the consent of the Bundesrat, the minimum maintenance for the first time as per 1 January 2016 and every two years thereafter.
- (5) (repealed)

#### **Section 1612b**

##### **Meeting cash requirements through child benefit**

- (1) The child benefit for the child is to be used to meet its cash requirements as follows:
1. half of the child benefit if one parent performs their obligation to maintain by caring for the child (section 1606 (3) sentence 2);
  2. in all other cases, the complete child benefit.

To this extent, it reduces the cash requirements of the child.

- (2) If the child benefit is increased to take account of a child that is not a child of both spouses, it is, in the amount of the increase, not to be taken into account as reducing the requirements.

#### **Section 1612c**

##### **Set-off of other child-related payments**

Section 1612b applies accordingly for regularly recurring child-related payments to the extent that they exclude the claim for child benefit.

#### **Section 1613**

##### **Maintenance for the past**

- (1) For the past, the person entitled may claim performance or damages for non-performance only from the date on which the person obliged, for the purpose of asserting the maintenance claim, was requested to provide information on their income and their assets, on which the person obliged was in default or on which the maintenance claim became pending at court. The maintenance is owed from the first of the month in which the events referred to fall if the maintenance claim existed in principle on this date.
- (2) The person entitled may demand performance for the past without the restriction of subsection (1)

1. by reason of an irregular exceptionally high need (special need); after the end of a one-year period since it arose, this claim may be asserted only if the person obliged is first in default or the claim has become pending at court;
2. for the period in which he
  - a) for legal reasons or
  - b) for factual reasons which fall into the area of responsibility of the person liable for maintenance,was prevented from asserting the maintenance claim.

(3) In the cases governed by subsection (2) no. 2, performance may not be demanded, may be demanded only in instalments or may be demanded only at a later date to the extent that full or immediate performance would be an inequitable hardship for the person obliged. This also applies to the extent that a third person demands compensation from the person obliged because they have paid maintenance in place of the person obliged.

#### **Section 1614**

##### **Waiver of maintenance claim; advance performance**

- (1) Maintenance may not be waived for the future.
- (2) Advance performance releases the person obliged, in the case where the person entitled becomes indigent again, only for the period of time laid down in section 760 (2) or, if they were to determine the period of time on their own, for a period of time that is appropriate in the circumstances.

#### **Section 1615**

##### **Extinction of the maintenance claim**

- (1) The maintenance claim expires on the death of the person entitled or of the person obliged, to the extent that it is not directed at performance or damages for non-performance for the past or at such performance to be made in advance as is due at the time of the death of the person entitled or of the person obliged.
- (2) In the case of the death of the person entitled, the person obliged bears the costs of the funeral to the extent that payment for it cannot be obtained from the heir.

#### **Subtitle 2**

##### **Special provisions for the child and its parents who are not married to each other**

#### **Section 1615a**

##### **Applicable provisions**

If there is no paternity as defined in section 1592 no. 1 and section 1593 for a child and if the parents also did not conceive the child during their marriage or enter into marriage with each other after its birth, the general provisions of law apply to the extent that the following provisions do not state otherwise.

#### **Sections 1615b to 1615k (repealed)**

#### **Section 1615l**

##### **Maintenance claim of mother and father by reason of the birth**

- (1) The father is to pay the mother maintenance for a period of six weeks before and eight weeks after the birth of the child. This also applies to the costs that arise as a result of the pregnancy or the delivery outside this period.
- (2) To the extent that the mother does not pursue gainful employment because as a result of the pregnancy or of an illness caused by the pregnancy or the delivery she is incapable of doing so, the father is obliged to pay her maintenance for a period exceeding the period set out in subsection (1) sentence 1. The same applies to the extent that the mother cannot be expected to pursue gainful employment by reason of the care for or child-rearing of the child. The obligation to maintain begins at the earliest four months before the birth and continues for at least three years after the birth. It is extended, as long as and to the extent that this is equitable. Here, particular account is to be taken of the concerns of the child and the existing possibilities of childcare.
- (3) The provisions of the obligation to maintain between relatives are to be applied accordingly. The obligation of the father takes precedence over the obligation of the relatives of the mother. Section 1613 (2) applies accordingly. The claim does not expire on the death of the father.
- (4) If the father cares for the child, he has the claim under subsection (2) sentence 2 against the mother. In this case, subsection (3) applies accordingly.

#### **Section 1615m**

##### **Funeral costs for the mother**

If the mother dies as a result of the pregnancy or the delivery, the father bears the costs of the funeral to the extent that payment for it cannot be obtained from the heir of the mother.

#### **Section 1615n**

##### **No expiry on the death of the father or stillbirth**

The claims under sections 1615l and 1615m exist even if the father dies before the birth of the child or if the child is stillborn. In the case of a miscarriage, the provisions of sections 1615l and 1615m apply accordingly.

### **Title 4**

#### **Legal relationship between the parents and the child in general**

#### **Section 1616**

##### **Birth name in the case of parents with family name**

The child receives the family name of its parents as its birth name.

#### **Section 1617**

##### **Birth name in the case of parents without family name and with joint parental custody**

(1) If the parents have no family name and if they have joint parental custody, then, by declaration to the registry of births, deaths and marriages, they designate the name that the father or the mother has at the time of the declaration as the birth name of the child. A declaration made after the recording of the birth must be publicly certified. The designation made by the parents also applies for their further children.

(2) If, within one month after the birth of the child, the parents make no designation, the family court transfers the right of designation to one parent. Subsection (1) applies accordingly. The court may impose a period of time on the parent for the exercise of the right of designation. If, after the period has ended, the right of designation has not been exercised, the child receives the name of the parent to whom the right of designation was transferred.

(3) Where a child is not born on domestic territory, the court transfers to one parent the right of designation under subsection (2) only if a parent or the child applied for this or the entry of the name of the child in a German registry of civil status or in an official German identity document is required.

#### **Section 1617a**

##### **Birth name in the case of parents without family name and with sole parental custody**

(1) If the parents have no family name and if only one of them has parental custody, the child receives the name that this parent has at the date of the birth of the child.

(2) The parent who has the sole parental custody for a child may, by declaration to the registry of births, deaths and marriages, give the child the name of the other parent. The giving of the name is subject to consent by the other parent and, if the child has reached the age of five, also consent by the child. The declarations must be publicly certified. The child's consent is governed accordingly by section 1617c (1).

#### **Section 1617b**

##### **Name in the case of subsequent joint parental custody or ostensible paternity**

(1) If joint parental custody begins only when the child already has a name, the name of the child may be newly designated within three months after the beginning of the joint parental custody. If one parent, at the date when the joint parental custody begins, does not have their habitual residence on domestic territory, the period does not end before the end of a one-month period after their return to domestic territory. Where the child has reached the age of five, the designation is effective only if the child agrees with the designation. Section 1617 (1) and section 1617c subsection (1) sentences 2 and 3 and subsection (3) apply accordingly.

(2) Where it is finally and bindingly established that a man whose family name has become the birth name of the child is not the father of the child, the child, on its application or, if the child has not yet attained the age of five, also on application by the man, receives as birth name the name that the mother has at the date of the birth of the child. The application is made by declaration to the registry of births, deaths and marriages, which must be publicly certified. The application of the child is governed by section 1617c (1) sentences 2 and 3 accordingly.

#### **Section 1617c**

##### **Name in the case of change of name by the parents**

(1) Where the parents designate a family name or a name for the life partnership after the child has reached the age of five, the family name or name for the life partnership is also the birth name of the child only if the child agrees with the naming. A child with limited capacity to contract that has reached the age of fourteen may make the declaration only without a representative; the approval of its legal representative is necessary for this. The declaration is to be made to the registry of births, deaths and marriages; it must be publicly certified.

(2) Subsection (1) applies accordingly

1. if the family name or name for the life partnership, which has become the birth name of a child, is changed or

2. if, in the cases governed by sections 1617, 1617a and 1617b, the family name of a parent, which has become the birth name of a child, is changed in a different way than through marriage or entering into a life partnership.

(3) A change of the birth name only affects the family name or the life partnership name of the child if the spouse or life partner also agrees with the change of name; subsection (1) sentence 3 applies accordingly.

#### **Section 1618**

##### **Bringing a child under a family name**

The parent who has the parental custody for a child alone or jointly with the other parent and their spouse who is not a parent of the child may, by declaration to the registry of births, deaths and marriages, give their family name to the child that they have taken into their joint household. They may also attach this name in front of or after the name of the child at the date of the declaration; a family name attached earlier in front or after under the first half-sentence lapses. Giving the name or prepending or appending it requires consent by the other parent where the other parent has joint parental custody with the parent giving the name or the child has the other parent's name; if the child has reached the age of five, this also requires consent by the child. The family court may substitute the consent of the other parent if the giving of the name or prepending or appending it is necessary for the best interests of the child. The declarations must be publicly certified. Section 1617c applies accordingly.

#### **Section 1618a**

##### **Duty of assistance and respect**

Parents and children owe each other assistance and respect.

#### **Section 1619**

##### **Services in house and business**

As long as the child belongs to the household of its parents and is brought up or maintained by its parents, it has a duty to perform services for its parents in their household and business in a manner appropriate for its strength and its position in life.

#### **Section 1620**

##### **Outlays of the child for the household of its parents**

If a child of full age belonging to the household of the parents, in order to pay the costs of the household, makes an outlay from its assets, or if it makes available to the parents something from its assets for this purpose, then in case of doubt it is to be presumed that there is no intention to demand compensation.

**Sections 1621 - 1623  
(repealed)**

**Section 1624**

**Advancement from the parental assets**

- (1) Whatever is given to a child by its father or its mother with regard to its marriage, to its establishing a life partnership or to attaining an independent position in life to establish or to maintain a household or a position in life (advancement) is deemed to be a donation, even if there is no duty, only to the extent that the advancement exceeds the degree appropriate to the circumstances, in particular the financial circumstances of the father or the mother.
- (2) The duty of the person giving the advancement to give a warranty that there is no error in law or material defect is governed, even to the extent that the advancement is not deemed to be a donation, by the provisions applying to the warranty duty of the donor.

**Section 1625**

**Advancement from the assets of the child**

If the father gives an advancement to a child whose assets by reason of parental custody, guardianship or custodianship are subject to the management of the father, then in case of doubt it is to be presumed that he gives it from these assets. This provision applies to the mother accordingly.

**Title 5**

**Parental custody**

**Section 1626**

**Parental custody, principles**

- (1) The parents have the duty and the right to care for the minor child (parental custody). Parental custody includes the care for the person of the child (care for the person of the child) and the assets of the child (care for the assets of the child).
- (2) In the care for and child-rearing of the child, the parents take account of the growing ability and the growing need of the child for independent responsible action. They discuss questions of parental custody with the child to the extent that, in accordance with the stage of development of the child, it is advisable, and they seek agreement.
- (3) The best interests of the child as a general rule include contact with both parents. The same applies to contact with other persons to whom the child has ties, if maintaining these ties is beneficial for its development.

**Section 1626a**

**Parental custody of parents who are not married to one another; declarations of parental custody**

- (1) Where the parents, at the date of the birth of the child, are not married to one another, they have joint parental custody
1. if they declare that they wish to take on parental custody jointly (declarations of parental custody),
  2. if they marry one another, or
  3. if the family court transfers joint parental custody to them.
- (2) On application by a parent, the family court is to transfer parental custody or a part of parental custody to both parents jointly in accordance with subsection (1) no. 3 if the transfer is not inconsistent with the best interests of the child. If the other parent fails to submit any

reasons which might be inconsistent with the transfer of joint parental custody, and if no such reasons are otherwise manifest, it is to be presumed that joint parental custody is not inconsistent with the best interests of the child.

(3) In all other cases, the mother has parental custody.

#### **Section 1626b**

##### **Special prerequisites for the effectiveness of the declaration of parental custody**

- (1) A declaration of parental custody subject to a condition or a stipulation as to time is ineffective.
- (2) The declaration of parental custody may be made even before the birth of the child.
- (3) A declaration of parental custody is ineffective to the extent that a court decision on parental custody under section 1626a (1) no. 3 or section 1671 has been made or such a decision has been altered under section 1696 (1) sentence 1.

#### **Section 1626c**

##### **Declaring in person; parent with limited capacity to contract**

- (1) The parents may make the declarations of parental custody only without a representative.
- (2) The declaration of parental custody of a parent with limited capacity to contract is subject to the approval of their legal representative. The approval may only be given by the legal representative without a representative; section 1626b subsections (1) and (2) applies accordingly. The family court is to substitute the approval on application by the parent with limited capacity to contract if the declaration of parental custody does not conflict with the well-being of this parent.

#### **Section 1626d**

##### **Form; duty of notification**

- (1) Declarations of parental custody and approvals is to be recorded by a notary.
- (2) The reporting agency without undue delay notifies the making of declarations of parental custody and approvals, stating the date of birth and place of birth of the child and the name that the child had at the time when its birth was recorded to the Youth Welfare Office competent under section 87c (6) sentence 2 of Book Eight of the Social Code (*Sozialgesetzbuch*) for the purposes designated in section 58a of Book Eight of the Social Code.

#### **Section 1626e**

##### **Ineffectiveness**

Declarations of parental custody are ineffective only if they do not satisfy the requirements of the above provisions.

#### **Section 1627**

##### **Exercise of parental custody**

The parents are to exercise the parental custody on their own responsibility and in mutual agreement for the best interests of the child. In the case of differences of opinion, they must make efforts to achieve agreement.

#### **Section 1628**

##### **Court decision in the case of differences of opinion between the parents**

If the parents, in a single matter or in a particular kind of matter of parental custody the arrangements for which are of substantial importance for the child, cannot agree, the family court, on the application of a parent, may transfer the decision to one parent. The transfer may be subject to limitations or conditions.

#### **Section 1629**

##### **Representation of the child**

- (1) Parental custody includes the representation of the child. The parents represent the child jointly; where a declaration of intent is to be made to the child, it is sufficient if it is made to one parent. One parent represents the child alone, to the extent that they exercise parental

custody alone or the decision has been transferred to them under section 1628. In the case of imminent danger, each parent is entitled to undertake all legal acts that are necessary for the best interests of the child; the other parent is to be informed without undue delay.

(2) The father and the mother may not represent the child to the extent that under section 1795 a guardian is excluded from the representation of the child. If the parental custody for a child is held by the parents jointly, then the parent in whose charge the child is may assert maintenance claims of the child against the other parent. The family court may deprive the father and the mother under section 1796 of the representation; this does not apply to the determination of paternity.

(2a) The father and the mother may not represent the child in court proceedings under section 1598a (2).

(3) If the parents of the child are married to each other or if they have entered into a life partnership, then one parent may assert maintenance claims of the child against the other parent only in their own name, for as long as.

1. the parents live apart, or
2. a court dispute concerning the marriage or the life partnership within the sense of section 269 (1), no. 1 or 2, of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction (*Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit*) is pending at court between them.

A court decision obtained by one parent and a court settlement entered into between the parents also take effect for and against the child.

#### **Section 1629a** **Restriction of liability of minors**

(1) The liability for obligations that the parents, as part of their statutory power of agency, or other persons entitled to represent the child, as part of their power of agency, have created with effect for the child by legal transaction or another action, or that have arisen on the basis of an acquisition as a result of death that occurred during the minority, is restricted to the inventory of the assets of the child that are in existence when the child attains full age; the same applies to obligations arising from legal transactions that the minor under sections 107 and 108 or section 111 entered into with the approval of their parents or for obligations arising from legal transactions for which the parents received the ratification by the family court. If the minor who is now of full age relies on the restriction of liability, the provisions of sections 1990 and 1991 for the liability of the heir apply accordingly.

(2) Subsection (1) does not apply to obligations from the independent operation of a trade or business to the extent that the minor was entitled to do this under section 112, and for obligations from legal transactions that served solely the satisfaction of their personal needs.

(3) The rights of the creditors against co-debtors and those who are jointly liable and their rights arising from a security created for the claim or from a priority notice securing its creation are not affected by subsection (1).

(4) If a member of a community of heirs or an association of persons does not within three months after the minor attains full age demand the partitioning of the estate or the termination of the association, then in case of doubt it is to be assumed that the obligation arising from such a relationship arose after the minor attained full age; similar provisions apply to the proprietor of a trading business who has attained full age and who does not terminate this within three months after reaching full age. Under the prerequisites set out in sentence 1, it is also presumed that the present assets of the person who has attained full age were already in existence when they attained full age.

#### **Section 1630** **Parental custody in the case of appointment of a curator or of foster care**

(1) The parental custody does not extend to matters of the child for which a curator has been appointed.

(2) Where the care for the person of the child or the care for the assets of the child is the responsibility of a curator, then the family court decides, if the parents and the curator cannot agree in a matter that relates to both the person and the assets of the child.

(3) If the parents place the child in foster care for a long period of time, the family court, on application by the parents or of the foster carer, may transfer matters of parental custody to the foster carer. The transfer on application by the foster carer requires the approval of the parents. In the scope of the transfer, the foster carer has the rights and duties of a curator.

### **Section 1631**

#### **Contents and limits of care for the person of the child**

(1) The care for the person of the child includes in particular the duty and the right to care for, bring up and supervise the child and to specify its abode.

(2) Children have a right to non-violent child-rearing. Physical punishments, psychological injuries and other degrading measures are inadmissible.

(3) The family court is to support the parents, on application, in exercising care for the person of the child in suitable cases.

### **Section 1631a**

#### **Training and profession**

In matters of training and of profession, the parents take account in particular of the aptitude and inclination of the child. If there are doubts, then as a rule the advice of a teacher or of another suitable person is to be obtained.

### **Section 1631b**

#### **Placement involving deprivation of liberty and measures involving deprivation of liberty**

(1) Placement of the child that is associated with deprivation of liberty requires ratification by the family court. The placement is permissible for as long as it is necessary in the child's best interests, in particular in order to avert danger to the child or to a third-party and the danger cannot be remedied by other means, including via other public assistance. Without approval, accommodation is only permissible if delay entails risk; the ratification is to be obtained subsequently without undue delay.

(2) Where the child is in a hospital, a home or some other institution, ratification by the family court also is necessary if it is intended to use mechanical devices, medication or other means to deprive the child of liberty for a longer period of time or on a regular basis in a manner that is not age-appropriate. Subsection (1) sentences 2 and 3 applies accordingly.

### **Section 1631c**

#### **Prohibition of sterilisation**

The parents may not consent to a sterilisation of the child. Nor can the child itself consent to the sterilisation. Section 1909 does not apply.

### **Section 1631d**

#### **Circumcision of the male child**

(1) The care for the person of the child includes the right to give consent to the medically unnecessary circumcision of a male child who is not capable of reasoning and forming a judgment, if this is to be carried out in accordance with the rules of medical practice. This does not apply if the circumcision, even considering its purpose, jeopardises the best interests of the child.

(2) In the first six months after the child is born, circumcision also may be performed pursuant to subsection (1) by persons designated by a religious group to perform this procedure if these persons are specially trained to do so and, without being a physician, are comparably qualified to perform circumcisions.

### **Section 1631e**

#### **Treatment of children with variants of sexual development**



(1) The care for the person of the child does not include the right to consent to the treatment of a child with a variant of sexual development who is unable to consent or to oneself perform such treatment, which is being performed solely with the intention, without any additional grounds for the treatment existing, of aligning the child's physical appearance with that of the male or female sex.

(2) Parents can consent to surgical interventions in the internal or external genitalia of the child with a variant of sexual development who is unable to consent, the consequence of which could be an alignment of the child's physical appearance with that of the male or female sex and regarding which the power to grant consent is not already lacking in accordance with subsection (1) only if it is impossible to postpone the intervention until the child takes a self-determined decision. Section 1909 is not to be applied.

(3) The consent in accordance with subsection (2) sentence 1 requires ratification by the family court unless the surgical intervention is required in order to avert danger to the life or health of the child and cannot be postponed until the ratification is issued. The ratification is to be issued on application of the parents if the planned intervention is most conducive to the best interests of the child. Where the parents submit to the family court an opinion by an interdisciplinary committee in favour of the intervention in accordance with subsection (4), then the presumption will be that the planned intervention is most conducive to the best interests of the child.

(4) As a rule, the interdisciplinary committee is to be made up of the following persons at a minimum:

1. the child's treating party as defined in section 630a,
2. at least one further physician,
3. a person with professional qualifications as a psychologist, child and youth psychotherapist or child and youth psychiatrist, and
4. a person trained in ethics or who has pursued further training or continuing education in ethics.

The medical members of the committee must be paediatricians with different subspecialties. They must include a specialist physician for paediatrics with a focus on paediatric endocrinology and diabetology. A member of the committee according to sentence 1 no. 2 may not be employed by the medical care facility in which it is intended to perform the surgical intervention. The entirety of all committee members must be experienced in dealing with children with variants of sexual development. As a rule, the committee is to involve a consulting person with a variant of sexual development should the parents so wish.

(5) The opinion from the interdisciplinary committee in favour of the surgical intervention in accordance with subsection (2) sentence 1 is to include the following information in particular:

1. the designation of the committee members and details of their qualification,
2. the child's age and whether the child has a variant of sexual development and if so, which variant this is,
3. the designation of the planned intervention and what the medical indication is for it,
4. why the committee is in favour of the intervention, taking account of the child's best interests, and whether they regard the intervention to be most conducive to the best interests of the child, in particular which risks are entailed by this intervention, by a different treatment or by forgoing an intervention until the child takes a self-determined decision,

5. whether committee members had a discussion with the parents and the child, and if so, which committee members did so, and whether committee members provided information, explanations and advice to the parents and the child on how this variant of sexual development may be dealt with, and if so, which committee members did so,

6. whether a consulting person with a variant of sexual development provided consultancy to the parents and the child,

7. the extent to which the child is able to form an opinion and to express themselves and whether the planned intervention corresponds to the child's intent, as well as

8. whether the consulting person with a variant of sexual development involved in accordance with subsection (4) sentence 6 supports the favourable opinion.

The opinion must be signed by all members of the interdisciplinary committee.

(6) The treating party defined in section 630a is to keep the medical record, if treatment was performed on the internal or external genitalia, up until the day on which the person treated attains the age of 48.

#### **Section 1632**

##### **Surrender of the child; determination of contact; order that child remains in foster care**

(1) The care for the person of the child includes the right to require surrender of the child from every person who is unlawfully withholding it from the parents or from one parent.

(2) The care for the person of the child also includes the right to determine contact for the child, even with effect for and against third parties.

(3) Disputes that relate to a matter under subsection (1) or (2) are decided by the family court on the application of a parent.

(4) Where the child has lived in foster care for a long period of time, and where the parents want to remove the child from the foster carer, the family court may order, of its own motion or on application by the foster carer, that the child remain with the foster carer, if and as long as the best interests of the child would be endangered by the removal. In proceedings according to sentence 1, the family court additionally may order, of its own motion or on application by the foster carer, that the child permanently remain with the foster carer if

1. the child-rearing circumstances given with the parents over the course of a period of time that is reasonable with a view to the child's development have not sustainably improved in spite of suitable consultancy and support measures having been offered and if it is highly likely that such an improvement is not to be expected, also not in the future, and if

2. the best interests of the child require this order to be made.

#### **Section 1633**

**(repealed)**

#### **Sections 1634 - 1637**

**(repealed)**

#### **Section 1638**

##### **Restriction of care for the assets of the child**

(1) The care for the assets of the child does not extend to the assets which the child acquires as a result of death or which are given it free of charge *inter vivos* if the testator by testamentary disposition or the donor when making the disposition stipulated that the parents were not to manage the assets.

(2) The parents may also not manage whatever the child acquires on the basis of a right that is part of such assets or as compensation for the destruction, damage or deprivation of an object that is part of the assets or by a legal transaction that relates to the assets.

(3) If it is stipulated by testamentary disposition or in making the disposition that one parent is not to manage the assets, the other parent will manage them. In this respect, this parent represents the child.

#### **Section 1639**

##### **Directions of the testator or donor**

(1) Whatever the child acquires as a result of death or whatever it is given free of charge *inter vivos* the parents are to manage under the directions that were made by testamentary disposition or when the disposition was made.

(2) The parents may deviate from the directions to the extent that, under section 1803 subsections (2) and (3), this is permitted to a guardian.

#### **Section 1640**

##### **Inventory of assets**

(1) The parents are to prepare an inventory of the assets subject to their management which the child acquires as a result of death, affix to the inventory an affirmation that it is correct and complete and submit the inventory to the family court. The same applies to assets which the child obtains in another way on the occasion of a death, and to lump sum payments that are made instead of maintenance, and gratuitous dispositions. In the case of household objects, a statement of the total value is sufficient.

(2) Subsection (1) does not apply

1. if the value of assets acquired does not exceed 15,000 euros or

2. to the extent that the testator by testamentary disposition or the donor when making the disposition made a direction to the contrary.

(3) If the parents, contrary to subsection (1) or (2), do not submit an inventory, or if the inventory submitted is inadequate, the family court may order that the inventory is recorded by a competent authority or a competent official or notary.

#### **Section 1641**

##### **Prohibition of donation**

The parents may not, in representation of the child, make donations. Donations that are made to comply with a moral duty or to show consideration for decency are exempt.

#### **Section 1642**

##### **Investment of money**

The parents are to invest the money of the child subject to their management in accordance with the principles of efficient management of assets to the extent that it is not to be kept ready to pay expenses.

#### **Section 1643**

##### **Legal transactions subject to approval**

(1) For legal transactions for the child, the parents need ratification by the family court in the cases in which under section 1821 and under section 1822 nos. 1, 3, 5 and 8 to 11 a guardian needs approval.

(2) The same applies to the disclaimer of an inheritance or of a legacy and for the waiver of a compulsory portion. Where the devolution on the child occurs only as the result of the disclaimer of a parent who represents the child alone or jointly with the other parent, the approval is necessary only if the parent was entitled together with the child.

(3) The provisions of sections 1825 and 1828 to 1831 are to be applied accordingly.

#### **Section 1644**

##### **Making available assets to the child**

The parents may not make objects available to the child that they may alienate only with the ratification of the family court, for purposes of performing a contract concluded by the child or for its free disposition, absent such ratification by the family court.

#### **Section 1645**

##### **New trade or business**

As a rule, the parents are not to commence, without ratification by the family court, a new trade or business in the name of the child.

#### **Section 1646**

##### **Acquisition with funds of the child**

(1) If the parents acquire movable things with the funds of the child, then on the acquisition the ownership passes to the child, unless the parents do not intend to acquire for the account of the child. This applies in particular also to bearer instruments as well as to instruments made out to order and furnished with a blank endorsement.

(2) The provisions of subsection (1) are to be applied accordingly if the parents, with the funds of the child, acquire a right things of the nature designated or another right for the transfer of which the contract of assignment suffices.

#### **Section 1647**

**(repealed)**

#### **Section 1648**

##### **Reimbursement of outlays**

If the parents, in exercising the care for the person of the child or the care for the assets of the child, make outlays which in the circumstances they are permitted to regard as necessary, then they may demand reimbursement from the child except to the extent that the outlays are not borne by themselves.

#### **Section 1649**

##### **Use of the income from the assets of the child**

(1) The income from the assets of the child that is not needed for the proper management of the assets is to be used for the maintenance of the child. To the extent that the income from the assets is not sufficient, the income may be used which the child acquires as a result of its work or as a result of the independent operation of a trade or business permitted them under section 112.

(2) The parents may use the income of the assets that is not needed for the proper management of the assets and for the maintenance of the child for their own maintenance and for the maintenance of the minor siblings of the child, to the extent that this is equitable, taking into account the financial circumstances and gainful employment pursued by the persons involved.

#### **Sections 1650 - 1663**

**(repealed)**

#### **Section 1664**

##### **Limited liability of the parents**

(1) In exercising the parental custody, the parents are answerable to the child only for the care they customarily exercise in their own affairs.

(2) If both parents are responsible for damage, they are liable as joint and several debtors.

#### **Section 1665**

**(repealed)**

#### **Section 1666**

##### **Court measures in the case of endangerment of the best interests of the child**

(1) Where the physical, mental or psychological best interests of the child or the child's assets are endangered and the parents do not wish or are not able to avert the danger, the family court is to take the measures necessary to avert the danger.

(2) In general it is to be presumed that the assets of the child are endangered if the person with care for the assets of the child violates their maintenance obligation towards the child or their duties connected with the care for the assets of the child or fails to comply with orders of the court that relate to the care for the assets of the child.

(3) The court measures in accordance with subsection (1) include in particular

1. instructions to seek public assistance, such as benefits of child and youth welfare and healthcare,
2. instructions to ensure that the obligation to attend school is complied with,
3. prohibitions to use the family residence or another dwelling temporarily or for an indefinite period, to be within a certain radius of the residence or to visit certain other places where the child regularly spends time,
4. prohibitions to establish contact with the child or to bring about a meeting with the child,
5. substitution of declarations of the person with parental custody,
6. part or complete removal of parental custody.

(4) In matters of care for the person of the child, the court may also undertake measures with effect in relation to a third party.

#### **Section 1666a**

##### **Principle of proportionality; priority of public support measures**

(1) Measures which entail a separation of the child from its parental family are admissible only if the danger cannot be countered in another way, not even through public support measures. This also applies if one parent is temporarily or for an indefinite period to be refused use of the family residence. If a parent or a third party is refused the use of the residence in which the child also lives or of another residence, then it also is to be considered, in assessing the duration of the measure, whether this person has the ownership, a heritable building right or usufruct in the plot of land on which the residence is located; similar provisions apply to title to residential premises, a permanent residential right and an in-rem right of habitation running with the land, or if the parent or third party is the lessee of the residence.

(2) The complete care for the person of the child may be revoked only if other measures have failed to obtain a result or if it is to be assumed that they do not suffice to avert the danger.

#### **Section 1667**

##### **Court measures in the case of endangerment of the assets of the child**

(1) The family court may order that the parents submit an inventory of the assets of the child and render accounts regarding their management. The parents are to affix to the inventory an affirmation that it is correct and complete. If the inventory submitted is inadequate, then the family court may order that the inventory is made by a competent authority or by a competent official or notary.

(2) The family court may order that the money of the child is invested in a particular way and that its approval is necessary for revocation. If securities, valuables or Debt Register claims against the Federal Government or a *Land* are part of the assets of the child, the family court may impose on the parent who represents the child the same duties as, under sections 1814 to 1816 and 1818, are imposed on a guardian; sections 1819 and 1820 are to be applied accordingly.

(3) The family court may require the parent who endangers the assets of the child to provide security for the assets the parent has under management. The nature and the scope of the provision of security is determined by the family court in its discretion. In the creation and cancellation of the security, the cooperation of the child is substituted by the order of the family court. The provision of security may be compelled only by the care for the assets of the child being removed as a whole or in part under section 1666 (1).

(4) The costs of the measures ordered are borne by the parent who occasioned them.

**Sections 1668 - 1670  
(repealed)**

**Section 1671**

**Transfer of sole custody where the parents live apart**

(1) If parents live apart for a period that is not merely temporary, and if they have joint parental custody, each parent may apply for the family court to transfer parental custody or part of parental custody to that parent alone. The application is to be granted to the extent that

1. the other parent consents, unless the child has reached the age of fourteen and objects to the transfer, or
2. it is to be expected that the termination of the joint parental custody and the transfer to the applicant is most conducive to the best interests of the child.

(2) If parents live apart for a period that is not merely temporary and if, under section 1626a (3), the mother has parental custody, the father may apply for the family court to transfer parental custody or part of the parental custody to him alone. The application is to be granted if

1. the mother consents, unless the transfer is inconsistent with the best interests of the child or the child has reached the age of fourteen and objects to the transfer, or
2. joint custody is not an available option and it is to be expected that the transfer to the father is most conducive to the best interests of the child.

(3) If the parental custody of the mother is suspended in accordance with section 1751 (1) sentence 1 the application of the father for transfer of joint parental custody in accordance with section 1626a (2) is to be deemed to be an application in accordance with subsection (2). The application is to be granted where the transfer of parental custody to the father is not inconsistent with the best interests of the child.

(4) The applications in accordance with subsections (1) and (2) are not to be granted where parental custody must be regulated differently on the basis of other provisions.

**Section 1672  
(repealed)**

**Section 1673**

**Suspension of parental custody in the case of a legal impediment**

(1) The parental custody of one parent is suspended if they are incapable of contracting.  
(2) The same applies if they have limited capacity to contract. They have the care for the person of the child together with the legal representative of the child; they are not entitled to represent the child. In the case of a difference of opinion, the opinion of the minor parent has precedence, if the legal representative of the child is a guardian or curator; failing this, section 1627 sentence 2 and section 1628 apply.

**Section 1674**

**Suspension of parental custody in the case of a factual impediment**

(1) The parental custody of a parent is suspended if the family court establishes that they cannot in fact exercise the parental custody for a long period of time.

(2) The parental custody revives if the family court establishes that the reason for the suspension no longer applies.

#### **Section 1674a**

##### **Suspension of the mother's parental custody for a child delivered by confidential birth**

The mother's parental custody is suspended for a child delivered by confidential birth pursuant to section 25 (1) of the Law on Conflicts in Pregnancies (*Schwangerschaftskonfliktgesetz*). Her parental custody revives if the family court establishes that the mother has provided the court with the information required to enter the child's birth in the register.

#### **Section 1675**

##### **Effect of the suspension**

As long as the parental custody is suspended, a parent is not entitled to exercise it.

#### **Section 1676**

**(repealed)**

#### **Section 1677**

##### **Termination of parental custody by declaration of death**

The parental custody of one parent ends if they are declared dead or the time of their death is established under the provisions of the Missing Persons Act (*Verschollenheitsgesetz*), at the time that is deemed to be the time of death.

#### **Section 1678**

##### **Consequences for the other parent of the actual prevention or of the suspension**

(1) Where a parent is actually prevented from exercising parental custody, or where their parental custody is suspended, the other parent exercises the parental custody alone; this does not apply if the parental custody under section 1626a (3) or section 1671 was held by the parent alone.

(2) Where the parental custody of the parent, which they had alone under section 1626a (3) or section 1671, is suspended, and where there is no prospect of the reason for the suspension ceasing to apply, the family court is to transfer parental custody to the other parent if this is not inconsistent with the best interests of the child.

#### **Section 1679**

**(repealed)**

#### **Section 1680**

##### **Death of a parent or removal of the parental custody**

(1) If the parental custody was held by the parents jointly and if one parent has died, the parental custody is held by the surviving spouse.

(2) Where a parent who, under section 1626a (3) or 1671, had sole custody has died, the family court is to transfer parental custody to the surviving parent if this is not inconsistent with the best interests of the child.

(3) Subsections (1) and (2) apply accordingly to the extent that one parent is deprived of parental custody.

#### **Section 1681**

##### **Declaration of death of a parent**

(1) Section 1680 (1) and (2) applies accordingly if the parental custody of a parent ends because they are declared dead or the time of their death has been established under the provisions of the Missing Persons Act (*Verschollenheitsgesetz*).

(2) Where this parent is still alive, the family court, on application, is to transfer parental custody to this parent to the extent to which the parent was entitled to it before the point of

time relevant under section 1677, unless this is inconsistent with the best interests of the child.

### **Section 1682**

#### **Order that the child remains with persons to whom it relates**

Where the child has lived for a long period in a household with one parent and the parent's spouse, and where the other parent, who under sections 1678, 1680 and 1681 may now alone determine the abode of the child, wants to remove the child from the spouse, the family court may of its own motion or on application by the spouse order that the child remains with the spouse, if and as long as the best interests of the child would be endangered by the removal. Sentence 1 applies accordingly if the child has lived for a long period in a household with one parent and the parent's life partner or a person entitled to contact under section 1685 (1).

### **Section 1683 (repealed)**

### **Section 1684**

#### **Contact of the child with its parents**

(1) The child has the right of contact with each parent; each parent has a duty and a right of contact with the child.

(2) The parents are to refrain from everything that renders more difficult the relationship of the child to the other parent or the child-rearing. Similar provisions apply if the child is in the charge of another person.

(3) The family court may decide on the scope of the right of contact and make more detailed provisions on its exercise, including provisions affecting third parties. It may enjoin the parties by orders to fulfil the duty defined in subsection (2). If the obligation in accordance with subsection (2) is considerably violated permanently or repeatedly, the family court may also order custodianship for the implementation of access (access custodianship). Access custodianship includes the right to demand surrender of the child to implement access and to determine where the child is to be for the duration of access. The order is to be time-limited. Section 277 of the Act on the Procedure in Family Matters and in Matters of Non-contentious Jurisdiction applies accordingly to compensation for expenditure and remuneration of the access custodian.

(4) The family court may restrict or exclude the right of contact or the enforcement of earlier decisions on the right of contact, to the extent that this is necessary for the best interests of the child. A decision that restricts the right of contact or its enforcement for a long period or permanently may only be made if otherwise the best interests of the child would be endangered. The family court may in particular order that contact may take place only if a third party who is prepared to cooperate is present. The third party also may be an agency of the youth welfare service or an association; the latter then determines in each case which individual carries out the task.

### **Section 1685**

#### **Contact of the child with other persons to whom it relates**

(1) Grandparents and siblings have a right of contact with the child if this serves the best interests of the child.

(2) The same applies to persons to whom the child relates closely if these have or have had actual responsibility for the child (social and family relationship). It is in general to be assumed that actual responsibility has been taken on if the person has been living for a long period in domestic community with the child.

(3) Section 1684 (2) to (4) applies accordingly. The family court may only order access custodianship in accordance with section 1684 (3) sentences 3 to 5 if the prerequisites of section 1666 (1) are met.



### **Section 1686**

#### **Information on the personal circumstances of the child**

Each parent may, in the case of legitimate interest, demand information from the other parent on the personal circumstances of the child, to the extent that this is not inconsistent with the best interests of the child.

### **Section 1686a**

#### **Rights of the biological but not legal father**

(1) As long as the paternity of another man exists, the biological father who has demonstrated a serious interest in the child has

1. a right of contact with the child if such access is in the best interests of the child, and
2. a right to be provided with information from each parent regarding the personal circumstances of the child where they have a legitimate interest and this is not inconsistent with the best interests of the child.

(2) Section 1684 subsections (2) to (4) applies accordingly with regard to the right of access to the child in accordance with subsection (1) no. 1. The family court may only order access custodianship in accordance with section 1684 (3) sentences (3) to (5) if the prerequisites of section 1666 (1) are met.

### **Section 1687**

#### **Exercise of joint parental custody when the parents live apart**

(1) If parents who have joint parental custody live apart not merely temporarily, then in the case of decisions in matters the arrangement of which is of substantial significance for the child their mutual agreement is required. The parent with whom the child, with the consent of the other parent or on the basis of a court decision, customarily resides has the authority to decide alone in matters of everyday life. Decisions in matters of everyday life are as a rule such as frequently occur and that have no effects that are difficult to alter on the development of the child. As long as the child, with the consent of this parent or on the basis of a court decision, resides with the other parent, the latter has the authority to decide alone in matters of actual care. Section 1629 (1) sentence 4 and section 1684 (2) sentence 1 apply accordingly.

(2) The family court may restrict or exclude the powers under subsection (1) sentences 2 and 4, if this is necessary for the best interests of the child.

### **Section 1687a**

#### **Power to make decision of the parent without parental custody**

For each parent who does not have parental custody and with whom the child resides with the consent of the other parent or of another person with parental custody or on the basis of a court decision, section 1687 (1) sentences 4 and 5 and subsection (2) apply accordingly.

### **Section 1687b**

#### **Parental custody powers of the spouse**

(1) The spouse of a parent with sole parental custody who is not a parent of the child has the power, in agreement with the parent with parental custody, to make joint decisions in matters of the everyday life of the child. Section 1629 (2) sentence 1 applies accordingly.

(2) In the case of imminent danger, each spouse is entitled to undertake all legal act that are necessary for the best interests of the child; the parent with parental custody is to be informed without undue delay.

(3) The family court may restrict or exclude the powers under subsection (1) if this is necessary for the best interests of the child.

(4) The powers under subsection (1) do not exist if the spouses live apart for a not merely temporary period.

### **Section 1688**

#### **Decisions of the foster carer**

(1) Where a child has lived in foster care for a long period of time, the foster carer is entitled to decide in matters of everyday life and to represent the person with parental custody in such matters. The foster carer is authorised to manage the child's earnings from work and to assert and manage maintenance, insurance, pension and other social security benefits for the child. Section 1629 (1) sentence 4 applies accordingly.

(2) The foster carer is equivalent to a person who in connection with the help under sections 34, 35 and 35a (2) nos. 3 and 4 of Book Eight of the Social Code (*Sozialgesetzbuch*) has taken on the child-rearing of and care for a child.

(3) Subsections (1) and (2) do not apply if the person with parental custody declares otherwise. The family court may restrict or exclude the powers under subsections (1) and (2) if this is necessary for the best interests of the child.

(4) For a person with whom the child, on the basis of a court decision under section 1632 (4) or section 1682, resides, subsections (1) and (3) apply subject to the proviso that the powers set out may be restricted or excluded only by the family court.

### **Sections 1689 - 1692**

**(repealed)**

### **Section 1693**

#### **Court measures where the parents are prevented**

If the parents are prevented from exercising parental custody, the family court is to take the measures necessary in the interest of the child.

### **Sections 1694, 1695**

**(repealed)**

### **Section 1696**

#### **Amendment of judicial decisions and of court-approved settlements**

(1) The decision on the right of custody or of contact or a court-approved settlement is to be amended if this is appropriate for sound reasons which affect the interests of the child in the long term. Decisions in accordance with section 1626a (2) may be altered in accordance with section 1671 (1); section 1671 (4) applies accordingly. Section 1678 (2), section 1680 (2), as well as section 1681 subsections (1) and (2), remain unaffected thereby.

(2) A measure under sections 1666 to 1667 or another provision of the Civil Code, which may only be taken if this is necessary to avert a danger to the child's best interests or which is in the child's best interests (measure under the law on child protection) is to be repealed if there is no longer a danger to the best interests of the child or the measure is no longer necessary.

(3) An order under section 1632 (4) is to be reversed on application of the parents if the best interests of the child would not be endangered by the child's removal from the foster carer.

### **Section 1697**

**(repealed)**

### **Section 1697a**

#### **Principle of best interests of child**

(1) Unless otherwise provided, the court, in proceedings on the matters provided for in this title, makes the decision that, taking into account the actual circumstances and possibilities and the legitimate interests of those involved, is most conducive to the best interests of the child.

(2) If the child lives in foster care, then unless otherwise provided, the court also is to take into account, in proceedings on matters governed by the present Title, whether and to what extent the child-rearing circumstances given with the parents have improved, over the course of a period of time that is reasonable with a view to the child's development, to such a

degree that they are able to themselves rear the child. Where the prerequisites stipulated in section 1632 (4) sentence 2 no. 1 are met, the court also is to take into account in its decision the need of the child for continuity and stability in their life circumstances. Sentences 1 and 2 apply accordingly if the child is reared and care for in connection with the help under sections 34 or 35a (2) no. 4 of Book Eight of the Social Code (*Sozialgesetzbuch*).

#### **Section 1698**

##### **Surrender of the assets of the child; rendering accounts**

- (1) If the parental custody ends or is suspended, or if their care for the assets of the child ends for another reason, they are to surrender the assets to the child and, on request, render accounts on their management.
- (2) The parents are to render account of the emoluments of the assets of the child only to the extent that there is reason to assume that they have used the emoluments contrary to the provisions of section 1649.

#### **Section 1698a**

##### **Continuation of transactions in ignorance that parental custody has ended**

- (1) The parents may continue the transactions connected with the care for the person of the child and with the care for the assets of the child until they obtain knowledge of the termination of parental custody or until they ought to know of it. A third party cannot rely on this power if, when they enter into a transaction, they know of the termination or ought to have knowledge.
- (2) These provisions are to be applied accordingly if the parental custody is suspended.

#### **Section 1698b**

##### **Continuation of urgent transactions after the death of the child**

If the parental custody ends as the result of the death of the child, the parents are to carry out, until the heir can make other arrangements, the transactions which cannot be deferred without danger.

#### **Sections 1699 - 1711 (repealed)**

#### **Title 6**

#### **Legal advisership**

#### **Section 1712**

##### **Youth welfare office as legal adviser; tasks**

- (1) On the written application of a parent, the Youth Welfare Office becomes the legal adviser of the child for the following tasks:
  1. the determination of paternity,
  2. the assertion of maintenance claims and the disposition of these claims; if the child is in the foster care of a third party on a payment basis, the legal adviser is entitled to satisfy the third party from the payment made by the person liable for maintenance.
- (2) The application may be restricted to individual tasks of those designated in subsection (1).

#### **Section 1713**

##### **Persons entitled to apply**

- (1) The application may be made by a parent who has sole parental custody for the scope of functions of the legal adviser applied for, or would have it if the child had already been born. If the parental custody for the child is held jointly by the parents, the application may be made by the parent in whose care the child now is. The application also may be made by a guardian designated under section 1776. It may not be made through an agent.

(2) Before the birth of the child, the mother-to-be may also make the application if the child, if it had already been born, would be under guardianship. If the mother-to-be has limited capacity to contract, she may make the application only without a representative; she does not need the approval of her legal representative for this. For a mother-to-be who is incapable of contracting, only her legal representative may make the application.

#### **Section 1714**

##### **Occurrence of legal advisership**

The legal advisership begins as soon as the application is received by the Youth Welfare Office. This also applies if the application is made before the birth of the child.

#### **Section 1715**

##### **Termination of legal advisership**

(1) The legal advisership ends when the applicant demands this in writing. Section 1712 (2) and section 1714 apply accordingly.

(2) The legal advisership also ends as soon as the applicant ceases to satisfy any of the prerequisites set out in section 1713.

#### **Section 1716**

##### **Effects of legal advisership**

The legal advisership does not restrict the parental custody. In all other cases, the provisions on curatorship, with the exception of those on the supervision of the family court and the rendering of accounts apply accordingly; sections 1791 and 1791c (3) are not to be applied.

#### **Section 1717**

##### **Requirement of habitual residence on domestic territory**

The legal advisership only occurs if the child has its habitual residence on domestic territory; it ends if the child establishes its habitual residence abroad. This applies to the legal advisership before the birth of the child accordingly.

#### **Sections 1718 - 1740**

##### **(repealed)**

#### **Title 7**

##### **Adoption**

#### **Subtitle 1**

##### **Adoption of minors**

#### **Section 1741**

##### **Admissibility of the adoption**

(1) Adoption is admissible if it serves the best interests of the child and it is to be expected that a parent-child relationship will arise between the adoptive parent and the child. A person who has taken part for the purpose of adoption in a procurement or transportation of a child that is unlawful or that offends common decency, or who has commissioned a third party with this or rewarded them for this as a rule is to adopt a child only if this is required by the best interests of the child.

(2) A person who is not married may adopt a child only alone. A married couple may adopt a child only jointly. A spouse may adopt a child of their spouse alone. They may also adopt a child alone if the other spouse cannot adopt the child because they are incapable of contracting or have not yet attained the age of 21.

#### **Section 1742**

##### **Adoption only as child of the spouses**

An adopted child may, as long as the adoption relationship exists, in the lifetime of an adoptive parent only be adopted by that parent's spouse.

**Section 1743**  
**Minimum age**

The adoptive parent must have reached the age of 25, or in the cases governed by section 1741 (2) sentence 3 the age of 21. In the cases governed by section 1741 (2) sentence 2 a spouse must have reached the age of 25 and the other spouse the age of 21.

**Section 1744**  
**Probationary period**

As a rule, the adoption is not to be pronounced until the adoptive parent has had the child in foster care for a reasonable period.

**Section 1745**  
**Prohibition of adoption**

The adoption may not be pronounced if overriding interests of the children of the adoptive parent or of the child to be adopted prevent it or if it is to be feared that interests of the child to be adopted are endangered by children of the adoptive parent. As a rule, interests under property law are not to be decisive.

**Section 1746**  
**Consent of the child**

(1) The adoption requires consent by the child. For a child that is incapable of contracting or has not yet attained the age of 14, only their legal representative may give the consent. In all other cases, the child may give the consent only without a representative; the approval of their legal representative is necessary for this.

(2) If the child has reached the age of fourteen and if it is not incapable of contracting, it may revoke the consent to the family court before the pronouncement of the adoption takes effect. The revocation is to be recorded by a notary. The approval of the legal representative is not required.

(3) If the guardian or curator refuses the consent or approval without a sound reason, the family court may substitute it; there is no need for a declaration by the parents under subsection (1) to the extent that they irrevocably consented to the adoption under sections 1747 and 1750 or their consent was substituted by the family court under section 1748.

**Section 1747**  
**Consent of the parents of the child**

(1) The adoption of a child requires consent by the parents. To the extent that no other man is to be regarded as father under section 1592, then in the meaning of sentence 1 and section 1748 (4), the person is deemed to be the father who satisfactorily demonstrates that the prerequisites set out in section 1600d (2) sentence 1 have been met.

(2) The consent may not be given until the child is eight weeks old. It is effective even if the person consenting does not know the adoptive parents, who have already been decided on.

(3) If parents who are not married to one another do not have joint parental custody,

1. the father's consent may be given even before the birth;
2. the father may waive the right to apply for the transfer of parental custody under section 1626a (2) and section 1671 (2) by means of a publicly notarised declaration; section 1750 applies, accordingly, with the exception of subsection (1) sentence 2 and subsection (4) sentence 1;
3. if the father has applied for the transfer of custody under section 1626a (2) or section 1671 (2), an adoption may not be pronounced until after there has been a decision on application by the father.

(4) The consent of one parent is not necessary if they are permanently incapable of making a declaration or their abode is permanently unknown. The abode of a mother who has delivered her child by confidential birth pursuant to section 25 (1) of the Law on Conflicts in

Pregnancies (*Schwangerschaftskonfliktgesetz*) is deemed permanently unknown until she has provided the family court with the information required to enter the child's birth in the register.

#### **Section 1748**

##### **Substitution of the consent of a parent**

(1) The family court, on application by the child, is to substitute the consent of one parent where that parent has persistently grossly violated their duties to the child or has shown by their conduct that they are indifferent to the child, and where it would be disproportionately disadvantageous to the child if the adoption did not take place. The consent also may be substituted if the violation of duty, although not persistent, is particularly serious and it is probable that it will permanently not be possible to entrust the child to the care of the parent.

(2) The consent may not be substituted on account of indifference that is not at the same time a persistent gross breach of duty until the parent has been instructed by the Youth Welfare Office on the possibility of its substitution and advised under section 51 (2) of Book Eight of the Social Code (*Sozialgesetzbuch*) and at least three months have passed since the instruction; the instruction is to point out the limitation period. No instruction is necessary if the parent has changed their residence without leaving their new address and the residence cannot be determined by the Youth Welfare Office within a period of three months despite appropriate research; in this case, the period commences on the first action of the Youth Welfare Office directed towards instruction and advice or towards determining the residence. The periods expire at the earliest five months after the birth of the child.

(3) The consent of a parent also may be substituted where they are permanently incapable of caring for and bringing up the child as the result of a particularly serious psychological illness or a particularly serious mental or psychological handicap and where the child, if the adoption does not take place, could not grow up in a family and the child's development would as a result be seriously endangered.

(4) In the cases governed by section 1626a (3), the family court is to substitute consent by the father if the fact that the adoption does not take place would be disproportionately disadvantageous to the child.

#### **Section 1749**

##### **Consent of the spouse**

(1) The adoption of a child by one spouse along requires consent by the other spouse. The family court may, on application by the adoptive parent, substitute the consent. The consent may not be substituted if legitimate interests of the other spouse and or the family conflict with the adoption.

(2) Consent by the spouse is not necessary if they are permanently incapable of making the declaration or their abode is permanently unknown.

#### **Section 1750**

##### **Declaration of consent**

(1) The consent under sections 1746, 1747 and 1749 is to be declared to the family court. The declaration requires notarial recording. The consent becomes effective on the date when it is received by the family court.

(2) The consent may not be given subject to a condition or a stipulation as to time. It is irrevocable; the provision of section 1746 (2) remains unaffected.

(3) The consent may not be given through an agent. If the person consenting has restricted capacity to contract, their consent does not require the approval of their legal representative. The provision of section 1746 (1) sentences 2 and 3 remains unaffected.

(4) The consent loses its force if the application is revoked or the adoption is refused. The consent of one parent also loses its force if the child is not adopted within three years from the date when the consent becomes effective.

### **Section 1751**

#### **Effect of parental consent, maintenance obligation**

(1) On the consent of one parent to the adoption, the parental custody of this parent is suspended; the power to have personal contact with the child may not be exercised. The Youth Welfare Office becomes the guardian; this does not apply if the other parent exercises parental custody alone or if a guardian has already been appointed. An existing curatorship remains unaffected. The adoptive parent, during the time of personal care prior to adoption, is governed by section 1688 subsections (1) and (3) accordingly.

(2) Subsection (1) is not to be applied to a spouse whose child is adopted by the other spouse.

(3) Where the consent of one parent has ceased to apply, the family court is to transfer the parental custody to the parents if and to the extent that this does not conflict with the best interests of the child.

(4) The adoptive parent has an obligation to pay maintenance before the relatives of the child as soon as the parents of the child have given the necessary consent and the child has been taken into the care of the adoptive parent with the purpose of adoption. If a spouse wishes to adopt a child of their spouse, the spouses have an obligation to the child before the other relatives of the child to pay maintenance as soon as the necessary consent of the parents of the child has been given and the child has been taken into the care of the adoptive parent with the purpose of adoption.

### **Section 1752**

#### **Order of the family court, application**

(1) The adoption is pronounced by the family court, on application by the adoptive parent.

(2) The application may not be made subject to a condition or to a stipulation as to time or through an agent. It is to be recorded by a notary.

### **Section 1753**

#### **Adoption after death**

(1) The pronouncement of the adoption may not be made after the death of the child.

(2) After the death of the adoptive parent, the pronouncement is admissible only if the adoptive parent submitted the application to the family court or at or after the notarial recording of the application commissioned the notary to submit the application.

(3) Where the adoption is pronounced after the death of the adoptive parent, it has the same effect as if it had been pronounced before the death.

### **Section 1754**

#### **Effect of adoption**

(1) If a married couple adopt a child or if a spouse adopts a child of the other spouse, the child attains the legal position of a child of both the spouses.

(2) In the other cases the child attains the legal position of a child of the adoptive parent.

(3) The parental custody is held in the cases governed by subsection (1) by the spouses jointly, and in the cases governed by subsection (2) by the adoptive parent.

### **Section 1755**

#### **Extinction of relationships**

(1) On the adoption, the relationship of the child and its descendants to the previous relatives and the rights and duties arising therefrom are extinguished. Claims of the child that arose before the adoption, in particular to pensions, orphan's allowance and other similar recurring payments are not affected by the adoption; this does not apply to maintenance claims.

(2) If a spouse adopts the child of their spouse, the extinction of the relationship occurs only in relation to the other parent and their relatives.

### **Section 1756**

#### **Continuation of relationships**

(1) If the adoptive parents are related by blood or by marriage to the child in the second or third degree, only the relationship of the child and of the child's descendants to the parents of the child and the rights and duties arising therefrom are extinguished.

(2) Where a spouse adopts the child of their spouse, the relationship is not extinguished in relation to the relatives of the other parent, if the other parent had the parental custody and has died.

#### **Section 1757**

##### **Name of the child**

(1) The child receives as its birth name the family name of the adoptive parent. The name affixed to the family name of the spouses or the life partnership name is not deemed to be the family name (section 1355 (4); section 3 (2) of the Act on Registered Life Partnerships (*Lebenspartnerschaftsgesetz*)).

(2) If a married couple adopt a child or if a spouse adopts a child of the other spouse and if the spouses have no family name, they determine the birth name of the child, before the pronouncement of the adoption, by declaration to the family court; section 1617 (1) applies accordingly. Where the child has reached the age of five, the determination is effective only if the child agrees with the determination, before the pronouncement of the adoption, by declaration to the family court; section 1617c (1) sentence 2 applies accordingly.

(3) The family court may, on application by the adoptive parent, with the consent of the child to the pronouncement of the adoption

1. change the first name of the child or give the child one or several new first names, if this is conducive to the best interests of the child;

2. prepend or append the previous family name to the new family name of the child, if this is necessary for grave reasons for the best interests of the child.

Section 1746 subsection (1) sentences 2 and 3 and subsection (3) first half-sentence are to be applied accordingly.

#### **Section 1758**

##### **Prohibition on disclosure and exploratory questioning**

(1) Facts that are suited to reveal the adoption and its circumstances may not be revealed or discovered by exploratory questioning without the approval of the adoptive parent and of the child unless special reasons of the public interest require this to be done.

(2) Subsection (1) applies accordingly if the consent under section 1747 has been given. The family court may order that the effects of subsection (1) occur if an application for substitution of the consent of a parent has been made.

#### **Section 1759**

##### **Cancellation of the adoption relationship**

The adoption relationship may be set aside only in the cases governed by section 1760 and 1763.

#### **Section 1760**

##### **Setting aside for lack of declarations**

(1) The adoption relationship may, on application, be set aside by the family court if it was created without an application of the adoptive parent, without the consent of the child or without the required consent of a parent.

(2) The application or consent is ineffective only if the declarant

a) at the time of the declaration was in a state of unconsciousness or temporary mental disturbance, if the applicant was incapable of contracting or the child, which was incapable of contracting or has not yet attained the age of 14, gave the consent itself,

b) did not know that it was an adoption, or if they knew this but did not wish to make an application for adoption or did not want to give consent to adoption or if the



adoptive parent was mistaken as to the person of the child to be adopted or if the child to be adopted was mistaken in the person of the adoptive parent,

- c) was induced to make the declaration by deceit as to material circumstances,
- d) was unlawfully induced to make the declaration by a threat,
- e) gave the consent before the end of the period laid down in section 1747 (2) sentence 1.

(3) The cancellation is excluded if the declarant, after the end of the incapacity to contract, the unconsciousness, the mental disturbance, the duress caused by the threat, after the discovery of the mistake or after the end of the period laid down in section 1747 (2) sentence 1 made up for the missing application or consent or indicated in another way that the adoption relationship was to be sustained. The provisions of section 1746 (1) sentences 2 and 3 and section 1750 (3) sentences 1 and 2 are to be applied accordingly.

(4) Cancellation for deceit on material circumstances is also excluded if there has been deceit as to the financial circumstances of the adoptive parent or of the child or if the deceit, without the knowledge of a person entitled to apply or consent, was carried out by a person who is entitled neither to apply nor to consent nor to arrange the adoption.

(5) Where, when the adoption was pronounced, it was wrongly presumed that a parent was permanently incapable of making the declaration or their abode was permanently unknown, then the cancellation is excluded if the parent makes up for the missing consent or has indicated in another way that the adoption relationship is to be maintained. The provision of section 1750 (3) sentences 1 and 2 are to be applied accordingly.

#### **Section 1761**

##### **Impediments preventing cancellation**

(1) The adoption relationship may not be cancelled because a necessary consent has not been obtained or is ineffective under section 1760 (2) if the prerequisites for the substitution of the consent had been met when the adoption was pronounced or if they are satisfied at the time of the decision on the application for cancellation; in this connection, there are no detrimental effects if there was no instruction or advice under section 1748 (2).

(2) The adoption relationship may not be cancelled if as a result of this the best interests of the child would be substantially endangered, unless overriding interests of the adoptive parent require the cancellation.

#### **Section 1762**

##### **Entitlement to apply; period for filing application, form**

(1) The only person who is entitled to apply is a person without whose application or consent the child was adopted. For a child that is incapable of contracting or has not yet attained the age of 14, and for the adoptive parent who is incapable of contracting, the application may be filed by the legal representatives. In addition, the application cannot be made through an agent. If the person entitled to file has restricted capacity to contract, the approval of their legal representative is not required.

(2) The application may only be made within one year if less than three years have passed since the adoption. The period commences

- a) in the cases governed by section 1760 (2) a, at the time when the declarer has attained at least limited capacity to contract or when the legal representative of the adoptive parent who is not capable of contracting or of the child that has not yet attained the age of 14 or is incapable of contracting becomes aware of the declaration;
- b) in the cases governed by section 1760 (2) (b) and (c), at the time when the declarer discovers the mistake or the deceit;
- c) in the case governed by section 1760 (2) (d), at the time at which the duress ends;

d) in the case governed by section 1760 (2) (e), at the end of the period laid down in section 1747 (2) sentence 1;

e) in the cases governed by section 1760 (5), at the time when the parent becomes aware that the adoption took place without their consent.

The provisions of section 206 and 210 that apply to limitation are to be applied accordingly.

(3) The application is to be recorded by a notary.

### **Section 1763**

#### **Cancellation by the court of its own motion**

(1) During the minority of the child, the family court may cancel the adoption relationship of its own motion if this is necessary for grave reasons in the best interests of the child.

(2) If the child has been adopted by a married couple, the adoption relationship existing between the child and one spouse also may be cancelled.

(3) The adoption relationship may only be cancelled

a) if, in the case governed by subsection (2), the other spouse or if a natural parent is prepared to take on the care for and child-rearing of the child, and if the exercise of parental custody by that spouse would not be inconsistent with the best interests of the child or

b) if the cancellation is intended to make it possible for the child to be adopted again.

### **Section 1764**

#### **Effect of cancellation**

(1) The cancellation has effect only in the future. Where the family court cancels the adoption relationship after the death of the adoptive parent on application by the adoptive parent or after the death of the child on application by the child, this has the same effect as if the adoption relationship had been cancelled before the death.

(2) On the cancellation of the adoption, the relationship, created by the adoption, of the child and its descendants to the previous relatives and the rights and duties arising therefrom is extinguished.

(3) At the same time, the relationship of the child and its descendants to the blood relatives of the child, and the rights and duties arising therefrom, are revived, with the exception of parental custody.

(4) The family court is to reassign the parental custody to the natural parents if and to the extent that this is not inconsistent with the best interests of the child; failing this, it appoints a guardian or curator.

(5) If the adoption relationship is with a married couple and if the cancellation takes place only with regard to one spouse, then the effects of subsection (2) occur only between the child and its descendants and this spouse and the relatives of this spouse; the effects of subsection (3) do not occur.

### **Section 1765**

#### **Name of the child after the cancellation**

(1) Upon the cancellation of the adoption, the child loses the right to use the family name of the adoptive parent as its birth name. In the cases governed by section 1754 (1) sentence 1 is not to be applied if the child uses a birth name under section 1757 (1) and the adoption relationship is cancelled in relation to one parent alone. If the birth name has become the family name or life partnership name of the child, the name remains unaffected.

(2) On application by the child, the family court may order, together with the cancellation, that the child retains the family name which it acquired as a result of the adoption, if the child has a legitimate interest in the use of this name. Section 1746 (1) sentences 2 and 3 is to be applied accordingly.

(3) If the name acquired as a result of the adoption has become the family name or life partnership name, the family court, upon the joint application of the spouses or life partners, is to order, together with the cancellation, that the spouses or life partners use as their family name or life partnership name the birth name which the child used before the adoption.

#### **Section 1766**

##### **Marriage between adoptive parent and child**

If an adoptive parent, contrary to the provisions of family law, enters into marriage with the adopted child or with one of its descendants, then upon the marriage, the legal relationship created between them by the adoption is cancelled. Sections 1764 and 1765 are not to be applied.

#### **Section 1766a**

##### **Adoption of children of a partner who is not a spouse**

(1) The provisions of this Subtitle on the adoption of a child of the other spouse apply accordingly to two persons in a stable long-term form of union cohabiting in a joint household.

(2) As a rule, a stable long-term form of union within the meaning of subsection (1) is given if the persons have been cohabiting

1. for a minimum of four years or
2. as the parents of a joint child, together with the child,

in a quasi-marital form of union. As a rule, this will not be given if one of the partners is married to a third party.

(3) Where the adoptive parent is married to a third party, the adoptive parent may adopt the child of their partner only alone. The adoption requires consent by the third party. section 1749 (1) sentence 2 and 3 and (2) applies accordingly.

#### **Subtitle 2**

##### **Adoption of persons of full age**

#### **Section 1767**

##### **Admissibility of adoption, applicable provisions**

(1) A person of full age may be adopted if the adoption is morally justified; this is to be assumed in particular if a parent-child relationship has already developed between the adoptive parent and the person to be adopted.

(2) The adoption of persons of full age is governed accordingly by the provisions on the adoption of minors, unless the following provisions lead to a different conclusion. The adoption of a married person or of a person who is a partner in a life partnership requires consent by their spouse or their life partner. The change of the birth name extends to the married name or the name for the life partnership of the person adopted only if the spouse or life partner also agrees with and accepts the change of name, before the pronouncement of the adoption, by declaration to the family court; the declaration must be publicly certified.

#### **Section 1768**

##### **Application**

(1) The adoption of a person of full age is pronounced by the family court upon application by the adoptive parent and the person to be adopted. Sections 1742, 1744, 1745, 1746 subsections (1) and (2) and section 1747 are not to be applied.

(2) For a person to be adopted who is incapable of contracting, the application may be made only by their legal representative.

#### **Section 1769**

##### **Prohibition of adoption**

The adoption of a person of full age may not be pronounced if overriding interests of the children of the adoptive parent or of the person to be adopted are inconsistent with it.

**Section 1770**  
**Effect of adoption**

(1) The effects of the adoption of a person of full age do not extend to the relatives of the adoptive parent. The spouse or life partner of the adoptive parent does not become a relative by marriage of the person adopted, and the spouse or life partner of the person adopted does not become a relative by marriage of the adoptive parent.

(2) The rights and duties arising from the relationship between the person adopted and their descendants and their relatives are not affected by the adoption except as otherwise provided by law.

(3) The adoptive parent is obliged to pay maintenance to the person adopted and the descendants of the person adopted before the blood relatives of the person adopted.

**Section 1771**  
**Cancellation of the adoption relationship**

The family court may, on application by the adoptive parent and of the person adopted, cancel an adoption relationship with a person of full age that has been pronounced, if there is a compelling reason. In all other cases, the adoption relationship may be cancelled only by applying the provisions of section 1760 (1) to (5) accordingly. The application of the person to be adopted takes the place of consent by the child.

**Section 1772**  
**Adoption with the effects of the adoption of a minor**

(1) The family court may, when pronouncing the adoption of a person of full age, on application by the adoptive parent and of the person to be adopted, rule that the effects of the adoption are based on the provisions on the adoption of a minor or of a related minor (sections 1754 to 1756) if

- a) a minor who is the brother or the sister of the person to be adopted has been adopted by the adoptive parent or is adopted at the same time or
- b) the person to be adopted was taken into the family of the adoptive parent when they were a minor or
- c) the adoptive parent adopts the child of their spouse or
- d) the person to be adopted is not yet of full age at the time at which the application for adoption is filed with the family court.

Such a provision may not be made if overriding interests of the parents of the person to be adopted are inconsistent with it.

(2) The adoption relationship may, in the cases governed by subsection (1), be cancelled only by applying the provisions of section 1760 (1) to (5) accordingly. The application of the person to be adopted takes the place of consent by the child.

**Division 3**  
**Guardianship, legal curatorship, custodianship**

**Title 1**  
**Guardianship**

**Subtitle 1**  
**Creation of guardianship**

**Section 1773**  
**Prerequisites**

(1) A minor is given a guardian if they are not subject to parental custody or if the parents are not entitled to represent the minor either in matters affecting the person or in matters relating to the minor's assets.

(2) A minor is also given a guardian if their personal status cannot be determined.

#### **Section 1774**

##### **Order by the court of its own motion**

The family court is to order guardianship of its own motion. If it is to be assumed that a child needs a guardian upon birth, then even before the birth of the child a guardian may be appointed; the appointment takes effect on the birth of the child.

#### **Section 1775**

##### **More than one guardian**

The family court may appoint a married couple jointly as guardians. In all other cases, the family court, insofar as there are no special reasons to appoint more than one guardian, as a rule is to appoint only one guardian for the ward and, if guardians are to be appointed for siblings, for all wards.

#### **Section 1776**

##### **Right of the parents to name the guardian**

(1) The person who is named by the parents of the ward as guardian is designated guardian.  
(2) If the father and the mother have named different persons, the naming by the parent who died later applies.

#### **Section 1777**

##### **Prerequisites for the right to name the guardian**

(1) The parents may only name a guardian if at the time of their death they have the parental custody for the person and the assets of the child.  
(2) The father may name a guardian for a child that is born only after his death where he would be entitled to do this if the child had been born before his death.  
(3) The guardian is named by testamentary disposition.

#### **Section 1778**

##### **Passing over the guardian named**

(1) A person who under section 1776 is designated guardian may be passed over without their consent only

1. if under sections 1780 to 1784 they cannot be appointed guardian or as a rule are not to be appointed guardian,
2. if they are prevented from assuming the guardianship,
3. if they delay the assumption,
4. if their appointment would endanger the best interests of the ward,
5. if the ward, who has reached the age of 14, opposes the appointment, unless the ward is incapable of contracting.

(2) If the person designated is prevented only temporarily, the family court is to appoint them as guardian, after the impediment has ended, in place of the previous guardian upon their application.  
(3) In addition to the person designated, a co-guardian may be appointed only with the approval of that person.

#### **Section 1779**

##### **Selection by the family court**

(1) If the guardianship is not to be transferred to a person designated under section 1776, the family court is to select the guardian after hearing the Youth Welfare Office.  
(2) As a rule, the family court is to choose a person who is suitable to act as guardian in view of their personal circumstances and their financial situation, and also in view of the other circumstances. When a selection is made between several suitable persons, the putative

intent of the parents, the personal ties of the ward, the relationship by blood or marriage with the ward and the religious denomination of the ward are to be taken into account.

(3) In selecting the guardian, the family court as a rule is to hear relatives by blood or marriage of the ward if this can be done without substantial delay and without disproportionate costs. The relatives by blood and marriage may require reimbursement of their expenditures from the ward; the amount of the expenditures is specified by the family court.

#### **Section 1780**

##### **Lack of capacity to be a guardian**

A person who is incapable of contracting may not be appointed a guardian.

#### **Section 1781**

##### **Unsuitability to be a guardian**

The following persons as a rule are not to be appointed guardians:

1. a person who is a minor,
2. a person for whom a custodian has been appointed.

#### **Section 1782**

##### **Exclusion by the parents**

(1) As a rule, a person is not to be appointed a guardian who has been excluded from the guardianship by a direction of the parents of the ward. If the parents have given directions that contradict each other, the direction of the parent who died later applies.

(2) The exclusion is governed by the provisions of section 1777.

#### **Section 1783**

**(repealed)**

#### **Section 1784**

##### **Official or church officer as guardian**

(1) An official or church officer, who under *Land* legislation needs a special authorisation to assume a guardianship, as a rule is not to be appointed guardian without the prescribed authorisation.

(2) This authorisation may only be refused if there is a compelling official reason.

#### **Section 1785**

##### **Duty to assume guardianship**

Every German is to assume the guardianship for which they are selected by the family court insofar as their appointment as guardian is not prevented by one of the reasons set out in sections 1780 to 1784.

#### **Section 1786**

##### **Right to refuse**

(1) The assumption of the guardianship may be refused by the following:

1. a parent who principally cares for two or more children who are not yet of school age or satisfactorily demonstrates that the care for the family for which they are responsible permanently makes the exercise of the office particularly difficult,
2. a person who has reached the age of 60,
3. a person who has the care for the person or the assets of more than three minor children,
4. a person who as the result of illness or of infirmity is prevented from conducting the guardianship properly,

5. a person who, because of the distance of their residence from the seat of the family court, cannot conduct the guardianship without particular inconvenience,
  6. (repealed)
  7. a person who is to be appointed to conduct the guardianship jointly with another person,
  8. a person who conducts more than one guardianship, custodianship or curatorship; the guardianship or curatorship of more than one sibling is regarded as only one; conducting two supervisory guardianships is equivalent to conducting one guardianship.
- (2) The right to refuse expires if it is not asserted to the family court before the appointment.

#### **Section 1787**

##### **Consequences of unjustified refusal**

- (1) A person who refuses to assume the guardianship without a reason is, if they are at fault, responsible for the damage that the ward suffers as a result of the appointment of the guardian being delayed.
- (2) If the family court declares that the refusal is unjustified, the person who refused, notwithstanding the remedies to which they are entitled, is to provisionally assume the guardianship at the requirement of the family court.

#### **Section 1788**

##### **Coercive fine**

- (1) The family court may enjoin the person selected to be guardian to assume the guardianship by imposing coercive fines.
- (2) The coercive fines may be imposed only at intervals of at least one week. More than three coercive fines may not be imposed.

#### **Section 1789**

##### **Appointment by the family court**

The guardian is appointed by the family court by placing them under obligation to conduct the guardianship faithfully and conscientiously. As a rule, the undertaking is to be given by a handshake in lieu of an oath.

#### **Section 1790**

##### **Appointment subject to a reservation**

When the guardian is appointed, there may be a reservation of the removal of the guardian in the eventuality that a particular event occurs or does not occur.

#### **Section 1791**

##### **Certificate of appointment**

- (1) The guardian receives a certificate of appointment.
- (2) As a rule, the certificate of appointment is to contain the name and the date of birth of the ward, the name of the guardian, of the supervisory guardian and the co-guardians, and in the case of the division of the guardianship the nature of the division.

#### **Section 1791a**

##### **Guardianship by association**

- (1) An association having legal personality may be appointed guardian if it has been declared to be suitable for this by the *Land* Youth Welfare Office. The association may be appointed guardian only if a person suitable as voluntary sole guardian is not available or if it is designated as guardian under section 1776; the appointment requires consent by the association.
- (2) The appointment is made by order of the family court; sections 1789 and 1791 are not to be applied.

(3) In conducting the guardianship, the association avails itself of individual members or employees of the association; a person who cares for the ward as an educator in a home of the association may not exercise the tasks of the guardian. The association is answerable to the ward for the fault of the member or of the employee in the same way as for the fault of an agent appointed under its constitution.

(4) If the family court wishes to have a co-guardian together with the association or if it wishes to appoint a supervisory guardian, then as a rule it is to hear the association before the decision.

#### **Section 1791b**

##### **Official guardianship of the Youth Welfare Office by appointment**

(1) If a person suitable as a voluntary sole guardian is not available, the Youth Welfare Office may be appointed guardian. The Youth Welfare Office may be neither named nor excluded by the parents of the ward.

(2) The appointment is made by order of the family court; sections 1789 and 1791 are not to be applied.

#### **Section 1791c**

##### **Statutory official guardianship of the Youth Welfare Office**

(1) Upon the birth of a child whose parents are not married to each other and which requires a guardian, the Youth Welfare Office becomes the guardian if the child has its habitual residence in the territorial extent of this Code; this does not apply if a guardian is appointed even before the birth of the child. If paternity under section 1592 no. 1 or 2 has been cancelled by contestation and if the child needs a guardian, the Youth Welfare Office becomes the guardian at the time at which the decision becomes final and binding.

(2) If the Youth Welfare Office has been the curator of a child whose parents are not married to each other, and if the curatorship ends by operation of law and the child needs a guardian, the Youth Welfare Office that was previously the curator becomes the guardian.

(3) The family court is to issue, without undue delay, to the Youth Welfare Office a certificate on the beginning of the guardianship; section 1791 is not to be applied.

#### **Section 1792**

##### **Supervisory guardian**

(1) In addition to the guardian, a supervisory guardian may be appointed. If the Youth Welfare Office is the guardian, no supervisory guardian may be appointed; the Youth Welfare Office may be supervisory guardian.

(2) As a rule, a supervisory guardian is to be appointed if management of assets is connected with the guardianship, unless the management is not material or the guardianship is to be conducted jointly by more than one guardian.

(3) If the guardianship of more than one guardian is not to be conducted jointly, one guardian may be appointed supervisory guardian of the other.

(4) The designation and appointment of the supervisory guardian are governed by the provisions applying to the creation of the guardianship.

#### **Subtitle 2**

### **Conducting of the guardianship**

#### **Section 1793**

##### **Duties of the guardian, liability of the ward**

(1) The guardian has the right and the duty to care for the person and the assets of the ward, and in particular to represent the ward. Section 1626 (2) applies accordingly. If the ward is taken into the household of the guardian for a long period, sections 1618a, 1619 and 1664 also apply accordingly.

(1a) The guardian is to maintain personal contact with the ward. As a rule, the guardian generally is to visit the ward once per month in the ward's customary environment unless shorter or longer visiting intervals or a different place are required in individual cases.



(2) For liabilities that arise against the ward in connection with the power of agency under subsection (1), the ward is liable under section 1629a accordingly.

#### **Section 1794**

##### **Restriction as a result of curatorship**

The right and the duty of the guardian to care for the person and the assets of the ward does not extend to matters of the ward for which a curator has been appointed.

#### **Section 1795**

##### **Exclusion of power of agency**

(1) The guardian may not represent the ward:

1. in a legal transaction between their spouse, their life partner or one of their lineal relatives on the one hand and the ward on the other hand, unless the legal transaction consists solely of the performance of an obligation,
2. in a legal transaction the subject of which is the transfer or encumbrance of a claim of the ward against the guardian secured by pledge, mortgage, ship mortgage or suretyship or the cancellation or reduction of this security or which creates an obligation of the ward to effect such a transfer, encumbrance, cancellation or reduction,
3. in a legal dispute between the persons designated in no. 1 and in a legal dispute on a matter of the kind designated in no. 2.

(2) The provision of section 181 remains unaffected.

#### **Section 1796**

##### **Revocation of power of agency**

(1) The family court may revoke from the guardian the power of agency for individual matters or for a specified group of matters.

(2) As a rule, the revocation is to occur only if the interest of the ward is to a substantial degree contrary to the interest of the guardian or of a third party represented by the guardian or of one of the persons designated in section 1795 no. 1.

#### **Section 1797**

##### **More than one guardian**

(1) More than one guardian conduct the guardianship jointly. In the case of a difference of opinion, the family court decides, unless otherwise provided upon the appointment.

(2) The family court may allocate the conducting of the guardianship between more than one guardian according to specified spheres of responsibility. Within the sphere of responsibility allocated to them, each guardian conducts the guardianship independently.

(3) Provisions which the father or the mother has made for the determination of differences of opinion between the guardians named by them and for the distribution of the transactions among them in accordance with section 1777 are to be followed by the family court except to the extent that pursuing them would endanger the interest of the ward.

#### **Section 1798**

##### **Differences of opinion**

If the care for the person and the care for the assets of the ward are the responsibility of different guardians, then in the case of a difference of opinion on the undertaking of an act relating to both the person and the assets of the ward the family court decides.

#### **Section 1799**

##### **Duties and rights of the supervisory guardian**

(1) The supervisory guardian is to ensure that the guardian conducts the guardianship in accordance with their duty. The supervisory guardian is to notify the family court without undue delay of breaches of duty by the guardian and of every case in which the family court is called on to intervene, in particular the death of the guardian or the occurrence of another

circumstance as a result of which the office of the guardian ends or the removal of the guardian becomes necessary.

(2) On request, the guardian is to give information to the supervisory guardian on the conducting of the guardianship and permit inspection of the papers relating to the guardianship.

#### **Section 1800**

##### **Scope of care for the person**

The right and the duty of the guardian to care for the person of the ward are governed by sections 1631 to 1632 (4) sentence 1. The guardian personally is to promote and guarantee the care for and child-rearing of the ward.

#### **Section 1801**

##### **Religious education**

(1) The care for the religious education of the ward may be removed from the sole guardian by the family court if the guardian does not belong to the denomination in which the ward is to be brought up.

(2) If the Youth Welfare Office or an association as guardian has to decide on the accommodation of the ward, then in this connection the religious denomination or the philosophical beliefs of the ward and of their family are to be taken into account.

#### **Section 1802**

##### **Inventory of assets**

(1) The guardian is to make a list of the assets that are available when the guardianship is ordered or that accrue to the ward later and submit the list to the family court, after providing it with a declaration of correctness and completeness. If there is a supervisory guardian, then the guardian is to involve them when making the list; the list is to be provided with a declaration of correctness and completeness by the supervisory guardian as well.

(2) The guardians may avail themselves, when making the list, of the help of an official, a notary or another expert.

(3) If the inventory submitted is inadequate, the family court may order that the inventory is made by a competent public authority or by a competent official or notary.

#### **Section 1803**

##### **Management of assets in the case of inheritance or donation**

(1) The guardian is to manage whatever the ward acquires as a result of death or is gratuitously bestowed on them by a third party *inter vivos* in accordance with the instructions of the deceased or of the third party if the instructions are made by the deceased by testamentary disposition or by the third party at the time of the gift.

(2) With ratification by the family court, the guardian may deviate from the instructions if complying with them would endanger the interest of the ward.

(3) For a deviation from the instructions made by a third party at the time of a disposition *inter vivos*, the approval of the third party, during their lifetime, is necessary and sufficient. The approval of the third party may be substituted by the family court if the third party is permanently incapable of making a declaration or the abode of the third party is permanently unknown.

#### **Section 1804**

##### **Donations made by the guardian**

The guardian may not, in representation of the ward, make donations. Donations that are made to comply with a moral duty or to show consideration for decency are exempt.

#### **Section 1805**

##### **Use for the guardian**

The guardian may not use assets of the ward for purposes of their own or those of the supervisory guardian. If the Youth Welfare Office is the guardian or supervisory guardian, the

investment of money held in trust for a ward under section 1807 is also admissible in the corporation in which the Youth Welfare Office is established.

#### **Section 1806**

##### **Investment of money held in trust for a ward**

The guardian is to invest the money that is part of the assets of the ward at interest, except to the extent that it is to be held ready to satisfy expenses.

#### **Section 1807**

##### **Nature of investment**

(1) As a rule, the investment of money held in trust for a ward laid down in section 1806 is to occur only

1. in debts for which there is a secure mortgage of a plot of land within the territory of Germany, or in secure land charges or annuity land charges on plots of land within the territory of Germany;
2. in securitised debts of the Federal Government or a *Land* and in debts that are entered in the Federal Debt Register or *Land* Debt Register of a *Land*;
3. in securitised debts whose interest is guaranteed by the Federal Government or by a *Land*;
4. in securities, in particular debenture bonds, and in securitised debts of all kinds of a domestic municipal corporation or the credit institution of such a corporation, to the extent that the securities or the debt have been declared by the Federal Government with the approval of the Bundesrat to be suitable for the investment of money held in trust for a ward;
5. with a domestic public savings bank if it has been declared by the competent public authority of the *Land* in which it has its seat suitable for the investment of money held in trust for a ward, or with another credit institution which belongs to an institution furnishing security that is sufficient for the investment.

(2) The *Land* legislation may lay down, for the plots of land situated within its territorial extent, the basic principles under which the security of a mortgage, a land charge or an annuity land charge is to be determined.

#### **Section 1808**

**(repealed)**

#### **Section 1809**

##### **Investment with blocking note**

As a rule, the guardian is to invest money held in trust for a ward under section 1807 (1) no. 5 only subject to the provision that the ratification by the supervisory guardian or by the family court is required for the collection of the money.

#### **Section 1810**

##### **Cooperation of supervisory guardian or family court**

As a rule, the guardian is to effect the investment laid down in sections 1806 and 1807 only with the ratification of the supervisory guardian; the ratification of the supervisory guardian is substituted by ratification from the family court. If there is no supervisory guardian, the investment as a rule is to be made only with the ratification of the family court, to the extent that the guardianship is not conducted by more than one guardian jointly.

#### **Section 1811**

##### **Other investment**

The family court may permit the guardian to make a different investment than that laid down in section 1807. As a rule, permission is to be refused only if the intended manner of

investment, in the circumstances of the case, would be contrary to the efficient management of assets.

### **Section 1812**

#### **Dispositions over claims and securities**

(1) The guardian may dispose over a claim or another right by which the ward may demand performance, and a security of the ward, only with the ratification of the supervisory guardian, except to the extent that ratification by the family court is required under sections 1819 to 1822. The same applies to the assumption of the duty to make such a disposition.

(2) The ratification by the supervisory guardian is substituted by ratification by the family court.

(3) If there is no supervisory guardian, ratification by the family court takes the place of the ratification of the supervisory guardian, except to the extent that the guardianship is conducted by more than one guardian jointly.

### **Section 1813**

#### **Transactions not requiring approval**

(1) The guardian does not require ratification from the supervisory guardian to accept performance owed:

1. if the object of the performance does not consist of money or securities,
2. if the claim is for not more than 3,000 euros,
3. if the claim concerns the balance of a giro or current account or money that the guardian invested is paid back,
4. if the claim is part of the emoluments of the assets of the ward,
5. if the claim is directed to the reimbursement of the costs of giving notice or to the prosecution of rights or to other collateral performance.

(2) The exemption under subsection (1) nos. 2 and 3 does not extend to the collection of money upon the investment of which a provision to the contrary was made. Nor does the exemption under subsection (1) no. 3 apply to the collection of money which is invested under section 1807 (1) nos. 1 to 4.

### **Section 1814**

#### **Deposit of bearer instruments**

The guardian is to deposit the bearer instruments that are part of the assets of the ward, together with the renewal coupons, with a depository institution or with one of the credit institutions named in section 1807 (1) no. 5, subject to the condition that the surrender of the instruments may be demanded only with the ratification of the family court. The deposit of bearer instruments that under section 92 are consumable things, and of interest coupons, annuity coupons or dividend coupons is not necessary. Instruments made out to order and furnished with a blank endorsement are equivalent to bearer instruments.

### **Section 1815**

#### **Change of registration and conversion of bearer instruments**

(1) The guardian may, instead of depositing the bearer instruments under section 1814, have their registration changed to the name of the ward, subject to the condition that they may alienate them only with the ratification of the family court. If the instruments are issued by the Federal Government or a *Land*, they may have them converted, subject to the same condition, into Debt Register claims against the Federal Government or the *Land*.

(2) If bearer instruments that may be converted into Debt Register claims against the Federal Government or a *Land* are to be deposited, the family court may order that they are converted into Debt Register claims under subsection (1).

### **Section 1816**

#### **Blocking of book-entry securities**

If Debt Register claims against the Federal Government or a *Land* are part of the assets of the ward at the time when the guardianship is ordered, or if the ward later acquires such claims, the guardian is to have a memorandum entered in the Debt Register that they may alienate the claims only with the ratification of the family court.

### **Section 1817**

#### **Exemption**

(1) The family court may, on application by the guardian, exempt them from the duties imposed on them under sections 1806 to 1816, to the extent that

1. the scope of the management of assets justifies this and
2. there is no concern that the assets will be endangered.

The prerequisites set out in no. 1 are as a rule satisfied if the value of the assets, without taking real property into account, does not exceed 6,000 euros.

(2) The family court may, for special reasons, exempt the guardian from the duties imposed on them under sections 1814 and 1816 even if the prerequisites set out in subsection (1) no. 1 are not satisfied.

### **Section 1818**

#### **Order of deposit**

The family court may, for special reasons, order that the guardian also is to deposit in the manner set out in section 1814 such securities as are part of the assets of the ward which the guardian is not obliged under section 1814 to deposit, and also valuables of the ward; on application by the guardian, the deposit of interest, annuity and dividend coupons may be ordered, even if there is not a special reason.

### **Section 1819**

#### **Approval in the case of deposit**

As long as the securities or valuables deposited under section 1814 or under section 1818 have not been taken back, the guardian requires the ratification of the family court for a disposition of them and, if mortgage, land charge or annuity land charge certificates have been deposited, for a disposition of the mortgage claim, the land charge or the annuity land charge. The same applies to the assumption of the duty to make such a disposition.

### **Section 1820**

#### **Approval after change of registration and conversion**

(1) If bearer instruments have had their registration changed to the name of the ward or been converted to Debt Register claims under section 1815, the guardian also requires the ratification of the family court for the assumption of the duty to make a disposition of the principal claims arising from the change of registration or the conversion.

(2) The same applies if, in the case of a Debt Register claim of the ward, the memorandum referred to in section 1816 is entered.

### **Section 1821**

#### **Approval of transactions relating to plots of land, ships or ships under construction**

(1) The guardian requires ratification by the family court:

1. for a disposition of a plot of land or of a right in a plot of land;
2. for a disposition of a claim that is directed to the transfer of the ownership of a plot of land or to the creation or transfer of a right in a plot of land or to the release of a plot of land from such a right;

3. for a disposition of a registered ship or ship under construction or of a claim that is directed to the transfer of the ownership of a registered ship or ship under construction;
  4. for the assumption of a duty to make one of the dispositions set out in nos. 1 to 3;
  5. for a contract which is directed at the non-gratuitous acquisition of a plot of land, a registered ship or ship under construction or a right in a plot of land.
- (2) The rights in a plot of land in the meaning of this provision do not include mortgages, land charges and annuity land charges.

### **Section 1822** **Approval for other transactions**

The guardian requires ratification by the family court:

1. for a legal transaction by which the ward is obliged to make a disposition over their assets as a whole or of an inheritance that has accrued to them or of their future intestate portion or of their future compulsory portion, and a disposition over the share of the ward in an inheritance,
2. to disclaim an inheritance or a legacy, to waive a compulsory portion and for a contract for the division of an inheritance,
3. for a contract which is directed to the non-gratuitous acquisition or the alienation of a trade or business and for a shareholders' or partnership agreement that is entered into to operate a trade or business,
4. for a usufructuary lease of a farm or a commercial business,
5. for a lease or usufructuary lease or another contract which obliges the ward to make periodical payments, if the contractual relationship is to continue for more than one year after the ward attains full age,
6. for an apprenticeship agreement that is concluded for longer than one year,
7. for a contract directed to the assumption of a service or employment relationship if the ward is to be obliged to render performance in person for longer than one year,
8. for taking out a loan against the credit of the ward,
9. for issuing a bearer bond or for the assumption of an obligation under a bill of exchange or another instrument that may be transferred by endorsement,
10. for the assumption of the liability of a third party, in particular for the assumption of a guarantee,
11. for the granting of a general commercial power of representation,
12. for a settlement or an arbitration agreement, unless the object of the dispute or of the uncertainty can be assessed in money and does not exceed the value of 3,000 euros, or the settlement corresponds to a judicial settlement suggestion made in writing or recorded by the court,
13. for a legal transaction that cancels or reduces the existing security for a claim of the ward or creates a duty to cancel or reduce it.

### **Section 1823** **Approval where the ward has a trade or business**

As a rule, the guardian is not to commence, without ratification by the family court, a new trade or business in the name of the ward or terminate an existing trade or business of the ward.

#### **Section 1824**

##### **Approval for making available objects to the ward for their use**

The guardian may not make objects available to the ward that they may alienate only with the ratification of the supervisory guardian or of the family court, for purposes of performing a contract concluded by the ward or for the ward's free disposition, absent such ratification by the family court.

#### **Section 1825**

##### **General authorisation**

(1) The family court may give the ward a general authorisation for legal transactions for which under section 1812 the ratification of the supervisory guardian is necessary and for the legal transactions set out in section 1822 nos. 8 to 10.

(2) As a rule, the authorisation is to be given only if it is necessary for the purpose of management of assets, in particular for the operation of a trade or business.

#### **Section 1826**

##### **Hearing of the supervisory guardian before giving the approval**

Before the decision on the approval necessary for an act of the ward, the family court as a rule is to hear the supervisory guardian, if one exists and the hearing is appropriate.

#### **Section 1827**

**(repealed)**

#### **Section 1828**

##### **Pronouncement of approval**

The family court may pronounce the approval of a legal transaction only to the guardian.

#### **Section 1829**

##### **Subsequent approval**

(1) If the guardian enters into a contract without the required ratification of the family court, the effectiveness of the contract is subject to the subsequent ratification by the family court. The approval and its refusal take effect in relation to the other party only when the guardian notifies the other party of it.

(2) Where the other party requests the guardian to notify it whether the ratification has been granted, the notification of the ratification may occur only before the end of a period of four weeks after the receipt of the request; if it is not given, the ratification is deemed to have been refused.

(3) If the ward has attained full age, ratification by the ward takes the place of ratification by the family court.

#### **Section 1830**

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

If the guardian has claimed to the other party, untruthfully, that the family court has issued its ratification, the other party is entitled to revoke the contract until it is informed of the subsequent ratification by the family court, unless it knew of the lack of ratification when it concluded the contract.

#### **Section 1831**

##### **Unilateral legal transaction without approval**

A unilateral legal transaction which the guardian enters into without the necessary ratification from the family court is ineffective. Where the guardian, with this approval, enters into such a legal transaction with another person, the legal transaction is ineffective if the guardian does

not provide the approval and the other person for this reason and without undue delay rejects the legal transaction.

### **Section 1832**

#### **Ratification by the supervisory guardian**

To the extent that the guardian requires ratification from the supervisory guardian for a legal transaction, the provisions of sections 1828 to 1831 apply accordingly; by way of derogation from section 1829 (2), the period for notification of ratification by the supervisory guardian is two weeks.

### **Section 1833**

#### **Liability of the guardian**

- (1) The guardian is answerable to the ward for the damage arising from a breach of duty if they are at fault. The same applies to the supervisory guardian.
- (2) If more than one person together are responsible for the damage, they are liable as joint and several debtors. If, in addition to the guardian, the supervisory guardian or a co-guardian is responsible only by reason of breach of their duty to supervise, then as between them the guardian alone is liable.

### **Section 1834**

#### **Duty to pay interest**

If the guardian uses money belonging to the ward for purposes of their own, they are to pay interest on it from the date when it is used.

### **Section 1835**

#### **Reimbursement of outlays**

- (1) If the guardian, for the purpose of conducting the guardianship, incurs outlays, then under the provisions applying to mandate of sections 669 and 670 the guardian may require an advance or reimbursement from the ward; the reimbursement of travelling expenses is governed by the arrangement made for experts in section 5 of the Court Payment and Reimbursement Act (*Justizvergütungs- und –entschädigungsgesetz*) accordingly. The supervisory guardian has the same right. Claims for reimbursement are extinguished if they are not asserted in court within 15 months after they arise; here, the assertion of the claim at the family court is also deemed to be an assertion vis-à-vis the ward.
  - (1a) The family court may lay down a period deviating from subsection (1) sentence 3 of a minimum of two months. The court document fixing the period is to provide information on the consequences of failure to observe the time limit. On application, the period may be extended by the family court. The claim expires to the extent that it is not quantified within the period.
  - (2) Outlays also include the costs of reasonable insurance against damage that may be caused to the ward by the guardian or the supervisory guardian or that may be suffered by the guardian or supervisory guardian because they are obliged to compensate a third party for damage caused by the conduct of the guardianship; this does not apply to the costs of the third-party liability insurance of the keeper of a motor vehicle. Sentence 1 is not to be applied if the guardian or supervisory guardian receives payment under section 1836 (1) sentence 2 in conjunction with the Guardians and Custodians Payment Act (*Vormünder- und Betreuervergütungsgesetz*).
  - (3) Such services of the guardian or of the supervisory guardian as belong to their business, trade or profession are also deemed to be expenses.
  - (4) If the ward is destitute, the guardian may require advance payment and reimbursement from the public treasury. Subsection (1) sentence 3 and subsection (1a) apply accordingly.
  - (5) The Youth Welfare Office or an association, as guardian or supervisory guardian, may require no advance payment and may require reimbursement only to the extent that the income and assets of the ward to be applied is sufficient. General management costs including the costs under subsection (2) are not reimbursed.



### **Section 1835a**

#### **Reimbursement for expenses**

- (1) For the discharge of their claim to compensation for expenses, the guardian, as reimbursement for expenses, may demand, for each guardianship for which they are not entitled to payment, an amount of money which for one year corresponds to sixteen times the amount that may be granted to a witness as the maximum amount of reimbursement for one lost working hour (section 22 of the Court Payment and Reimbursement Act (*Justizvergütungs- und –entschädigungsgesetz*)) (reimbursement for expenses). If the guardian has already received an advance payment or compensation for such outlays, the reimbursement for expenses is correspondingly reduced.
- (2) The reimbursement for expenses is to be paid annually, for the first time one year after the appointment of the guardian.
- (3) If the ward is destitute, the guardian may demand the reimbursement for expenses from the public treasury; maintenance claims of the ward against the guardian are not to be taken into account in this respect when income is assessed under section 1836c no. 1.
- (4) The claim to reimbursement for expenses expires if it is not asserted within three months after the end of the year in which the claim arises; the assertion of the claim at the family court is also deemed to be an assertion vis-à-vis the ward.
- (5) No reimbursement for expenses may be granted to the Youth Welfare Office or to an association.

### **Section 1836**

#### **Payment of the guardian**

- (1) The guardianship is conducted gratuitously. It is, exceptionally, conducted non-gratuitously if the court finds when the guardian is appointed that the guardian is conducting the guardianship as an occupation or profession. The details are governed by the Guardians and Custodians Payment Act (*Vormünder- und Betreuervergütungsgesetz*).
- (2) Where the court does not make a finding under subsection (1) sentence 2 it may nevertheless grant to the guardian, and for special reasons also to the supervisory guardian, a reasonable payment if the extent or the difficulty of the guardianship transactions justifies this; this does not apply if the ward is destitute.
- (3) No payment may be granted to the Youth Welfare Office or to an association.

#### **Sections 1836a and 1836b (repealed)**

### **Section 1836c**

#### **Funds to be applied by the ward**

The ward is to apply the following:

1. under section 87 of Book 12 of the Social Code (*Sozialgesetzbuch*) the ward's income, to the extent that, together with the income of their spouse or life partner who is not living apart, it exceeds the relevant income limit under sections 82, 85 (1) and 86 of Book 12 of the Social Code for help under Chapters 5 to 9 of Book 12 of the Social Code. If, in the individual case, the provision of part of the income to satisfy a particular need as part of the help under the Chapters 5 to 9 of Book 12 of the Social Code is required to be accepted or demanded, this part of the income may no longer be taken into account in the assessment as to how far the provision of the income is to be used to pay the costs of the guardianship. Income is also deemed to include maintenance claims and the annuities payable by reason of the revocation of such a claim;
2. their assets under section 90 of the Book 12 of the Social Code (*Sozialgesetzbuch*).

### **Section 1836d**

#### **Destitution of the ward**

The ward is deemed to be destitute if, with regard to the compensation for expenses or the remuneration,

1. they cannot raise it or can raise it only in part or in instalments or
  2. they can raise it only by the judicial assertion of maintenance claims
- from their income or assets that are to be applied towards same.

#### **Section 1836e**

##### **Statutory devolution of claim**

(1) To the extent that the public treasury satisfies the guardian or supervisory guardian, claims of the guardian or supervisory guardian against the ward devolve to the public treasury. After the death of the ward, their heir is liable only for the value of the estate available at the date of the devolution of the inheritance; section 102 subsections (3) and (4) of Book 12 of the Social Code (*Sozialgesetzbuch*) applies accordingly; section 1836c does not apply to the heir.

(2) To the extent that claims under section 1836c no. 1 sentence 3 are to be applied, section 850b of the Code of Civil Procedure, for the benefit of the public treasury, does not apply.

#### **Subtitle 3**

#### **Care and supervision of the family court**

##### **Section 1837**

##### **Advice and supervision**

- (1) The family court advises the guardians. It assists in introducing them to their tasks.
- (2) The family court is to supervise all the activity of the guardian and of the supervisory guardian and to intervene against breaches of duty by suitable orders and prohibitions. It is to particularly supervise compliance with the necessary personal contacts between the guardian and the charge. It may instruct the guardian and the supervisory guardian to take out insurance against damage that they may cause to the ward.
- (3) The family court may enjoin the guardian and the supervisory guardian to observe its directions by imposing coercive fines. No coercive fine is imposed on the Youth Welfare Office or an association.
- (4) Sections 1666 and 1666a and section 1696 apply accordingly.

##### **Section 1838**

**(repealed)**

##### **Section 1839**

##### **Duty of information of the guardian**

The guardian and the supervisory guardian are to provide information to the family court, on demand and at any time, on the conduct of the guardianship and on the personal circumstances of the ward.

##### **Section 1840**

##### **Report and rendering of account**

- (1) The guardian is to report to the family court at least once a year on the personal circumstances of the ward. The report also is to include information on the guardian's personal contacts with the ward.
- (2) The guardian is to render accounts to the family court on their management of the assets.
- (3) The accounts are to be rendered annually. The accounting year is laid down by the family court.
- (4) If the management is of a small extent, the family court, after the account has been rendered for the first year, may order that the accounts are to be rendered for longer periods, of a maximum of three years.

#### **Section 1841**

##### **Contents of the accounts rendered**

- (1) The accounts as a rule are to contain an organised record of the receipts and expenditure, on alienations and acquisitions of assets and, to the extent that it is customary to provide supporting documents, they are to be provided with supporting documents.
- (2) If a trade or business is operated with commercial bookkeeping, then a financial statement drawn up from the books is sufficient as a rendering of accounts. The family court may, however, require the books and other supporting documents to be submitted.

#### **Section 1842**

##### **Cooperation of the supervisory guardian**

If there is a supervisory guardian or a supervisory guardian is to be appointed, the guardian is to submit the account to them, with proof of the amount of the assets. The supervisory guardian is to make the annotations on the account which the examination gives them cause to make.

#### **Section 1843**

##### **Examination by the family court**

- (1) The family court is to examine the account from an accounting point of view and objectively and, to the extent that this is necessary, arrange for its correction and supplementation.
- (2) Claims that remain disputed between the guardian and the ward may be judicially asserted even before the termination of the guardianship relationship.

#### **Section 1844**

**(repealed)**

#### **Section 1845**

**(repealed)**

#### **Section 1846**

##### **Interim measures of the family court**

If a guardian has not yet been appointed or if the guardian is prevented from carrying out their duties, the family court is to take the measures that are necessary in the interest of the person affected.

#### **Section 1847**

##### **Hearing of the relatives**

In important matters, the family court as a rule is to hear relatives by blood or marriage of the ward if this can be done without substantial delay and without disproportionate costs. Section 1779 (3) sentence 2 applies accordingly.

#### **Section 1848**

**(repealed)**

#### **Subtitle 4**

##### **Cooperation of the Youth Welfare Office**

#### **Sections 1849, 1850**

**(repealed)**

#### **Section 1851**

##### **Duties of notification**

- (1) The family court is to notify the Youth Welfare Office of the order of guardianship, designating the guardian and the supervisory guardian, and of a change of the person and the termination of the guardianship.
- (2) If the habitual residence of a ward is moved to the area of another Youth Welfare Office, the guardian is to notify the Youth Welfare Office of the previous habitual residence, and that

Youth Welfare Office is to notify the Youth Welfare Office of the new habitual residence, of the move.

(3) If an association is guardian, then subsections (1) and (2) are not to be applied.

**Subtitle 5**  
**Exempted guardianship**

**Section 1852**  
**Exemption by the father**

(1) The father may, when he names a guardian, exclude the appointment of a supervisory guardian.

(2) The father may direct that the guardian named by him is not to be subject, in investing money, to the restrictions laid down in sections 1809 and 1810 and is not to require the ratification of the supervisory guardian or of the family court for the legal transactions set out in section 1812. These directions are to be regarded as having been made if the father has excluded the appointment of a supervisory guardian.

**Section 1853**  
**Exemption from deposit and blocking**

The father may exempt the guardian named by him from the duty to deposit bearer instruments and instruments made out to order and to have the memorandum mentioned in section 1816 entered in the Federal Debt Register or the Debt Register of a *Land*.

**Section 1854**  
**Exemption from duty to render accounts**

(1) The father may exempt the guardian named by him from the duty to render accounts for the duration of their office.

(2) In such a case, the guardian is to file with the family court, after a period of two years in each case, a summary of the amount of the assets under their management. The family court may direct that the summary is filed at longer intervals of a maximum of five years.

(3) If there is a supervisory guardian or a supervisory guardian is to be appointed, the guardian is to submit the summary to the supervisory guardian, along with proof of the amount of the assets. The supervisory guardian is to make the annotations on the summary which the examination gives them cause to make.

**Section 1855**  
**Exemption by the mother**

If the mother designates a guardian, she may make the same directions as the father may under sections 1852 to 1854.

**Section 1856**  
**Prerequisites for exemption**

The directions admissible under sections 1852 to 1855 are governed by the provisions of section 1777. If the parents have given directions that contradict each other, the direction of the parent who died later applies.

**Section 1857**  
**Cancellation of the exemption by the family court**

The directions of the father or the mother may be cancelled by the family court if compliance with them would endanger the interest of the ward.

**Section 1857a**  
**Exemption of the Youth Welfare Office and the association**

The Youth Welfare Office and an association as guardian are entitled to the exemptions admissible under section 1852 (2) and sections 1853 and 1854.

**Sections 1858 - 1881  
(repealed)**

**Subtitle 6  
Termination of the guardianship**

**Section 1882  
Cessation of the prerequisites**

The guardianship ends when the prerequisites laid down for the commencement of the guardianship in section 1773 cease to be met.

**Section 1883  
(repealed)**

**Section 1884  
Ward missing and declaration of death of the ward**

(1) If the ward is missing, the guardianship ends only when it is cancelled by the family court. The family court is to cancel the guardianship if it obtains knowledge of the death of the ward.

(2) If the ward is declared to be dead or if their date of death is determined under the provisions of the Missing Persons Act (*Verschollenheitsgesetz*), the guardianship ends when the order on the declaration of death or the determination of the time of death becomes final and binding.

**Section 1885  
(repealed)**

**Section 1886  
Removal of the sole guardian**

The family court is to remove the sole guardian if the continuation of the office, in particular by reason of conduct in breach of duty of the guardian, would endanger the interest of the ward or if one of the reasons set out in section 1781 is present in the person of the guardian.

**Section 1887  
Removal of the Youth Welfare Office or association**

(1) The family court is to remove the Youth Welfare Office or the association as guardian and appoint another guardian if this serves the well-being of the ward and another suitable person is available as guardian.

(2) The decision is made by the court of its own motion or on application. A ward who is fourteen years of age, and every person who asserts a legitimate interest of the ward, is entitled to apply. The Youth Welfare Office or the association as a rule are to make the application as soon as they learn that the prerequisites set out in subsection (1) have been met.

(3) Before its decision, the family court as a rule also is to hear the Youth Welfare Office or the association.

**Section 1888  
Removal of officials and church officers**

Where an official or a church officer is appointed guardian, the family court is to remove them if the authorisation that is necessary under the *Land* statutes on the assumption of guardianship or for the continuation of the guardianship assumed before entry into the civil service or service relationship ends or is revoked or if the prohibition of continuation of the guardianship that is admissible under the *Land* statutes occurs.

**Section 1889  
Removal on application by the guardian**

(1) The family court is to remove the sole guardian on their application if there is a compelling reason; a compelling reason in particular includes the occurrence of a circumstance that would entitle the guardian under section 1786 (1) nos. 2 to 7 to refuse the assumption of the guardianship.

(2) The family court is to remove the Youth Welfare Office or the association as guardian on its application if another person suited as guardian is available and this measure is not inconsistent with the best interests of the ward. In addition, an association is to be removed on its application if there is a compelling reason.

#### **Section 1890**

##### **Surrender of assets and rendering accounts**

After the termination of their office, the guardian is to surrender to the ward the assets managed and render accounts for the management. To the extent that the guardian has rendered accounts to the family court, reference to these accounts is sufficient.

#### **Section 1891**

##### **Cooperation of the supervisory guardian**

(1) If there is a supervisory guardian, the guardian is to submit the account to the supervisory guardian. The supervisory guardian is to make the annotations on the account which the examination gives them cause to make.

(2) On request, the supervisory guardian is to provide information on the conduct of the supervisory guardianship and, to the extent they are able to do so, on the assets managed by the guardian.

#### **Section 1892**

##### **Examination and approval of the account**

(1) The guardian is to file the account, after they have submitted it to the supervisory guardian, with the family court.

(2) The family court is to examine the accounts from an accounting point of view and objectively and arrange its acceptance by negotiation with the parties involved, involving the supervisory guardian. To the extent that the accounts rendered are approved as correct, the family court is to record the acceptance.

#### **Section 1893**

##### **Continuation of transactions after the termination of the guardianship, return of certificates**

(1) In the case of the termination of the guardianship or of the office of guardian, the provisions of sections 1698a and 1698b apply accordingly.

(2) After the termination of their office, the guardian is to return the certificate of appointment to the family court. In the cases governed by sections 1791a and 1791b, the order of the family court is to be returned, and in the case governed by section 1791c the certificate on the commencement of the guardianship.

#### **Section 1894**

##### **Notification on death of the guardian**

(1) The heir of the guardian is to notify the family court without undue delay of the death of the guardian.

(2) The guardian is to give notification without undue delay of the death of the supervisory guardian or of a co-guardian.

#### **Section 1895**

##### **Termination of office of the supervisory guardian**

The provisions of sections 1886 to 1889, 1893 and 1894 apply accordingly to the supervisory guardian.

### **Title 2**

#### **Legal custodianship**

### **Section 1896 Prerequisites**

(1) If a person of full age, by reason of a mental illness or a physical, mental or psychological handicap, cannot as a whole or in part take care of their affairs, the custodianship court, on application by that person or of its own motion, appoints a custodian for them. The application also may be made by a person incapable of contracting. To the extent that the person of full age cannot attend to their affairs by reason of a physical handicap, the custodian may be appointed only on application by the person of full age, unless the person is unable to make their will known.

(1a) A custodian may not be appointed against the free will of the person of full age.

(2) A custodian may be appointed only for the scope of functions regarding which the custodianship is required. The custodianship is not required to the extent that the affairs of a person of full age can be taken care of by an authorised person who is not one of the persons set out in section 1897 (3), or by other assistants for whom no legal representative is appointed, just as well as by a custodian.

(3) The assertion of rights of the person under custodianship vis-à-vis the person authorised by them also may be defined as a scope of functions.

(4) The decision on the telecommunications of the person under custodianship and on the taking of receipt, opening and withholding of their post are included in the custodian's scope of functions only if the court has expressly ordered this.

### **Section 1897 Appointment of a natural person**

(1) The custodianship court appoints as custodian a natural person who is suited to take care of the affairs of the person under custodianship from a legal point of view within the scope of functions determined by the court and to take care of their person to the extent necessary.

(2) The employee of a custodianship association recognised under section 1908f who is solely or partly employed there as a custodian (association custodian) may be appointed only with the consent of the association. The same applies to the employee of a public authority competent in custodianship matters who is solely or partly employed there as custodian (public authority custodian).

(3) A person who is in a situation of dependence or in another close connection to an institution, a home or another establishment to which the person of full age has been committed or in which they live may not be appointed custodian.

(4) If the person of full age suggests a person who may be appointed custodian, this suggestion is to be followed unless it is inconsistent with the best interests of the person of full age. If the person of full age suggests that a particular person not be appointed, then as a rule this is to be taken into account. Sentences 1 and 2 also apply to suggestions that the person of full age made before the custodianship proceedings, unless they discernibly do not wish to uphold these suggestions.

(5) If the person of full age suggests no-one who can be appointed custodian, then when the custodian is selected, account is to be taken of the family and other personal ties of the person of full age, in particular the ties to parents, to children, to the spouse and to the life partner, and of the danger of conflicts of interest.

(6) A person who conducts custodianships as part of the exercise of their occupation or profession as a rule is to be appointed custodian only if no other suitable person is available who is prepared to conduct the custodianship on a voluntary basis. If the custodian becomes aware of circumstances which indicate that the person of full age can be cared for by one or more than one other suitable persons outside the exercise of an occupation or profession, they are to notify the court of this fact.

(7) If a person is appointed a custodian, subject to the prerequisites set out in subsection (6) sentence 1, for the first time in the district of the custodianship court, then court as a rule first is to hear the competent public authority on the suitability of the selected custodian and on

the findings to be made under section 1 (1) sentence 1 second alternative of the Guardians and Custodians Payment Act (*Vormünder- und Betreuervergütungsgesetz*). As a rule, the competent authority is to request the person to submit a certificate of good conduct and a status report from the debtors' list.

(8) If a person is appointed under the prerequisites set out in subsection (6) sentence 1, they are to declare the number and volume of the custodianships they are conducting professionally.

### **Section 1898**

#### **Duty to assume custodianship**

(1) The person selected by the custodianship court is under a duty to assume the custodianship if they are suitable as a custodian and reasonably can be required to assume it, taking into account their family, professional and other circumstances.

(2) The person selected may be appointed a custodian only upon their having stated that they are prepared to assume the custodianship.

### **Section 1899**

#### **More than one custodian**

(1) The custodianship court may appoint more than one custodian if better care can be taken of the affairs of the person under custodianship as a result of this. In this case, it determines which custodian is entrusted with which scope of functions. There is no appointment of more than one custodian who receive payment except in the cases dealt with in subsections (2) and (4) and section 1908i (1) sentence 1 in conjunction with section 1792.

(2) In all cases, a special custodian is to be appointed for the decision on consent to a sterilisation of the person under custodianship.

(3) To the extent that more than one custodian is entrusted with the same scope of functions, they may take care of the affairs of the person under custodianship only jointly, unless the court has ordered otherwise or delay entails risk.

(4) The court may also appoint more than one custodian in such a way that one is to take care of the affairs of the person under custodianship only to the extent that the other is prevented.

### **Section 1900**

#### **Custodianship by association or public authority**

(1) If the person of full age cannot be adequately cared for by one or more than one natural persons, the custodianship court appoints a recognised custodianship association as custodian. The appointment requires consent by the association.

(2) The association transfers the exercise of the custodianship to individual persons. In doing this, it is to comply with suggestions of the person of full age, to the extent that this is not contravened by compelling reasons. The association notifies the court at once to whom it has transferred the exercise of the custodianship.

(3) If the association becomes aware of circumstances which indicate that the person of full age can be cared for adequately by one or more than one natural persons, it is to notify the court of this fact.

(4) If the person of full age cannot be cared for adequately by one or more than one natural persons or by an association, the court appoints the competent public authority as custodian. Subsections (2) and (3) apply accordingly.

(5) The decision on consent to a sterilisation of the person under custodianship may not be transferred to associations or to public authorities.

### **Section 1901**

#### **Scope of the custodianship, duties of the custodian**

(1) The custodianship includes all activities that are necessary to attend to the affairs of the person under custodianship from a legal point of view in accordance with the following provisions.



(2) The custodian is to attend to the affairs of the person under custodianship in a manner that is conducive to that person's welfare. The well-being of the person under custodianship also includes the possibility for them to shape their life, within their capabilities, according to their own wishes and ideas.

(3) The custodian is to comply with wishes of the person under custodianship to the extent that this is not inconsistent with the best interests of the latter and can be expected of the custodian. This also applies to wishes which the person under custodianship expressed before the appointment of the custodian, unless they discernibly do not wish to uphold these wishes. Before the custodian deals with important matters, they discuss them with the person under custodianship, to the extent that this is not inconsistent with the best interests of the latter.

(4) Within their scope of functions, the custodian is to work towards opportunities being seized to alleviate or improve the illness or handicap of the person under custodianship, to prevent the exacerbation of the illness or handicap or to mitigate its consequences. If the custodianship is conducted as an occupation or profession, then where appropriate the custodian is to draw up, on the order of the court, a custodianship plan at the commencement of the custodianship. The custodianship plan is to set out the aims of the custodianship and the measures to be undertaken to achieve them.

(5) If the custodian becomes aware of circumstances which enable the cancellation of the custodianship, they are to notify the custodianship court of this. The same applies to circumstances which enable a restriction of the scope of functions or require its extension, the appointment of a further custodian or the order of a reservation of consent (section 1903).

#### **Section 1901a**

##### **Living will**

(1) If a person of full age who is able to consent has determined in writing, for the event of their becoming unable to consent, whether they consent to or prohibit specific tests of their state of health, treatment or medical interventions not yet directly immanent at the time of determination (living will), the custodian examines whether these determinations correspond to the current living and treatment situation. If this is the case, the custodian is to see to it that the will of the person under custodianship is done. A living will may be revoked at any time without having to comply with requirements as to its form.

(2) If there is no living will, or if the determinations of a living will do not correspond to the current life and treatment situation, the custodian is to determine the wishes with regard to treatment or the putative intent of the person under custodianship, and decide on this basis whether they consent to or prohibit a medical treatment pursuant to subsection (1). The putative intent is to be ascertained on the basis of concrete indications. Consideration is to be given, in particular, to previous oral or written statements, ethical or religious convictions and other personal values of the person under custodianship.

(3) Subsections (1) and (2) apply regardless of the nature and stage of any illness of the person under custodianship.

(4) Where appropriate, the custodian is to indicate to the person under custodianship the opportunity of establishing a living will and is to support that person, should they so desire, in establishing a living will.

(5) No one may be placed under obligation to establish a living will. The conclusion of a contract may not be made contingent on the establishment or submission of a living will.

(6) Subsections (1) to (3) apply to authorised representatives accordingly.

#### **Section 1901b**

##### **Discussion to ascertain the patient's will**

(1) The physician in attendance examines which medical treatment is indicated with regard to the patient's overall condition and prognosis. The physician and the custodian discuss this measure, considering the patient's will as a basis for the decision to be taken pursuant to section 1901a.

(2) In ascertaining the patient's will pursuant to section 1901a (1) or the wishes with regard to treatment or the putative intent pursuant to section 1901a (2), close relatives and other persons enjoying the confidence of the person under custodianship as a rule are to be afforded the opportunity to make a statement insofar as this is possible without any considerable delay.

(3) Subsections (1) and (2) apply to authorised representatives accordingly.

#### **Section 1901c**

##### **Wishes in writing with regard to custodianship, enduring power of attorney**

A person who is in possession of a document in which a person, for the contingency of their being under custodianship, has communicated suggestions on the choice of the custodian or wishes for the conduct of the custodianship, is to deliver it to the custodianship court without undue delay after they obtain knowledge that proceedings for the appointment of a custodian have been commenced. Similarly, the possessor is to inform the custodianship court of documents in which the person concerned has authorised another person to take care of their affairs. The custodianship court may require a copy to be submitted.

#### **Section 1902**

##### **Representation of the person under custodianship**

As part of their scope of functions, the custodian represents the person under custodianship in court and from court.

#### **Section 1903**

##### **Reservation of consent**

(1) To the extent that this is necessary to prevent a substantial danger for the person under custodianship or their assets, the custodianship court orders that the person under custodianship requires consent by the custodian for a declaration of intent that relates to the scope of functions of the custodian (reservation of consent). Sections 108 - 113, 131 (2) and section 210 apply accordingly.

(2) A reservation of consent may not extend

1. to declarations of intent that are directed at entering into a marriage or creating a life partnership,
2. to dispositions *mortis causa*,
3. to the avoidance of a contract of inheritance,
4. to the avoidance of a contract of inheritance by contract, and
5. to declarations of intent for which a person with limited capacity to contract under the provisions of Books 4 and 5 does not need the consent of their legal representative.

(3) Where a reservation of consent is ordered, the custodian nevertheless does not require the consent of their custodian if the declaration of intent merely confers a legal advantage on the person under custodianship. To the extent that the court does not order otherwise, this also applies if the declaration of intent relates to a trivial matter of everyday life.

(4) Section 1901 (5) applies accordingly.

#### **Section 1904**

##### **Ratification by the custodianship court in the case of medical treatment**

(1) Consent by the custodian to an examination of the state of health of the person under custodianship, to therapeutic treatment or to an operation requires ratification by the custodianship court if the justified danger exists that the person under custodianship will die or will suffer serious and prolonged damage to their health by reason of the measure. Without the approval, the measure may be carried out only if delay entails danger.

(2) The non-consent to or revocation of consent by the custodian to a test of the state of health, treatment or medical intervention requires ratification by the custodianship court if the measure is medically indicated and there is justified reason to fear that the person under custodianship will die or suffer serious, long-term detriment to health if the measure is not carried out or is discontinued.

(3) Approval pursuant to subsections (1) and (2) is to be given if the consent, non-consent or revocation of consent corresponds to the will of the person under custodianship.

(4) Approval pursuant to subsections (1) and (2) is not required if agreement is reached between the custodian and the physician in attendance that the granting, non-granting or revocation of consent corresponds to the will of the person under custodianship established pursuant to section 1901a.

(5) Subsections (1) to (4) also apply to an authorised representative. The latter may only consent to, not consent to or revoke consent to one of the measures designated in subsection (1) sentence 1 or subsection (2) if the power of attorney expressly includes these measures and is given in writing.

### **Section 1905 Sterilisation**

(1) Where the operation is a sterilisation of the person under custodianship to which the person may not consent, the custodian may consent only if

1. the sterilisation is not inconsistent with the intention of the person under custodianship,
2. the person under custodianship will permanently remain incapable of consenting,
3. it is to be assumed that without the sterilisation there would be a pregnancy,
4. as a result of this pregnancy a danger for the life of the pregnant woman or the danger of a serious adverse effect on her physical or psychological state of health were to be expected which could not be prevented in a reasonable way, and
5. the pregnancy cannot be prevented by other reasonable means.

A serious danger for the psychological state of health of the pregnant woman also includes the danger of serious and persistent suffering which would threaten her because custodianship court measures which would entail separating her from her child (sections 1666 and 1666a) would have to be taken against her.

(2) The consent requires ratification by the custodianship court. The sterilisation may not be carried out until two weeks after the approval takes effect. In performing the sterilisation, preference is always to be given to the method that permits a refertilisation.

### **Section 1906**

#### **Ratification by the custodianship court in the case of placement involving deprivation of liberty and in the case of measures involving deprivation of liberty**

(1) It is admissible for the custodian to place the person under custodianship in an environment associated with deprivation of liberty only as long as this is necessary for the well-being of the person under custodianship because,

1. by reason of a mental illness or mental or psychological handicap of the person under custodianship, there is a danger that they will kill themselves or cause substantial damage to their own health, or
2. in order to avert the threat of substantial damage to health, an examination of the state of health of the person under custodianship, therapeutic treatment or an operation is necessary, the measure cannot be carried out without the accommodation of the person under custodianship and the person under custodianship, by reason of a

mental illness or mental or psychological handicap, cannot recognise the necessity of the accommodation or cannot act in accordance with this realisation.

(2) The accommodation is admissible only with the ratification of the custodianship court. Without the approval, the accommodation is admissible only if delay entails risk; the approval is to be obtained thereafter without undue delay.

(3) The custodian is to terminate the accommodation if the prerequisites therefor have ceased to exist. They are to notify the custodianship court of the termination of the accommodation without undue delay.

(4) Subsections (1) to (3) apply accordingly if the person under custodianship who is in a hospital, a home or another establishment is to be deprived of their liberty by mechanical devices, by medical drugs or in another way for a long period of time or regularly.

(5) The accommodation by an authorised person and the consent of an authorised person to measures under subsection (4) require that the power of attorney be granted in writing and expressly cover the measures set out in subsections (1) and (4). In all other cases, subsections (1) to (4) apply accordingly.

### **Section 1906a**

#### **Ratification by the custodianship court in the case of coercive measures by physicians**

(1) Where an examination of the state of health of the person under custodianship, a therapeutic treatment or an operation are against the natural will of the person under custodianship (coercive medical measure), the custodian may consent to the coercive medical measure only if

1. the coercive medical measure is necessary for the well-being of the person under custodianship in order to avert an impending substantial damage to health,
2. the person under custodianship cannot recognise the necessity of the medical treatment, or cannot act in accordance with this realisation, because of a mental illness or of a mental or psychological handicap,
3. the coercive medical measure corresponds to the will of the person under custodianship that is to be taken into account pursuant to section 1901a,
4. a serious attempt had been made previously, with the necessary time being expended and without exercising any undue pressure, to convince the person under custodianship of the necessity of the medical treatment,
5. the impending substantial damage to health cannot be averted by any other measure that is less onerous for the person under custodianship,
6. the anticipated benefit of the coercive medical treatment considerably outweighs the anticipated adverse effect, and if
7. the coercive medical measure is performed while the person under custodianship is an in-patient in a hospital in which the required medical care for the person under custodianship, including the necessary follow-up treatment, is assured.

Section 1846 is only to be applied if the custodian is prevented from carrying out their duties.

(2) Consent to the coercive medical treatment requires ratification by the custodianship court.

(3) The custodian is to revoke consent to the coercive medical treatment if the prerequisites therefor have ceased to exist. They are to inform the custodianship court of the revocation without undue delay.

(4) Where coercive medical treatment is an available option, section 1906 subsection (1) no. 2, subsection (2) and subsection (3) sentence 1 applies accordingly to the placement of the person under custodianship against their natural will in a hospital as an in-patient.

(5) The consent by an agent to coercive medical treatment and the consent to a measure pursuant to subsection (4) have as their prerequisite that the power of attorney has been granted in writing and that it expressly includes consent to these measures. In all other cases, subsections (1) to (3) apply accordingly.

#### **Section 1907**

##### **Ratification by the custodianship court in the case of the abandonment of rented residence**

(1) The custodian requires the ratification of the custodianship court for the termination of a lease of residential space which the person under custodianship rented. The same applies to a declaration of intent that is directed at cancelling such a lease.

(2) Where other circumstances occur by reason of which the termination of the lease is an available option, the custodian is to notify the custodianship court of this without undue delay if their scope of functions includes the lease or the determination of residence. If the custodian wishes to abandon residential space of the person under custodianship in another way than by notice of termination or cancellation of a lease, they are to notify the custodianship court of this as well without undue delay.

(3) The custodian requires the ratification of the custodianship court for a lease or usufructuary lease or another contract by which the person under custodianship is obliged to make periodical payments if the contractual relationship is to last longer than four years or residential space is to be leased by the custodian.

#### **Section 1908**

##### **Ratification by the custodianship court with regard to advancement**

The custodian may promise or grant an advancement from the assets of the person under custodianship only with the ratification of the custodianship court.

#### **Section 1908a**

##### **Precautionary appointment of a custodian and order of reservation of consent for minors**

Measures under sections 1896 and 1903 also may be made for a minor who is 17 years of age if it can be assumed that they will be necessary when they have attained full age. The measures take effect only when they attain full age.

#### **Section 1908b**

##### **Removal of the custodian**

(1) The custodianship court is to remove the custodian if their suitability to attend to the affairs of the person under custodianship is no longer guaranteed or there is another compelling reason for the removal. A compelling reason also exists if the custodian has intentionally issued an incorrect statement of costs or has not maintained the necessary personal contact with the person under custodianship. As a rule, the court is to remove the custodian appointed under section 1897 (6) if the person under custodianship can be cared for by one or more than one other persons outside the exercise of an occupation or profession.

(2) The custodian may demand to be removed if, following their appointment, circumstances arise on the basis of which they no longer reasonably can be expected to conduct the custodianship.

(3) The court may remove the custodian if the person under custodianship suggests an equally suitable person who is prepared to assume the custodianship.

(4) The association custodian also is to be removed if the association applies for this. If the removal is not necessary for the well-being of the person under custodianship, the custodianship court may instead declare, with the agreement of the custodian, that the custodian will continue the custodianship in future as a private person. Sentences 1 and 2 apply accordingly for the public authority custodian.

(5) The association or the public authority is to be removed as soon as the person under custodianship can be adequately cared for by one or more than one natural persons.

#### **Section 1908c**

##### **Appointment of a new custodian**

If the custodian dies or if they are removed, a new custodian is to be appointed.

#### **Section 1908d**

##### **Cancellation or alteration of custodianship and reservation of consent**

(1) The custodianship is to be cancelled if its prerequisites cease to be met. If these prerequisites cease to be met for only a part of the custodian's functions, then the scope of the custodian's functions is to be restricted.

(2) If the custodian was appointed at the application of the person under custodianship, the custodianship, on the application of that person, is to be cancelled, unless custodianship of the court's own motion is required. The application also may be made by a person incapable of contracting. Sentences 1 and 2 apply accordingly for the restriction of the scope of functions.

(3) The custodian's scope of functions is to be extended if this becomes necessary. The provisions on the appointment of the custodian apply here accordingly.

(4) Subsections (1) and (3) apply to the reservation of consent accordingly.

#### **Section 1908e**

**(repealed)**

#### **Section 1908f**

##### **Recognition as custodianship association**

(1) An association having legal personality may be recognised as a custodianship association if it guarantees that it

1. has a sufficient number of suitable employees and will supervise and provide continuing education to them and insure them appropriately for damage that they may cause to others in the course of their activity,

2. methodically endeavours to acquire voluntary custodians, introduces them to their tasks, provides further training to them and advises and supports them and authorised representatives in the performance of their tasks,

2a. methodically gives information on enduring powers of attorney and custodianship orders,

3. enables an exchange of experience between the employees.

(2) The recognition applies for the relevant *Land*; it may be restricted to individual parts of a *Land*. It is revocable and may be given subject to conditions.

(3) Details are laid down in *Land* law. It may also provide further prerequisites for recognition.

(4) The recognised custodianship associations may, in the individual case, advise persons in the creation of an enduring power of attorney.

#### **Section 1908g**

##### **Public authority custodian**

(1) No coercive fine under section 1837 (3) sentence 1 is imposed on a public authority custodian.

(2) The public authority custodian may also invest money of the person under custodianship under section 1807 in the corporation in which they are employed.

#### **Section 1908h**

**(repealed)**

### **Section 1908i**

#### **Provisions applicable accordingly**

(1) In all other cases, the following sections apply accordingly to custodianship: section 1632 (1) to (3), sections 1784, 1787 (1), section 1791a (3) sentence 1 second half-sentence, and second sentence, sections 1792, 1795 to 1797 (1) sentence 2, sections 1798, 1799, 1802, 1803, 1805 to 1821, 1822 nos. 1 to 4 and 6 to 13, sections 1823 to 1826, 1828 to 1836, 1836c to 1836e, 1837 (1) to (3), sections 1839 to 1843, 1846, 1857a, 1888, 1890 to 1895.

The law of a *Land* may lay down that provisions that relate to the supervision of the custodianship court with regard to property law and to the entering into of apprenticeship agreements and contracts of employment do not apply with respect to the competent authority.

(2) Section 1804 applies accordingly, but the custodian, in representation of the person under custodianship, may also give occasional presents if this is consistent with the wish of the person under custodianship and is customary in accordance with their life circumstances. Section 1857a applies accordingly to the custodianship by the father, the mother, the spouse, the life partner or a descendant of the person under custodianship and to the association custodian and the public authority custodian to the extent that the custodianship court does not direct otherwise.

### **Section 1908k**

**(repealed)**

### **Title 3**

### **Curatorship**

### **Section 1909**

#### **Supplementary curatorship**

(1) A person who is subject to parental custody or guardianship is given a curator for matters which the parents or the guardian are prevented from carrying out. In particular, they are given a curator to manage the assets they acquire as a result of death or that are given to them free of charge *inter vivos* if the testator stipulated by testamentary disposition, or the donor when making the disposition stipulated, that the parents or the guardian were not to manage the assets.

(2) If a curatorship becomes necessary, the parents or the ward are to notify the family court of this fact without undue delay.

(3) The curatorship also is to be ordered if the prerequisites for ordering a guardianship are met but a guardian has not yet been appointed.

### **Section 1910**

**(repealed)**

### **Section 1911**

#### **Curatorship of absentees**

(1) An absent person of full age whose abode is unknown is given a curator of absentees for their financial affairs to the extent that they need to be attended to. Such a curator in particular is to be appointed for the absent person also in those cases in which they have made arrangements by giving a mandate or a power of attorney but circumstances have arisen that give reason to revoke the mandate or the power of attorney.

(2) The same applies to an absentee whose abode is known but who is prevented from returning and attending to their financial affairs.

### **Section 1912**

#### **Curatorship for an unborn child**

(1) An unborn child is given a curator for the safeguarding of its future rights to the extent that these require care.

(2) The care is, however, the right of the parents to the extent that they would have parental custody if the child had already been born.

### **Section 1913**

#### **Curatorship for unknown persons involved**

If it is unknown or uncertain who is the person involved in a matter, then a curator may be appointed for the person for this matter to the extent that care is required. In particular, a reversionary heir who has not yet been conceived or whose identity is only to be established by a future event, may be given a curator for the time until the reversionary succession takes effect.

### **Section 1914**

#### **Curatorship for collected assets**

Where, by public collection, assets have been collected for a temporary purpose, a curator may be appointed for the purpose of the management and application of the assets if the persons named to manage and apply it are no longer available.

### **Section 1915**

#### **Application of guardianship law**

(1) The curatorship is governed by the provisions applying to guardianship accordingly, unless the statute leads to a different conclusion. Notwithstanding section 3 (1) to (3) of the Guardians and Custodians Payment Act (*Vormünder- und Betreuervergütungsgesetz*), the amount of a payment to be granted under section 1836 (1) is determined by the specialised knowledge of the curator that is useful for the curatorship business and by the scope and difficulty of the curatorship business, provided that the person subject to curatorship is not destitute. The custodianship court replaces the family court; this does not apply to curatorship for minors or for an unborn child.

(2) The appointment of a supervisory guardian is not necessary.

(3) Section 1793 (2) does not apply to curatorship for persons of full age.

### **Section 1916**

#### **Designation as supplementary curator**

The curatorship to be ordered under section 1909 is not governed by the provisions on designation of guardianship.

### **Section 1917**

#### **Naming of the supplementary curator by testator and third parties**

(1) If the order for a curatorship under section 1909 (1) sentence 2 is necessary, then whoever was named by testamentary disposition or at the time of the disposition is designated as curator; the provisions of section 1778 are to be applied accordingly.

(2) For the person named curator, the exemptions set out in sections 1852 to 1854 may be ordered by testamentary disposition or at the time of the disposition. The family court may cancel the orders if they endanger the interest of the person under curatorship.

(3) For deviation from the directions of the donor, during their lifetime, their consent is necessary and sufficient. If the donor permanently is incapable of making a declaration or their abode their permanently unknown, the family court may substitute the consent.

### **Section 1918**

#### **Termination of the curatorship by operation of law**

(1) The curatorship for a person under parental custody or under guardianship ends on the termination of the parental custody or the guardianship.

(2) The curatorship for an unborn child terminates on the birth of the child.

(3) The curatorship to take care of a single matter terminates when the matter is completed.

### **Section 1919**

#### **Cancellation of the curatorship on cessation of reason**



The curatorship is to be cancelled if the reason for the order of the curatorship has ceased to exist.

**Section 1920  
(repealed)**

**Section 1921**

**Cancellation of the curatorship of absentees**

- (1) The curatorship for an absent person is to be cancelled when the absent person no longer prevented is from attending to their financial affairs.
- (2) If the absent person dies, the curatorship ends only when it is cancelled by the custodianship court. The custodianship court is to cancel the curatorship if it obtains knowledge of the death of the absent person.
- (3) If the absent person is declared to be dead or if their date of death is determined under the provisions of the Missing Persons Act (*Verschollenheitsgesetz*), the curatorship ends upon the order on the declaration of death or the determination of the time of death becoming final and binding.

**Book 5  
Law of succession**

**Division 1  
Succession**

**Section 1922  
Universal succession**

- (1) Upon the death of a person (devolution of an inheritance), that person's assets (inheritance) devolve as a whole to one or more than one other persons (heirs).
- (2) The share of a co-heir (share of the inheritance) is governed by the provisions relating to inheritance.

**Section 1923  
Capacity to inherit**

- (1) Only a person who is alive at the time of the devolution of an inheritance may be an heir.
- (2) A person who is not yet alive at the time of the devolution of an inheritance, but has already been conceived, is deemed to have been born before the devolution of an inheritance.

**Section 1924  
Heirs on intestacy of the first degree**

- (1) Heirs on intestacy of the first degree are the descendants of the deceased.
- (2) A descendant living at the time of the devolution of an inheritance excludes from the succession the descendants related to the deceased through that living descendant.
- (3) If a descendant is no longer living at the time of the devolution of an inheritance, the descendants related to the deceased through the descendant no longer living take that descendant's place (succession per stirpes).
- (4) Children inherit in equal shares.

**Section 1925  
Heirs on intestacy of the second degree**

- (1) Heirs on intestacy of the second degree are the parents of the deceased and their descendants.
- (2) If the parents are alive at the time of the devolution of an inheritance, they inherit alone and in equal shares.
- (3) If at the time of the devolution of an inheritance the father or the mother is no longer alive, the place of the deceased parent is taken by their descendants under the provisions

governing succession by heirs of the first degree. If there are no descendants, the surviving parent inherits alone.

(4) In the cases under section 1756, the adopted child and the descendants of the natural parents or of the other parent of the child are not heirs of the second degree in relation to each other.

#### **Section 1926**

##### **Heirs on intestacy of the third degree**

(1) Heirs on intestacy of the third degree are the grandparents of the deceased and their descendants.

(2) If the grandparents are alive at the time of the devolution of an inheritance, they inherit alone and in equal shares.

(3) If the grandfather or the grandmother of one set of grandparents is no longer alive at the time of the devolution of an inheritance, the place of the deceased grandparent is taken by their descendants. Where there are no descendants, the share of the deceased grandparent falls to the other grandparent and, if the other grandparent is no longer alive, to the other grandparent's descendants.

(4) If one set of grandparents are no longer alive at the time of the devolution of an inheritance and there are no descendants of the deceased grandparents, the other grandparents or their descendants inherit alone.

(5) To the extent that descendants take the place of their parents or more remote forebears, the provisions governing succession by heirs of the first degree apply.

#### **Section 1927**

##### **More than one share of the inheritance in the case of multiple relationship**

If a person belongs to more than one stirps in the first, the second or the third degree, they receive the shares due to them in each of these stirpes. Each share is deemed to be a separate share of the inheritance.

#### **Section 1928**

##### **Heirs on intestacy of the fourth degree**

(1) Heirs on intestacy of the fourth degree are the great-grandparents of the deceased and their descendants.

(2) If great-grandparents are alive at the time of the devolution of an inheritance, they inherit alone; more than one inherit in equal shares, irrespective of whether they belong to the same line or different lines.

(3) If great-grandparents are no longer alive at the time of the devolution of an inheritance, the one of their descendants who is most closely related to the deceased by degree inherits; more than one equally closely related descendant inherit in equal shares.

#### **Section 1929**

##### **More distant degrees**

(1) Heirs on intestacy of the fifth degree and of the more distant degrees are the more distant forebears of the deceased and their descendants.

(2) The provision of section 1928 subsections (2) and (3) applies accordingly.

#### **Section 1930**

##### **Priority of the degrees**

A relative is not entitled to inherit as long as a relative of a preceding degree survives.

#### **Section 1931**

##### **Right of intestate succession of the spouse**

(1) The surviving spouse of the deceased as an heir on intestacy is entitled to one quarter of the inheritance together with relatives of the first degree, and to one half of the inheritance together with relatives of the second degree or together with grandparents. If both

grandparents and descendants of grandparents are alive, the spouse also receives the share of the other half that under section 1926 would devolve to the descendants.

(2) If there are relatives neither of the first nor of the second degree nor grandparents who are alive, the surviving spouse receives the whole inheritance.

(3) The provision of section 1371 remains unaffected.

(4) If at the time of the devolution of the inheritance there was separation of property and if one or two children of the deceased are entitled as heirs on intestacy together with the surviving spouse, the surviving spouse and each child inherit in equal shares; section 1924 (3) applies in this case too.

### **Section 1932**

#### **Preferential benefit of the spouse**

(1) If the surviving spouse is an heir on intestacy together with relatives of the second degree or together with grandparents, the spouse has a right, in addition to the shares of the inheritance, to the objects belonging to the marital household, to the extent that these are not accessories to a plot of land, and to the wedding presents, as a preferential benefit. If the surviving spouse is an heir on intestacy together with relatives of the first degree, the spouse has a right to these objects to the extent that they need them to maintain a reasonable household.

(2) The preferential benefit is governed by the provisions applying to legacies.

### **Section 1933**

#### **Exclusion of the right of succession of the spouse**

The right of succession of the surviving spouse and the right to the preferential benefit are excluded if at the time of the death of the deceased the prerequisites for the dissolution by divorce of the marriage were met and the deceased had petitioned for or consented to the divorce. The same applies if the deceased was entitled to petition for the annulment of the marriage and had filed the petition. In these cases, the spouse is entitled to maintenance under sections 1569 to 1586b.

### **Section 1934**

#### **Right of succession of spouse who is a relative**

If the surviving spouse is one of the relatives entitled to inherit, they inherit at the same time as a relative. The share of the inheritance that devolves to them by reason of the relationship is deemed to be a separate share of the inheritance.

### **Section 1935**

#### **Consequences of increase of share of the inheritance**

If an heir on intestacy ceases to be an heir before or after the devolution of an inheritance, and if as a result of this the share of the inheritance of another heir on intestacy is increased, the proportion by which the share of the inheritance increases is deemed to be a separate share of the inheritance with regard to the legacies and testamentary burdens to which this heir or the heir who has ceased to be an heir is subject, and with regard to the duty to adjust advancements.

### **Section 1936**

#### **Right of intestate succession of the State**

If at the time of the devolution of the inheritance neither a relative, nor a spouse, nor a life partner of the deceased is alive, the *Land* in which the deceased had their last place of residence or, if none such is ascertainable, their customary place of residence at the time of the devolution of the inheritance is the heir. In all other cases, the Federal Government is the heir.

### **Section 1937**

#### **Appointment of heir by testamentary disposition**

The deceased may appoint an heir by a unilateral disposition mortis causa (will, testamentary disposition).

**Section 1938**  
**Disinheritance without appointment of an heir**

The deceased may by will exclude a relative, their spouse or their life partner from intestate succession without appointing an heir.

**Section 1939**  
**Legacy**

The deceased may by will give a material benefit to another person without appointing the other person as heir (legacy).

**Section 1940**  
**Testamentary burden**

The deceased may by will oblige their heir or a legatee to perform an act without giving another person a right to the performance (testamentary burden).

**Section 1941**  
**Contract of inheritance**

(1) The deceased may by contract appoint an heir, grant legacies, and impose testamentary burdens and may also select the laws of inheritance that are to be applied (contract of inheritance).

(2) Both the other contractual party and a third party may be appointed as an heir (contractual heir) or as a legatee.

**Division 2**  
**Legal position of the heir**

**Title 1**

**Acceptance and disclaimer of the inheritance; supervision of the probate court**

**Section 1942**  
**Devolution and disclaimer of the inheritance**

(1) The inheritance devolves to the entitled heir irrespective of the right to disclaim it (devolution of the inheritance).

(2) The treasury may not disclaim the inheritance that devolves to it as the heir on intestacy.

**Section 1943**  
**Acceptance and disclaimer of the inheritance**

The heir may no longer disclaim the inheritance if they have accepted it or if the period laid down for disclaimer has passed; on the expiry of the period, the inheritance is deemed to have been accepted.

**Section 1944**  
**Period for disclaimer**

(1) Disclaimer may be made only within six weeks.

(2) The period begins on the date on which the heir obtains knowledge of the devolution and of the reason for their entitlement. If the heir is entitled by a disposition mortis causa, the period does not begin before the notification of the disposition mortis causa by the probate court. The provisions of sections 206 and 210, governing limitation, apply accordingly to the running of the period.

(3) The period is six months if the deceased had their last residence only abroad or if the heir is resident abroad at the beginning of the period.

**Section 1945**  
**Form of disclaimer**

- (1) The disclaimer is made by a declaration to the probate court; the declaration is to be made in the presence of and recorded by the probate court or in publicly certified form.
- (2) The record of the probate court is made under the provisions of the Law on Attestations (*Beurkundungsgesetz*).
- (3) An authorised representative requires a publicly certified power of attorney. The power of attorney must be enclosed with the declaration or submitted later within the disclaimer period.

#### **Section 1946**

##### **Date for acceptance or disclaimer**

The heir may accept or disclaim the inheritance as soon as the devolution of the inheritance has occurred.

#### **Section 1947**

##### **Condition and stipulation as to time**

The acceptance and the disclaimer may not be made subject to a condition or a stipulation as to time.

#### **Section 1948**

##### **More than one ground of entitlement**

- (1) A person who is entitled to inherit by disposition mortis causa may, if they would be entitled as an heir on intestacy without the disposition, disclaim the inheritance as an appointed heir and accept it as an heir on intestacy.
- (2) A person who is entitled as heir by will and by contract of inheritance may accept the inheritance by reason of the one ground of entitlement and disclaim it for the other ground.

#### **Section 1949**

##### **Mistake as to the ground of entitlement**

- (1) Acceptance is deemed not to have been made if the heir was mistaken as to the ground of entitlement.
- (2) In case of doubt, the disclaimer extends to all grounds of entitlement that are known to the heir at the time of the declaration.

#### **Section 1950**

##### **Partial acceptance; partial disclaimer**

The acceptance and the disclaimer may not be limited to part of the inheritance. The acceptance or disclaimer of a part is ineffective.

#### **Section 1951**

##### **More than one share of the inheritance**

- (1) A person who is entitled to more than one share of the inheritance may, if the entitlement is based on more than one ground, accept one share of the inheritance and disclaim the other.
- (2) Where the entitlement is based on the same ground, the acceptance or disclaimer of one share of the inheritance also applies to the other, even if the other devolves only later. The entitlement is based on the same ground even if it is directed in more than one will or by contract in more than one contract of inheritance concluded between the same persons.
- (3) If the deceased leaves an heir more than one share of the inheritance, then they may permit the heir by disposition mortis causa to accept one share of the inheritance and disclaim the other.

#### **Section 1952**

##### **Inheritability of the right of disclaimer**

- (1) The right of the heir to disclaim the inheritance is inheritable.
- (2) If the heir dies before the expiry of the period for disclaimer, the period does not end before the expiry of the period for disclaimer laid down for the inheritance of the heir.

(3) Of more than one heir of the heir, each may disclaim the part of the inheritance corresponding to their share of the inheritance.

#### **Section 1953**

##### **Effect of disclaimer**

- (1) If the inheritance is disclaimed, it is deemed that the inheritance did not devolve to those disclaiming.
- (2) The inheritance devolves to the person who would be entitled if the person disclaiming had not been alive at the time of the devolution of the inheritance; the devolution is deemed to have taken place simultaneously with the devolution of the inheritance.
- (3) As a rule, the probate court is to notify that person of the disclaimer to whom the inheritance has devolved as a result of the disclaimer. It is to permit inspection by every person who satisfactorily demonstrates an interest of a legal nature.

#### **Section 1954**

##### **Period of avoidance**

- (1) If the acceptance or the disclaimer may be avoided, the avoidance may be effected only within six weeks.
- (2) In the case of avoidance for duress, the period begins on the date on which the duress ends, and in the other cases on the date on which the person entitled to avoid obtains knowledge of the ground for avoidance. The running of the period is governed by the provisions applying to limitation of sections 206, 210 and 211 accordingly.
- (3) The period is six months if the deceased had their last residence only abroad or if the heir is resident abroad at the beginning of the period.
- (4) The avoidance is excluded if 30 years have passed since the acceptance or the disclaimer.

#### **Section 1955**

##### **Form of avoidance**

The avoidance of the acceptance or the disclaimer is made by declaration to the probate court. The declaration is governed by the provisions of section 1945.

#### **Section 1956**

##### **Avoidance of failure to disclaim in good time**

Failure to disclaim in good time may be avoided in the same way as acceptance.

#### **Section 1957**

##### **Effect of avoidance**

- (1) The avoidance of the acceptance is deemed to be a disclaimer; the avoidance of the disclaimer is deemed to be an acceptance.
- (2) As a rule, the probate court is to notify that person of the avoidance of the disclaimer to whom the inheritance devolved as a result of the disclaimer. The provision of section 1953 (3) sentence 2 applies.

#### **Section 1958**

##### **Judicial assertion of claims against the heir**

Before the acceptance of the inheritance, a claim directed against the estate may not be asserted in court against the heir.

#### **Section 1959**

##### **Management before the disclaimer**

- (1) If the heir carries out transactions relating to the inheritance before the disclaimer, they have the rights and duties towards the person who becomes an heir of an agent without specific authorisation.
- (2) Where the heir disposes of an object of the estate before the disclaimer, the effectiveness of the alienation is not affected by the disclaimer if it was not possible to postpone the alienation without detriment to the estate.

(3) A legal transaction that must be entered into with the heir as such remains effective even after the disclaimer if it is entered into before the disclaimer with the person disclaiming.

#### **Section 1960**

##### **Securing the estate; curator of the estate**

(1) Until the inheritance is accepted, the probate court is to ensure that the estate is secured, to the extent a need for this is given. The same applies if the heir is unknown or if it is uncertain whether they have accepted the inheritance.

(2) The probate court may, in particular, order the attachment of seals, the deposit of money, securities and valuables and the drawing up of an estate inventory, and it may appoint a curator for the person who becomes heir (curator of the estate).

(3) The provision of section 1958 does not apply to the curator.

#### **Section 1961**

##### **Curatorship of the estate on application**

In the cases governed by section 1960 (1), the probate court is to appoint a curator of the estate if the appointment is applied for by the person entitled for the purpose of judicially asserting a claim that is directed against the estate.

#### **Section 1962**

##### **Jurisdiction of the probate court**

For the curatorship of the estate, the probate court takes the place of the family court or custodianship court.

#### **Section 1963**

##### **Maintenance for the mother-to-be of an heir**

Where at the time of the devolution of the inheritance the birth of an heir is to be expected, the mother-to-be, if she is incapable of maintaining herself, may claim appropriate maintenance from the estate until the birth or, if other persons are also entitled as heirs, from the share of the inheritance of the child. When the share of the inheritance is calculated, it is to be assumed that only one child will be born.

#### **Section 1964**

##### **Presumption that the treasury is heir**

(1) If the heir is not determined within a period appropriate to the circumstances, the probate court is to determine that there is no existing heir other than the treasury.

(2) The determination gives rise to the presumption that the treasury is the heir on intestacy.

#### **Section 1965**

##### **Public invitation to register the rights of succession**

(1) The determination is to be preceded by a public invitation to register the rights of succession, specifying a period of time for such registration; the type of the notice given by publication and the length of the registration period are governed by the provisions governing judicial call procedure. The invitation may be omitted if the costs are disproportionately high with regard to the amount of the estate.

(2) A right of succession is not taken into account if it is proved to the probate court within three months after the expiry of the notification period that the right of succession exists or that it has been asserted against the treasury in a legal action. If there has been no public invitation, the three-month period begins when the judicial invitation to prove the right of succession or the filing of the claim is made.

#### **Section 1966**

##### **Legal position of the treasury before determination**

A right may be asserted by the treasury as heir on intestacy and against the treasury as heir on intestacy only after the probate court has determined that no other heir exists.

**Title 2**  
**Liability of the heir for the obligations of the estate**

**Subtitle 1**  
**Obligations of the estate**

**Section 1967**  
**Liability of heir, obligations of the estate**

- (1) The heir is liable for the obligations of the estate.  
(2) The obligations of the estate include, in addition to the debts of the deceased, the obligations borne by the heirs as such, in particular the obligations arising from rights to a compulsory portion, legacies and testamentary burdens.

**Section 1968**  
**Costs of funeral**

The heir bears the costs of the funeral of the deceased.

**Section 1969**  
**Maintenance for 30 days**

- (1) The heir has a duty in the first 30 days after the occurrence of the devolution of the inheritance to grant maintenance to family members of the deceased, if they belong to the household of the deceased and have been receiving maintenance from them at the time of their death, in the same scope as the deceased did and to permit them to use the residence and the household objects. The deceased may by testamentary disposition make different arrangements.  
(2) The provisions on legacies apply accordingly.

**Subtitle 2**  
**Judicial call for the creditors of the estate**

**Section 1970**  
**Notification of the claims**

The creditors of the estate may be requested by way of the judicial call procedure to register their claims.

**Section 1971**  
**Creditors not affected**

Pledges and creditors who are equivalent to pledges in insolvency proceedings, and creditors who on compulsory enforcement against the immovable property have a right to satisfaction from these assets are not affected, insofar as it is a question of satisfaction from the objects subject to their claims, by the judicial call procedure. The same applies to creditors whose claims are secured by a priority notice or who have a right of separation of assets in the insolvency proceedings, with regard to the objects subject to their rights.

**Section 1972**  
**Rights not affected**

Rights to a compulsory portion, legacies and testamentary burdens are not affected by the judicial call, notwithstanding the provision in section 2060 no. 1.

**Section 1973**  
**Exclusion of creditors of the estate**

- (1) The heir may refuse the satisfaction of a creditor of the estate excluded in the judicial call procedure to the extent that the estate is completely exhausted in the satisfaction of the creditors who are not excluded. However, the heir is to satisfy the excluded creditor before the obligations arising from rights to compulsory portions, legacies and testamentary burdens unless the creditor asserts their claim only after the discharge of these obligations.



(2) The heir is to return a surplus for the purpose of satisfying the creditor by way of compulsory enforcement in accordance with the provisions on the surrender of unjust enrichment. The heir may prevent the surrender of the objects of the estate still in existence by paying the value. The final and binding judgment ordering the heir to satisfy an excluded creditor has the same effect with regard to another creditor as satisfaction.

#### **Section 1974**

##### **Defence of withheld information**

(1) A creditor of the estate who asserts their claim in relation to the heir later than five years after the devolution of the inheritance is on the same footing as an excluded creditor, unless the claim became known to the heir before the expiry of the five years or was notified in the judicial call procedure. If the deceased is declared to be dead or if their date of death is determined under the provisions of the Missing Persons Act (*Verschollenheitsgesetz*), the period does not begin before the order containing the declaration of death or the determination of the time of death becomes final and binding.

(2) The obligation imposed on the heir under section 1973 (1) sentence 2 arises in the interrelationship of obligations under rights to a compulsory portion, legacies and testamentary burdens only to the extent that the creditor would have priority in the case of estate insolvency proceedings.

(3) To the extent that a creditor is, under section 1971, not affected by the judicial call, the provisions of subsection (1) do not apply to them.

#### **Subtitle 3**

##### **Restriction of the liability of the heir**

#### **Section 1975**

##### **Administration of estate; estate insolvency**

The liability of the heir for the obligations of the estate is restricted to the estate if curatorship is ordered in order to satisfy the creditors of the estate (administration of the estate) or estate insolvency proceedings are instituted.

#### **Section 1976**

##### **Effect on legal relationships extinguished by merger**

If administration of the estate has been ordered or estate insolvency proceedings have been instituted, the legal relationships extinguished on the devolution of the inheritance by merger of right and obligation or of right and encumbrance are deemed not to be extinguished.

#### **Section 1977**

##### **Effect on a set-off**

(1) If a creditor of the estate, before administration of the estate was ordered or before estate insolvency proceedings were instituted, set off without the approval of the heir their claim against a claim of the heir that does not form part of the estate, then after the administration of the estate is ordered or estate insolvency proceedings are instituted, the set-off is to be deemed not to have taken place.

(2) The same applies if a creditor who is not a creditor of the estate has set off their claim in relation to the heir against a claim belonging to the estate.

#### **Section 1978**

##### **Responsibility of the heir for previous administration, reimbursement of expenses**

(1) If administration of the estate has been ordered or estate insolvency proceedings have been instituted, the heir is as responsible to the creditors of the estate for the previous management of the estate as if they had had to manage the estate for them as their agent from the date of acceptance of the inheritance on. The transactions relating to the inheritance carried out by the heir before the acceptance of the inheritance are governed by the provisions on voluntary agency without specific authorisation, accordingly.

(2) The claims of the creditors of the estate under subsection (1) are deemed to belong to the estate.

(3) Expenses are to be reimbursed to the heir from the estate to the extent that they could require reimbursement under the provisions on mandate or on voluntary agency without specific authorisation.

#### **Section 1979**

##### **Discharge of obligations of the estate**

The discharge of an obligation of the estate by the heir must be treated by the creditors of the estate as having been made for the account of the estate if the heir in the circumstances was entitled to assume that the estate was sufficient to discharge all obligations of the estate.

#### **Section 1980**

##### **Application for opening of estate insolvency proceedings**

(1) If the heir has obtained knowledge of the insolvency or over-indebtedness of the estate, then they are to apply, without undue delay, to have estate insolvency proceedings opened. If they infringe this duty, they are liable to the creditors for the damage resulting from this. In assessing the adequacy of the estate, the liabilities in the form of legacies and testamentary burdens are not taken into account.

(2) Ignorance arising from negligence is equivalent to knowledge of insolvency or over-indebtedness. It is deemed in particular to be negligence if the heir does not apply for a judicial call to be effected for the creditors of the estate although the heir has reason to assume that there are unknown obligations of the estate; a judicial call is not necessary if the costs of the proceedings are disproportionately high in relation to the amount of the estate.

#### **Section 1981**

##### **Order of administration of the estate**

(1) The administration of the estate is to be ordered by the probate court if the heir applies for the order.

(2) The administration of the estate is to be ordered on the application of a creditor of the estate if there is reason to assume that the satisfaction of the creditors of the estate from the estate is endangered by the conduct or the financial situation of the heir. The application may no longer be made if two years have passed since the acceptance of the inheritance.

(3) The provision of section 1785 does not apply.

#### **Section 1982**

##### **Refusal to order administration of the estate for insufficiency of assets**

There may be a refusal to order administration of the estate if the assets are insufficient to pay the costs.

#### **Section 1983**

##### **Notice by publication**

The probate court is to give notice of the order of administration of the estate by publication in the newspaper specified for its notices.

#### **Section 1984**

##### **Effect of the order**

(1) On the order of administration of the estate, the heir loses the authority to manage the estate and alienate it. The provisions of sections 81 and 82 of the Insolvency Code (*Insolvenzordnung*) apply accordingly. A claim directed against the estate may be asserted only against the administrator of the estate.

(2) Compulsory enforcement against the estate and attachment of the estate to the benefit of a creditor who is not a creditor of the estate are excluded.

#### **Section 1985**

##### **Duties and liability of the administrator of the estate**

- (1) The administrator is to manage the estate and discharge the obligations of the estate from the estate.
- (2) The administrator is also responsible to the creditors of the estate for the management of the estate. The provisions of section 1978 (2) and sections 1979 and 1980 apply accordingly.

**Section 1986**  
**Surrender of the estate**

- (1) The administrator may pay out the estate to the heir only when the known obligations of the estate have been discharged.
- (2) Where the discharge of a liability is not possible at the time, or where a liability is disputed, the estate may be paid out only if security is provided to the creditor. The provision of security is not necessary for a conditional claim if the possibility of the condition being fulfilled is so remote that the claim does not have a current asset value.

**Section 1987**  
**Payment of the administrator of the estate**

The administrator may request appropriate payment for carrying out their office.

**Section 1988**  
**End and cancellation of administration of the estate**

- (1) The administration of the estate ends on the institution of the estate insolvency proceedings.
- (2) The administration of the estate may be cancelled if it is shown that the assets are insufficient to pay the costs.

**Section 1989**  
**Defence by the heir of exhaustion of assets**

If the estate insolvency proceedings are ended by distribution of the assets or by an insolvency plan, the liability of the heir is governed by the provision of section 1973 accordingly.

**Section 1990**  
**Defence by the heir as to insufficiency of assets**

- (1) If it is not appropriate to order the administration of the estate or to open estate insolvency proceedings by reason of lack of sufficient assets to pay the costs, or if for this reason the administration of the estate is cancelled or the insolvency proceedings are suspended, then the heir may refuse to satisfy a creditor of the estate to the extent that the estate is insufficient. In this case, the heir is obliged to deliver the estate for the purpose of satisfying the creditor by way of compulsory enforcement.
- (2) The right of the heir is not excluded by the fact that the creditor, after the date of the devolution of the inheritance, by way of compulsory enforcement or enforcement of a seizure, has obtained a pledge or a mortgage or, by way of injunction, a priority notice.

**Section 1991**  
**Consequences of defence as to insufficiency of assets**

- (1) If the heir exercises the right to which they are entitled under section 1990, their responsibility and the reimbursement of their expenses are governed by sections 1978 and 1979.
- (2) The legal relationships extinguished as a result of the devolution of the inheritance by merger of right and obligation or of right and encumbrance are deemed in the relationship between the creditor and the heir not to be extinguished.
- (3) The final and binding judgment ordering the heir to satisfy a creditor has the same effect with regard to another creditor as satisfaction.

(4) The liabilities arising from rights to a compulsory share, legacies and testamentary burdens are to be discharged by the heir in the same way as they would be satisfied in the case of insolvency proceedings.

#### **Section 1992**

##### **Over-indebtedness as a result of legacies and testamentary burdens**

If the over-indebtedness of the estate results from legacies and testamentary burdens, the heir, even if the prerequisites set out in section 1990 are not met, is entitled to effect the discharge of these liabilities under the provisions of sections 1990 and 1991. The heir may prevent the surrender of the objects of the estate still in existence by paying the value.

#### **Subtitle 4**

##### **Filing of an inventory, unlimited liability of the heir**

#### **Section 1993**

##### **Filing of an inventory**

The heir is entitled to file a list of the estate (inventory) at the probate court (filing of an inventory).

#### **Section 1994**

##### **Inventory period**

(1) On the application of a creditor of the estate, the probate court is to fix a period (inventory period) for the heir to file the inventory. After the expiry of the period, the heir has unlimited liability for the obligations of the estate, unless the inventory is filed before this.

(2) Applicants are to satisfactorily demonstrate their claim. The effectiveness of the fixing of the period remains unaffected if the claim does not exist.

#### **Section 1995**

##### **Length of the period**

(1) As a rule, the inventory period is to amount to at least one month and to at most three months. It begins on the service of the order setting the period.

(2) If the period is fixed before the acceptance of the inheritance, it begins only on the acceptance of the inheritance.

(3) On application by the heir, the probate court may, at its discretion, extend the period.

#### **Section 1996**

##### **Fixing a new period**

(1) If the heir has been prevented through no fault of their own from filing the inventory in good time, from applying for the extension of the inventory period where this is justified in the circumstances or from observing the two-week period specified in subsection (2), then on the heir's application the probate court is to fix a new inventory period for them.

(2) The application must be filed within two weeks after the removal of the impediment and at the latest before the expiry of one year after the end of the period first fixed.

(3) Before the decision, the creditor of the estate on whose application the first period was specified as a rule is to be heard if this is appropriate.

#### **Section 1997**

##### **Suspension of the expiry of the period**

The running of the inventory period and of the period of two weeks fixed in section 1996 (2) are governed by the provisions applying to limitation in section 210 accordingly.

#### **Section 1998**

##### **Death of the heir before expiry of the period**

If the heir dies before the expiry of the inventory period or of the period of two weeks fixed in section 1996 (2), the period does not end before the expiry of the period laid down for disclaimer of the inheritance of the heir.

**Section 1999**  
**Notice to the court**

If the heir is subject to parental custody or to guardianship, then the probate court as a rule is to notify the family court of the fixing of the inventory period. If the matter relating to the estate falls under the tasks of a custodian, the family court is replaced by the custodianship court.

**Section 2000**  
**Ineffectiveness of the fixing of the period**

The fixing of an inventory period becomes ineffective if administration of the estate is ordered or estate insolvency proceedings are instituted. During the period of the administration of the estate or of the estate insolvency proceedings, an inventory period may not be fixed. If the estate insolvency proceedings are terminated by distribution of the insolvency estate or by an insolvency plan, the filing of an inventory is not necessary in order to avoid unlimited liability.

**Section 2001**  
**Contents of the inventory**

- (1) As a rule, the inventory is to state in full the objects of the estate that are in existence at the date of the devolution of the inheritance and the obligations of the estate.
- (2) In addition, the inventory as a rule is to contain a description of the objects of the estate, to the extent that such is necessary to assess the value, and a statement of the value.

**Section 2002**  
**Preparation of the inventory by the heir**

The heir must call in a competent authority or a competent official or notary for the preparation of the inventory.

**Section 2003**  
**Official preparation of the inventory**

- (1) On application by the heir, the official preparation of the inventory is to be carried out by a notary appointed by the probate court. The filing of the application preserves the inventory period.
- (2) The heir is obliged to give the information that is necessary for the preparation of the inventory.
- (3) The inventory is to be filed at the probate court by the notary.

**Section 2004**  
**Reference to an existing inventory**

Where an inventory complying with the provisions of sections 2002 and 2003 already is at the probate court, it suffices for the heir to declare, before expiry of the inventory period, to the probate court that the inventory is to be deemed to have been filed by them.

**Section 2005**  
**Unlimited liability of the heir if the inventory is incorrect**

- (1) If the heir intentionally causes a substantial incompleteness of the statement of objects of the estate contained in the inventory, or if, with the intention to place the creditors of the estate at a disadvantage, causes a non-existent obligation of the estate to be included, they have unlimited liability for the obligations of the estate. The same applies if, in the case governed by section 2003, they refuse to give the information or intentionally delay the giving of the information to a significant degree.
- (2) If the statement of the objects of the estate is incomplete but this is not a case of subsection (1), a new inventory period may be fixed for the heir to complete the statement.

**Section 2006**  
**Declaration in lieu of an oath**

- (1) On demand by a creditor of the estate, the heir is to make a declaration in lieu of an oath, to be recorded by the probate court, that to the best of their knowledge they have stated the objects of the estate as fully as they can.
- (2) Before filing the declaration in lieu of an oath, the heir may complete the inventory.
- (3) If the heir refuses to make the declaration in lieu of an oath, they have unlimited liability to the creditor who made the application. The same applies if they appear neither at the hearing nor at a new hearing fixed at the application of the creditor, unless there is a reason that sufficiently justifies their non-appearance at this hearing.
- (4) The same creditor or another creditor may request the declaration in lieu of an oath to be made again only if there is reason to assume that the heir learnt of the existence of further objects of the estate after making the statutory declaration.

#### **Section 2007**

##### **Liability in the case of more than one share of the inheritance**

If an heir is entitled to more than one share of the inheritance, their liability for the obligations of the estate with regard to each of the shares of the inheritance is determined in the same way as if the shares in the inheritance belonged to different persons. In the cases of accrual and of section 1935, this applies only if the shares of the inheritance are differently encumbered.

#### **Section 2008**

##### **Inventory for an inheritance that is part of common matrimonial property**

- (1) Where a spouse living under the regime of community of property is an heir and where the inheritance is part of the common matrimonial property, the fixing of the inventory period is effective only if it is also made towards the other spouse, if the other spouse manages the common matrimonial property alone or together with the first spouse. As long as the period has not expired with regard to the second spouse, it does not end with regard to the spouse who is the heir either. The filing of the inventory by the other spouse also benefits the spouse who is an heir.
- (2) The provisions of subsection (1) also apply after the end of the community of property.

#### **Section 2009**

##### **Effect of filing of inventory**

If the inventory is filed in good time, it is presumed in the relationship between the heir and the creditors of the estate that at the time of the devolution of the inheritance no further objects of the estate apart from those stated were in existence.

#### **Section 2010**

##### **Inspection of the inventory**

The probate court is to permit inspection of the inventory by every person who satisfactorily demonstrates an interest of a legal nature.

#### **Section 2011**

##### **No inventory period for the treasury as heir**

No inventory period may be fixed for the treasury as heir on intestacy. The treasury is obliged towards the creditors of the estate to supply information on the amount of the estate.

#### **Section 2012**

##### **No inventory period for the curator and administrator of the estate**

- (1) No inventory period may be fixed for a curator of the estate appointed under sections 1960 and 1961. The treasury is obliged towards the creditors of the estate to supply information on the amount of the estate. The curator may not waive the limitation of the liability of the heir.
- (2) These provisions also apply to the administrator of the estate.

#### **Section 2013**

##### **Consequences of the unlimited liability of the heir**

(1) If the heir has unlimited liability for the obligations of the estate, the provisions of sections 1973 to 1975, 1977 to 1980 and 1989 to 1992 do not apply; the heir is not entitled to apply for an order of administration of the estate. However, the heir may rely on a limitation of liability occurring under section 1973 or under section 1974 if the case of section 1994 (1) sentence 2 or of section 2005 (1) later arises.

(2) The provisions of sections 1977 to 1980 and the right of the heir to apply for an order of administration of the estate are not excluded by the fact that the heir has unlimited liability towards individual creditors of the estate.

#### **Subtitle 5 Suspensive defences**

##### **Section 2014 Defence within three months**

The heir is entitled to refuse to discharge an obligation of the estate before the end of the first three months after the acceptance of the inheritance, but not past the date when the inventory is filed.

##### **Section 2015 Defence of judicial call procedure**

(1) If the heir has made the application for the initiation of the judicial call procedure for the creditors of the estate within one year after the acceptance of the inheritance and if the application has been admitted, the heir is entitled to refuse to discharge an obligation of the estate before the end of the judicial call procedure.

(2) (repealed)

(3) If the exclusory order is passed or the application for the exclusory order to be passed is rejected, the judicial call procedure is not to be deemed as terminated until the order has gained legal force.

##### **Section 2016 Exclusion of defences in the case of unlimited liability of the heir**

(1) The provisions of sections 2014 and 2015 do not apply if the heir has unlimited liability.

(2) The same applies to the extent that a creditor under section 1971 is not affected by the judicial call for the creditors of the estate, subject to the proviso that a right acquired only after the date of the devolution of the inheritance by way of compulsory enforcement or enforcement of a seizure and a priority notice obtained only after this date by way of injunction are disregarded.

##### **Section 2017 Beginning of the period of time in the case of curatorship of the estate**

If, before the inheritance is accepted, a curator is appointed to manage the estate, the periods laid down in section 2014 and 2015 (1) commence on the date of the appointment.

#### **Title 3 Claim to inheritance**

##### **Section 2018 Duty to surrender of the possessor of the inheritance**

The heir may request every person who, on the basis of a right of succession to which that person is not entitled in actual fact, has acquired something from the inheritance (possessor of the inheritance) to surrender the benefit obtained.

##### **Section 2019 Direct substitution**

(1) Items that the possessor of the inheritance acquires by legal transaction with means from the inheritance are also deemed to have been obtained from the inheritance.

(2) Only when the debtor obtains knowledge that a claim acquired in such a way is part of the inheritance is the debtor to allow this to be credited against them; the provisions of sections 406 to 408 apply accordingly.

**Section 2020**  
**Emoluments and fruits**

The possessor of the inheritance is to surrender to the heir the emoluments taken: the duty to surrender also relates to fruits the ownership in which they have acquired.

**Section 2021**  
**Duty to surrender under principles of unjust enrichment**

To the extent that the possessor of the inheritance is incapable of surrendering the emoluments, their obligation is governed by the provisions on the surrender of unjust enrichment.

**Section 2022**  
**Reimbursement of outlays and expenses**

(1) The possessor of the inheritance is obliged to surrender the things belonging to the inheritance in return for reimbursement of all outlays only to the extent that the outlays are not covered by set-off against the enrichment to be returned under section 2021. The provisions of sections 1000 to 1003 applying to the claim to ownership apply.

(2) The outlays also include the expenses that the possessor of the inheritance incurs in paying charges on the inheritance or in discharging obligations of the estate.

(3) To the extent that the heir is to make reimbursement to a greater extent for expenses that were not incurred in relation to individual things, in particular for the expenses set out in subsection (2), under the general provisions, this does not affect the claim of the possessor of the inheritance.

**Section 2023**  
**Liability after litigation is pending and for emoluments and outlays**

(1) If the possessor of the inheritance is to surrender things belonging to the inheritance, then from the date when the matter becomes pending on the claim of the heir to damages for deterioration, destruction or impossibility of surrender for another reason is governed by the provisions that apply to the relationship between the owner and the possessor from the date when the claim to ownership became pending.

(2) The same applies to the claim of the heir for surrender of or payment for emoluments and of the claim of the possessor of the inheritance to the reimbursement of outlays.

**Section 2024**  
**Liability with knowledge**

If the possessor of the inheritance is not in good faith at the beginning of their possession of the inheritance, they are liable in the same way as if the claim of the heir had at this time become pending. If the possessor of the inheritance later discovers that they are not an heir, they are liable in the same way from the date when they obtained the knowledge. A more extensive liability for default remains unaffected.

**Section 2025**  
**Liability in the case of tort**

If the possessor of the inheritance has obtained an object of the inheritance through a criminal offence or has obtained a thing that is part of the inheritance through prohibited interference, they are liable under the provisions on damages for torts. A possessor of the inheritance in good faith, however, is liable for prohibited interference under these provisions only if the heir has already actually taken possession of the thing.

**Section 2026**  
**No reliance on acquisition by prescription**



For as long as the claim to the inheritance has not become statute-barred, the possessor of the inheritance may not rely in relation to the heir on the acquisition by prescription of a thing that they have in their possession as belonging to the inheritance.

#### **Section 2027**

##### **Duty of information of the possessor of the inheritance**

- (1) The possessor of the inheritance is obliged to give the heir information on the amount of the inheritance and on the whereabouts of the objects of the inheritance.
- (2) A person who, without being the possessor of the inheritance, takes possession of a thing from the estate before the heir has actually taken possession has the same obligation.

#### **Section 2028**

##### **Duty of information of occupant of house**

- (1) A person who, at the time of the devolution of the inheritance, lived in the same household as the deceased, is obliged to inform the heir on request what transactions relating to the inheritance they conducted and what they know of the whereabouts of the objects of the inheritance.
- (2) If there is reason to assume that the information was not given with the requisite care, then on demand by the heir, the person obliged is to declare in lieu of an oath, to be recorded in writing, that they made their statements, to the best of their knowledge, as fully as they were able.
- (3) The provisions of section 259 (3) and section 261 apply.

#### **Section 2029**

##### **Liability in the case of individual claims by the heir**

The liability of the possessor of the inheritance with regard to the claims to which the heir is entitled with respect to the individual objects of the inheritance is also governed by the provisions on the claim to the inheritance.

#### **Section 2030**

##### **Legal position of the acquirer of the inheritance**

A person who acquires the inheritance by contract from a possessor of the inheritance is, in relation to the heir, equivalent to a possessor of the inheritance.

#### **Section 2031**

##### **Claim to surrender of a person declared dead**

- (1) If a person who is declared dead or the time of whose death is established under the provisions of the Missing Persons Act (*Verschollenheitsgesetz*) survives the date that is deemed to be the date of their death, the person may require the surrender of their assets under the provisions governing the claim to inheritance. As long as the person is still alive, their claim does not become statute-barred before the expiry of a one-year period after the date on which they obtained knowledge of the declaration of death or of the determination of the time of death.
- (2) The same applies if the death of a person has been wrongly assumed without a declaration of death or determination of the time of death.

### **Title 4**

#### **More than one heir**

##### **Subtitle 1**

##### **Legal relationship of the heirs between themselves**

#### **Section 2032**

##### **Community of heirs**

- (1) If the deceased leaves more than one heir, the estate becomes the joint assets of the heirs.
- (2) Until the partitioning, the provisions of section 2033 to 2041 apply.

### **Section 2033**

#### **Right of disposition of the co-heir**

- (1) Every co-heir may dispose over their share in the estate. The contract by which a co-heir disposes of their share is to be recorded by a notary.
- (2) A co-heir may not alienate their share in the individual objects of the estate.

### **Section 2034**

#### **Right of preemption as against seller**

- (1) If a co-heir sells their share to a third party, the other co-heirs have a right of preemption.
- (2) The period for exercising the right of preemption is two months. The right of preemption is inheritable.

### **Section 2035**

#### **Right of preemption as against buyer**

- (1) If the share sold has been transferred to the buyer, the co-heirs may exercise against the buyer the right of preemption to which they are entitled under section 2034 against the seller. The right of preemption as against the seller expires upon the transfer of the share.
- (2) The seller is to inform the co-heirs of the transfer without undue delay.

### **Section 2036**

#### **Liability of buyer of share of the inheritance**

Upon the transfer of the share to the co-heirs, the buyer is released from liability for the obligations of the estate. However, their liability continues to the extent that they are responsible to the creditors of the estate under sections 1978 to 1980; the provisions of sections 1990 and 1991 apply accordingly.

### **Section 2037**

#### **Onward alienation of the share of the inheritance**

If the buyer transfers the share to another person, the provisions of sections 2033, 2035 and 2036 apply accordingly.

### **Section 2038**

#### **Joint management of the estate**

- (1) The heirs are jointly entitled to the management of the estate. Every co-heir is obliged to the others to cooperate in measures that are necessary for due management; the measures necessary for preservation may be undertaken by each co-heir without the cooperation of the others.
- (2) The provisions of sections 743, 745, 746 and 748 apply. The division of the fruits does not take place until the partitioning. If the partitioning is excluded for more than one year, each co-heir may request the division of the net income at the end of every year.

### **Section 2039**

#### **Estate claims**

If a claim is part of the estate, the person obliged may perform only to all heirs jointly, and each co-heir may claim only performance to all heirs. Every co-heir may require that the person obliged deposit the thing to be surrendered for all heirs or, if it is not suitable for deposit, delivers it to a custodian to be appointed by the court.

### **Section 2040**

#### **Alienation of objects of the estate, set-off**

- (1) The heirs may alienate an object of the estate only jointly.
- (2) If a claim is part of the estate, the debtor may not set off against it a claim they have against an individual co-heir.

### **Section 2041**

#### **Direct substitution**

Whatever is acquired under a right that is part of the estate or as compensation for the destruction, damage or removal of an object of the estate or by a legal transaction relating to the estate is part of the estate. A claim acquired by such a legal transaction is governed by the provision of section 2019 (2).

**Section 2042**  
**Partitioning**

- (1) Every co-heir may at any time request the partitioning of the estate, unless sections 2043 to 2045 lead to a different conclusion.
- (2) The provisions of section 749 subsections (2) and (3) and of sections 750 to 758 apply.

**Section 2043**  
**Postponement of partitioning**

- (1) To the extent that the shares of the inheritance are still undetermined because the birth of a co-heir is expected, the partitioning is excluded until the indeterminacy is removed.
- (2) The same applies to the extent that the shares of the inheritance are still undetermined because the decision on an application for adoption, on the cancellation of the adoption relationship or on the recognition of a foundation created by the deceased as having legal personality is still outstanding.

**Section 2044**  
**Exclusion of partitioning**

- (1) The deceased may by testamentary disposition exclude the partitioning with regard to the estate or individual objects of the estate or make it contingent on a notice period. The provisions of section 749 subsections (2) and (3), and sections 750 and 751 and of section 1010 (1) apply accordingly.
- (2) The testamentary disposition ceases to be effective if 30 years have passed since the date of the devolution of the inheritance. However, the testator may provide that the disposition is to remain effective until the occurrence of a particular event relating to the person of a co-heir or, if the testator provides for reversionary succession or a legacy, until the occurrence of the reversionary succession or until the devolution of the legacy. If the co-heir in relation to whom the event is to occur is a legal person, the thirty-year period applies.

**Section 2045**  
**Postponement of partitioning**

Every co-heir may require that the partitioning be postponed until the termination of the judicial call procedure admissible under section 1970 or until the expiry of the notification period laid down in section 2061. Where the application for the initiation of the judicial call procedure has not yet been filed or the public invitation under section 2061 has not yet been issued, the postponement may be requested only if the application is made or the notice is issued without undue delay.

**Section 2046**  
**Discharge of obligations of the estate**

- (1) The obligations of the estate are first to be discharged from the estate. If an obligation of the estate is not yet due or if it is disputed, the amount necessary to discharge the obligation is to be withheld.
- (2) If an obligation of the estate encumbers only a few co-heirs, they may request the discharge to be made only from the part of the estate that accrues to them in the partitioning.
- (3) For the purpose of discharge, the estate, so far as necessary, is to be converted into money.

**Section 2047**  
**Distribution of the surplus**

- (1) The surplus remaining after the discharge of the obligations of the estate is due to the heirs in the proportion of their shares of the inheritance.

(2) Documents relating to the personal circumstances of the deceased or of their family or to the whole estate remain joint property.

#### **Section 2048**

##### **Directions by the deceased for partitioning**

The testator may by testamentary disposition give directions for the partitioning. In particular, the testator may direct that the partitioning is to be carried out by a third party exercising equitable discretion. The decision made by the third party on the basis of the direction is not binding on the heirs if it is evidently inequitable; the decision is made by judicial decision of a court in this case.

#### **Section 2049**

##### **Taking over of a farm**

(1) If the deceased directed that one of the co-heirs is to have the right to take over a farm that is part of the estate, then in case of doubt it is to be assumed that the farm is to be recognised at the capitalised value of the anticipated yield.

(2) The capitalised value of the anticipated yield is based on the net income that the farm, in accordance with its economic purpose to date, can give in the long term if properly managed.

#### **Section 2050**

##### **Duty to adjust advancements for descendants as heirs on intestacy**

(1) Descendants who inherit as heirs on intestacy are obliged to have adjusted whatever they received from the deceased during the latter's lifetime as an advancement in the partitioning between the heirs, unless the deceased directed otherwise when giving the advancement.

(2) Contributions that were given in order to be used as income, and expenses for training for a profession, are to be adjusted to the extent that they exceeded the degree appropriate for the financial circumstances of the deceased.

(3) Other gifts *inter vivos* are to be adjusted if the deceased directed adjustment when they made the gift.

#### **Section 2051**

##### **Duty to adjust advancements if a descendant does not inherit**

(1) If a descendant who would be obliged to adjust advancements as an heir ceases to be an heir before or after the devolution of the inheritance, then the descendant who takes their place is under obligation to make adjustments for the gifts made to them.

(2) If the deceased appointed a substitute heir for the heir who ceases to be an heir, then in case of doubt it is to be assumed that it is not intended for the substitute heir to receive more than the descendant would receive, taking into account the duty to adjust advancements.

#### **Section 2052**

##### **Duty to adjust advancements for descendants as heirs by will**

If the deceased has appointed the descendants as heirs to what they would receive as heirs on intestacy, or if the deceased has defined their shares of the inheritance in such a way that they have the same proportion to each other as the shares of the inheritance on intestacy, then in case of doubt it is to be assumed that the descendants are to be obliged to adjust their advancements under sections 2050 and 2051.

#### **Section 2053**

##### **Gift to more remote or adopted descendant**

(1) A gift that was received from the deceased by a more remote descendant before the closer descendant who excluded them from the succession ceased to be an heir, or by a descendant who took the place of a descendant as a substitute heir, is not to be adjusted unless the deceased directed adjustment when they made the gift.

(2) The same applies if a descendant received a gift from the deceased before attaining the legal position of a descendant.

#### **Section 2054**

##### **Gift from the common matrimonial property**

(1) A gift made out of the common matrimonial property subject to the regime of community of property is deemed to have been made by the spouses at one half each. However, if the gift is made to one descendant who is descended from only one of the spouses, or if one of the spouses is to reimburse the common matrimonial property for the gift, it is deemed to have been made by that spouse.

(2) These provisions are to be applied accordingly to a gift made out of common matrimonial property under continued community of property.

#### **Section 2055**

##### **Carrying out the adjustment**

(1) When the inheritance is partitioned, the value of the gift that each co-heir has to have adjusted is counted towards the share of the inheritance of that co-heir. The value of all the gifts that are to be adjusted is added to the estate to the extent that the estate is due to the co-heirs among whom the adjustment takes place.

(2) The value is assessed according to the time at which the gift was made.

#### **Section 2056**

##### **Excess gifts**

If a co-heir has received more in the gift than they would be entitled to on partitioning, they are not obliged to pay out the amount received in excess. In such a case, the estate is divided between the other heirs in such a way that the value of the gift and the share of the inheritance of the co-heir are excluded from the adjustment.

#### **Section 2057**

##### **Duty of information**

Every co-heir is obliged, on request, to give the other co-heirs information on the gifts that they are to have adjusted under sections 2050 to 2053. The provisions of sections 260 and 261 on the obligation to make a declaration in lieu of an oath apply accordingly.

#### **Section 2057a**

##### **Duty to adjust advancements in the case of special payments by one descendant**

(1) A descendant who, as a result of work over a long period in the household, profession or business of the deceased, of substantial financial contributions or in another way has to a particular degree contributed to the preservation or increase of the assets of the deceased, may, in the partitioning, demand adjustment between the descendants who inherit as heirs on intestacy together with him; section 2052 applies accordingly. This also applies to a descendant who cared for the deceased for a long period.

(2) An adjustment may not be demanded if appropriate payment was made or agreed for the work, or to the extent that the descendant, on account of their work, has a claim on other legal grounds. It does not conflict with the duty to adjust advancements if the work was done under sections 1619 and 1620.

(3) The adjustment amount is to be assessed in such a way as is equitable with regard to the duration and scope of the work and to the value of the estate.

(4) In the partitioning, the adjustment amount is added to the share of the inheritance of the co-heir entitled to adjustment. All the adjustment amounts are deducted from the value of the estate, to the extent that this is due to the co-heirs among whom the adjustment takes place.

#### **Subtitle 2**

##### **Legal relationship between the heirs and the creditors of the estate**

#### **Section 2058**

##### **Joint and several liability**

The heirs are liable for the joint obligations of the estate as joint and several debtors.

#### **Section 2059**

##### **Liability until division**

(1) Until the division of the estate, each co-heir may refuse the discharge of the obligations of the estate from the assets they own apart from their share in the estate. If they have unlimited liability for an obligation of the estate, they do not have this right with regard to the part of the obligation that corresponds to their share of the inheritance.

(2) The right of the creditors of the estate to demand satisfaction from all the co-heirs from the undivided estate remains unaffected.

#### **Section 2060**

##### **Liability after division**

After the division of the estate, each co-heir is liable only for the part of an obligation of the estate that corresponds to their share of the inheritance.

1. if the creditor is excluded in the judicial call procedure; in this respect, the judicial call also extends to the creditors set out in section 1972 and to the creditors towards whom the co-heir has unlimited liability;
2. if the creditor asserts their claim more than five years after the date determined in section 1974 (1), unless the claim became known to the co-heir before the expiry of the five-year period or was notified in the judicial call procedure; the provision does not apply to the extent that the creditor under section 1971 is not affected by the judicial call;
3. if estate insolvency proceedings have been instituted and have been terminated by distribution of the insolvency estate or by an insolvency plan.

#### **Section 2061**

##### **Judicial call for the creditors of the estate**

(1) Every co-heir may publicly request the creditors of the estate to register their claims within six months with the heir or the probate court. Once the request has been made, every co-heir will be liable after the division only for the part of a claim corresponding to their share of the inheritance, unless the claim was registered before the end of the period or the co-heir was aware of the claim at the time of the division.

(2) The request is to be published in the Federal Gazette (*Bundesanzeiger*) and by the newspaper specified for the notices of the probate court. The period begins on the last insertion. The costs are borne by the heir issuing the request.

#### **Section 2062**

##### **Application for administration of the estate**

The order of the administration of the estate may be applied for only jointly by the heirs; it is excluded after the estate has been partitioned.

#### **Section 2063**

##### **Filing of an inventory, limitation of liability**

(1) The filing of the inventory by a co-heir also works to the benefit of the other heirs, to the extent that their liability for the obligations of the estate is not unlimited.

(2) A co-heir may rely on the limitation of their liability in relation to the other heirs even if the co-heir has unlimited liability towards the other creditors of the estate.

### **Division 3**

#### **Will**

##### **Title 1**

##### **General provisions**

**Section 2064**  
**Made in person**

The testator may make a will only in person.

**Section 2065**  
**Determination by third parties**

(1) The testator may not make a testamentary disposition in such a way that another person is to determine whether or not it is to be valid.

(2) The testator may not leave to another person the specification of the person who is to receive a gift or the specification of the object of the gift.

**Section 2066**  
**Heirs on intestacy of the testator**

If the testator has made provision for their heirs on intestacy without more precise identification, provision is made to the persons who would be their heirs on intestacy at the time of the devolution of the inheritance in accordance with the proportions of their shares of the inheritance on intestacy. Where the gift is made subject to a condition precedent or together with the specification of a date of commencement, and where the condition is satisfied or the date occurs only after the devolution of the inheritance, then in case of doubt provision is to be seen as made to those persons who would be the heirs on intestacy if the testator had died at the time when the condition was satisfied or on the date of the commencement.

**Section 2067**  
**Relatives of the testator**

If the testator has made provision for their relatives or their next of kin without more precise identification, then in case of doubt provision is to be regarded as having been made to those relatives who would be their heirs on intestacy at the time of the devolution of the inheritance, in accordance with the proportions of their shares of the inheritance on intestacy. The provision of section 2066 sentence 2 applies.

**Section 2068**  
**Children of the testator**

If the testator has made provision for their children without more precise identification and if a child died before the making of the will, leaving descendants, then in case of doubt it is to be assumed that the provision has been made to the descendants to the extent that they would take the place of the child in intestate succession.

**Section 2069**  
**Descendants of the testator**

If the testator has made provision for one of their descendants and if after the will is made this descendant ceases to be an heir, then in case of doubt it is to be assumed that provision is made for this descendant's descendants to the extent that they would take their place in intestate succession.

**Section 2070**  
**Descendants of a third party**

Where the testator has made provision for the descendants of a third party without more precise identification, then in case of doubt it is to be assumed that provision is not made for the descendants who have not been conceived at the time of the devolution of the inheritance or, if the gift is made subject to a condition precedent or together with the specification of a date of commencement and the condition is satisfied or the date occurs only after the devolution of the inheritance, at the time when the condition is satisfied or on the date of the commencement.

**Section 2071**  
**Group of persons**

If the testator has made provision, without more precise identification, for a class of persons or for persons who have an employment or business relationship with the testator, then in case of doubt it is to be assumed that provision is made for those who at the time of the devolution of the inheritance belong to the class stated or are in the stated relationship.

#### **Section 2072**

##### **The poor**

If the testator has made provision, without more precise identification, for the poor, then in case of doubt it is to be assumed that provision is made to the public poor relief fund of the municipality in the district of which the testator had their last residence, subject to the testamentary burden of having to distribute the gift among poor persons.

#### **Section 2073**

##### **Ambiguous designation**

If the testator has designated the person provided for in a way that applies to more than one person, and if it cannot be determined which of them was to be provided for, they are regarded as provided for in equal shares.

#### **Section 2074**

##### **Condition precedent**

Where the testator has made a testamentary gift subject to a condition precedent, then in case of doubt it is to be assumed that the gift is only to be made if the person provided for is alive at the date when the condition is satisfied.

#### **Section 2075**

##### **Condition subsequent**

Where the testator has made a testamentary gift subject to the condition that the person provided for refrains from doing or continues to do something for an indefinite period, then, if the ceasing or continuing is purely at the discretion of the person provided for, in case of doubt it is to be assumed that the gift is to be dependent on the condition subsequent that the person provided for undertakes the action or refrains from it.

#### **Section 2076**

##### **Condition for the benefit of a third party**

If the condition subject to which a testamentary gift is made is intended to benefit a third party, then in case of doubt it is held to have been satisfied if the third party refuses the cooperation necessary to satisfy it.

#### **Section 2077**

##### **Ineffectiveness of testamentary dispositions on dissolution of marriage or engagement**

(1) A testamentary disposition in which the testator has made provision for their spouse is ineffective if the marriage was dissolved before the testator's death. It is equivalent to dissolution of marriage if at the time of the death of the testator the prerequisites for divorce were satisfied and the testator had petitioned for divorce or consented to it. The same applies if the deceased at the time of their death was entitled to petition for the annulment of the marriage and had filed the petition.

(2) A testamentary disposition in which the testator has made provision for the person to whom they are engaged is ineffective if the engagement was dissolved before the testator's death.

(3) The disposition is not ineffective if it is to be assumed that the testator would have made it even in such a case.

#### **Section 2078**

##### **Avoidance for mistake or duress**

(1) A testamentary disposition may be avoided to the extent that the testator was mistaken as to the contents of their declaration or had no intention whatsoever of making a declaration



with these contents and it is to be assumed that had the testator been aware of the situation, they would not have made the declaration.

(2) The same applies to the extent that the testator was induced to make the disposition by the mistaken assumption or expectation that a circumstance would occur or not occur, or was unlawfully induced by duress.

(3) The provision of section 122 does not apply.

### **Section 2079**

#### **Avoidance for omission of a person entitled to a compulsory portion**

A testamentary disposition may be avoided if the testator has omitted a person entitled to a compulsory portion who is in existence at the time of the devolution of the inheritance, the existence of whom was unknown to the testator when they made the testamentary disposition or who was born or became entitled to a compulsory portion only after the testamentary disposition was made. Avoidance is excluded to the extent that it is to be assumed that the testator would have made the disposition even if they had been aware of the circumstances.

### **Section 2080**

#### **Person entitled to avoid**

(1) The person who would be directly benefited by the cancellation of the testamentary disposition is entitled to avoid it.

(2) Where, in the cases governed by section 2078, the mistake relates only to a particular person and where this person is entitled to avoid or would be entitled to avoid if they had been alive at the time of the devolution of the inheritance, no other person is entitled to avoid.

(3) In the case governed by section 2079, only the person entitled to a compulsory portion is entitled to avoid.

### **Section 2081**

#### **Declaration of avoidance**

(1) The avoidance of a testamentary disposition that appoints an heir, excludes an heir on intestacy from succession, appoints an executor or cancels a disposition of such a kind is effected by a declaration made to the probate court.

(2) As a rule, the probate court is to communicate the declaration of avoidance to the person who is directly benefited by the disposition avoided. It is to permit inspection by every person who satisfactorily demonstrates an interest of a legal nature.

(3) The provision of subsection (1) also applies to the avoidance of a testamentary disposition that does not create a right for another person, in particular to the avoidance of a testamentary burden.

### **Section 2082**

#### **Period of avoidance**

(1) The avoidance may be made only within one year.

(2) The period begins on the date on which the person entitled to avoidance obtains knowledge of the ground of avoidance. The running of the period is governed by the provisions applying to limitation of sections 206, 210 and 211 accordingly.

(3) The avoidance is excluded if 30 years have passed since the devolution of the inheritance.

### **Section 2083**

#### **Defence of voidability**

If a testamentary disposition that creates an obligation to perform is voidable, the person with the obligation may refuse performance, even if avoidance is excluded under section 2082.

### **Section 2084**

#### **Interpretation favouring effectiveness**

If the contents of a testamentary disposition permit more than one interpretation, then in case of doubt preference is to be given to the interpretation under which the disposition may be effective.

#### **Section 2085**

##### **Partial ineffectiveness**

The ineffectiveness of one of a number of dispositions contained in a will results in the ineffectiveness of the other dispositions only if it is to be assumed that the testator would not have made them without the ineffective disposition.

#### **Section 2086**

##### **Reservation of right to make addition**

If a testamentary disposition contains the reservation of a right to make an addition but the addition has not been made, the disposition is effective unless it is to be assumed that its effectiveness was intended to be contingent on the addition.

### **Title 2**

#### **Appointment of heirs**

#### **Section 2087**

##### **Gift of assets, of fraction of assets or of individual objects**

(1) If the testator has given their assets or a fraction of their assets to the person provided for, the disposition is to be regarded as the appointment of an heir even if the person provided for is not described as an heir.

(2) If the person provided for has been given only individual objects, then in case of doubt it is not to be assumed that they are intended to be an heir, even if they are described as an heir.

#### **Section 2088**

##### **Appointment to fractions**

(1) If the testator has appointed only one heir and has restricted the appointment to a fraction of the inheritance, the remainder of the inheritance devolves under the rules of intestate succession.

(2) The same applies if the testator has appointed more than one heir, restricting each of them to a fraction, and the fractions do not exhaust the whole.

#### **Section 2089**

##### **Increase of the fractions**

Where the appointed heirs, by the will of the testator, are to be the only heirs, then, if each of them inherits a fraction of the inheritance and the fractions do not exhaust the whole, the fractions are proportionately increased.

#### **Section 2090**

##### **Decrease of fractions**

If each of the appointed heirs is appointed to a fraction of the inheritance and the fractions exceed the whole, the fractions are proportionately decreased.

#### **Section 2091**

##### **Undetermined fractions**

If more than one heir is appointed without the shares of the inheritance being determined, they are appointed in equal shares, unless sections 2066 to 2069 lead to a different conclusion.

#### **Section 2092**

##### **Partial appointment to fractions**

(1) If, of more than one heir, some are appointed to fractions and the others without fractions, the latter receive the part of the inheritance that remains.

(2) If the determined fractions exhaust the inheritance, then a proportionate decrease of the fractions occurs such that each of the heirs appointed without a fraction receives as much as the heir appointed to the smallest fraction.

#### **Section 2093**

##### **Joint share of the inheritance**

If more than one of several heirs is appointed to one and the same fraction of the inheritance (joint share of the inheritance), then with regard to the joint share of the inheritance the provisions of sections 2089 to 2092 apply accordingly.

#### **Section 2094**

##### **Accrual**

(1) If more than one heir is appointed in such a way that they exclude intestate succession, and if one of the heirs ceases to be an heir before or after the date of the devolution of the inheritance, the share of the inheritance of that heir accrues to the other heirs in proportion to their shares of the inheritance. If some of the heirs are appointed to a joint share of the inheritance, the accrual is first effected between them.

(2) If the appointment of an heir disposes of only part of the inheritance and if intestate succession applies with regard to the remainder, then accrual takes place between the appointed heirs only to the extent that they are appointed to a joint share of the inheritance.

(3) The testator may exclude the accrual.

#### **Section 2095**

##### **Accrued share of the inheritance**

The share of the inheritance that devolves to an heir through accrual is deemed to be a separate share of the inheritance with regard to the legacies and testamentary burdens with which this heir or the heir who ceased to be heir is encumbered and with regard to the duty to adjust advancements.

#### **Section 2096**

##### **Substitute heir**

The testator may, to provide for the case where an heir ceases to be heir before or after the date of the devolution of the inheritance, appoint another person as heir (substitute heir).

#### **Section 2097**

##### **Rule of interpretation in the case of substitute heir**

If a person is appointed substitute heir for the case in which the heir first appointed cannot be heir or for the case where the heir first appointed does not wish to be heir, then in case of doubt it is to be assumed that they are appointed for both cases.

#### **Section 2098**

##### **Mutual appointment as substitute heir**

(1) If the heirs are appointed mutually or if for one of them the others are appointed as substitute heirs, then in case of doubt it is to be assumed that they are appointed substitute heirs in the proportion of their shares of the inheritance.

(2) If the heirs are appointed mutually as substitute heirs, then in case of doubt heirs who are appointed to a joint share of the inheritance take priority over the others as substitute heirs for this share of the inheritance.

#### **Section 2099**

##### **Substitute heir and accrual**

The right of the substitute heir takes priority over the right of accrual.

### **Title 3**

#### **Appointment of a reversionary heir**

**Section 2100**  
**Reversionary heir**

The testator may appoint an heir in such a way that the person only becomes an heir after another heir has first been heir (reversionary heir).

**Section 2101**  
**Reversionary heir not yet conceived**

(1) If a person not yet conceived at the time of the devolution of the inheritance is appointed heir, then in case of doubt it is to be assumed that the person is appointed as reversionary heir. If it does not correspond to the testator's intention that the person appointed is to become reversionary heir, the appointment is ineffective.

(2) The same applies to the appointment of a legal person that comes into existence only after the devolution of the inheritance; the provision of section 84 remains unaffected.

**Section 2102**  
**Reversionary heir and substitute heir**

(1) The appointment as a reversionary heir, in case of doubt, also contains the appointment as a substitute heir.

(2) If it is doubtful whether a person is appointed substitute heir or reversionary heir, they are deemed to be a substitute heir.

**Section 2103**  
**Order to surrender the inheritance**

If the testator has directed that the heir, on a particular date or on the occurrence of a particular event, is to surrender the inheritance to another person, then it is to be assumed that the other person is appointed reversionary heir.

**Section 2104**  
**Heirs on intestacy as reversionary heirs**

Where the testator has directed that the heir is to be heir only until a particular date or the occurrence of a particular event, without providing who is to receive the inheritance thereafter, then it is to be assumed that the persons appointed as reversionary heirs are those who would be the heirs on intestacy of the testator if the testator had died on the date or at the time of the occurrence of the event. The treasury is not one of the heirs on intestacy within the meaning of this provision.

**Section 2105**  
**Heirs on intestacy as provisional heirs**

(1) If the testator has directed that the appointed heir is to receive the inheritance only on a particular date or on the occurrence of a particular event, without determining who is to be heir until that date, then the heirs on intestacy of the testator are the provisional heirs.

(2) The same applies if the identity of the heir is to be established by an event that occurs only after the devolution of the inheritance or if the appointment of a person who has not yet been conceived at the time of the devolution of the inheritance or a legal person that is not yet in existence at this time as an heir under section 2101 is to be regarded as the appointment of a reversionary heir.

**Section 2106**  
**Occurrence of reversionary succession**

(1) If the testator has appointed a reversionary heir without determining the time of the event at or on which the reversionary succession is to occur, the inheritance accrues to the reversionary heir on the death of the provisional heir.

(2) If the appointment of a person not yet conceived as an heir is to be regarded under section 2101 (1) as the appointment of a reversionary heir, the inheritance accrues to the reversionary heir on their birth. In the case governed by section 2101 (2), the accrual occurs on the creation of the legal person.

### **Section 2107**

#### **Childless provisional heir**

If the testator has determined a reversionary heir for the time after the death of a descendant who at the time when the testamentary disposition is made has no descendants or of whom the testator does not know at this time that they have a descendant, then it is to be assumed that the reversionary heir is appointed only for the case where the descendant remains without issue.

### **Section 2108**

#### **Capacity to inherit; inheritability of the reversionary succession**

- (1) The provision of section 1923 applies to the reversionary succession accordingly.
- (2) If the appointed reversionary heir dies before the circumstances giving rise to reversionary succession occur, but after the date of the devolution of the inheritance, then their right devolves to their heirs, unless it is to be assumed that the testator intended otherwise. If the reversionary heir is appointed subject to a condition precedent, the provision of section 2074 applies.

### **Section 2109**

#### **End of effectiveness of reversionary succession**

- (1) The appointment of a reversionary heir becomes ineffective at the end of a period of 30 years after the devolution of the inheritance, if the circumstances giving rise to reversionary succession do not occur before this time. It remains effective even after this time
  1. if reversionary succession is directed for the case in which a particular event occurs relating to the person of the provisional heir or of the reversionary heir and the person in relation to whose person the event is to occur is alive at the time of the devolution of the inheritance,
  2. if it is provided that, if a brother or a sister is born to the provisional heir or to a reversionary heir, the brother or the sister is the reversionary heir.
- (2) If the provisional heir or the reversionary heir in relation to whose person the event is to occur is a legal person, the thirty-year period applies.

### **Section 2110**

#### **Scope of the right of reversionary succession**

- (1) The right of the reversionary heir extends, in case of doubt, to a share of the inheritance that accrues to the provisional heir as the result of a co-heir ceasing to be heir.
- (2) The right of the reversionary heir does not extend, in case of doubt, to a preferential legacy given to the provisional heir.

### **Section 2111**

#### **Direct substitution**

- (1) The inheritance includes whatever the provisional heir acquires on the basis of a right that is part of the inheritance or as compensation for the destruction, damage or removal of an object of the inheritance or by legal transaction with funds from the inheritance, unless the acquisition is due to them as emoluments. The debtor is to allow the fact that a claim acquired by legal transaction is part of the inheritance to be asserted against them only upon the debtor's having obtained knowledge of this fact; the provisions of sections 406 to 408 apply accordingly.
- (2) The inheritance also includes what the provisional heir introduces into the inventory of a plot of land that is part of the inheritance.

### **Section 2112**

#### **Right of alienation of the provisional heir**

The provisional heir may alienate the objects belonging to the inheritance except insofar as the provisions in sections 2113 to 2115 lead to a different conclusion.

### **Section 2113**

#### **Dispositions of plots of land, ships and ships under construction; gifts**

(1) The disposition by the provisional heir of a plot of land or right in a plot of land that is part of the inheritance or of a registered ship or ship under construction that is part of the inheritance is, in the case where reversionary succession occurs, ineffective to the extent that it would frustrate or adversely affect the right of the reversionary heir.

(2) The same applies to the disposition of an object of the inheritance that is made free of charge or for the purpose of fulfilling the promise of a gift made by the provisional heir. Donations that are made to comply with a moral duty or to show consideration for decency are exempt.

(3) The provisions to the benefit of those who derive rights from an unauthorised person apply accordingly.

### **Section 2114**

#### **Dispositions of mortgage claims, land charges and annuity land charges**

If a mortgage claim, a land charge, an annuity land charge or a ship's mortgage claim is part of the inheritance, the provisional heir has the right of termination and seizure. However, the provisional heir may demand only that the capital be paid to them upon consent by the reversionary heir having been obtained, or that the capital be deposited for the provisional heir and the reversionary heir. Other dispositions of the mortgage claim, the land charge, the annuity land charge or the ship's mortgage claim are governed by the provisions of section 2113.

### **Section 2115**

#### **Dispositions of compulsory enforcement against provisional heir**

A disposition over an object of the inheritance that is effected by way of compulsory enforcement or enforcement of a seizure or by the insolvency administrator is, in the case where the reversionary succession occurs, ineffective to the extent that it would frustrate or adversely affect the right of the reversionary heir. The disposition is effective without restriction if the claim of a creditor of the estate or a right existing in an object of the inheritance is asserted and this right is effective as against the reversionary heir in the case where reversionary succession commences.

### **Section 2116**

#### **Deposit of securities**

(1) On demand by the reversionary heir, the provisional heir is to deposit the bearer instruments that are part of the inheritance together with the renewal coupons with a depository institution subject to the condition that surrender may be required only with the approval of the reversionary heir. The deposit of bearer instruments that under section 92 are consumable things, and of interest coupons, annuity coupons or dividend coupons may not be demanded. Instruments made out to order and furnished with a blank endorsement are equivalent to bearer instruments.

(2) The provisional heir may alienate the deposited instruments only with the approval of the reversionary heir.

### **Section 2117**

#### **Change of registration; conversion**

The provisional heir may, instead of depositing the bearer instruments under section 2116, have them registered in their name subject to the condition that they may alienate them only with the approval of the reversionary heir. If the instruments are issued by the Federal Government or by a *Land*, then the provisional heir may have them converted, subject to the same condition, into book-entry securities against the Federal Government.

### **Section 2118**

#### **Blocking note in debt ledger**

If book-entry securities against the Federal Government or a *Land* are part of the inheritance, the provisional heir is obliged, at the request of the reversionary heir, to have a note entered in the debt ledger that they may alienate the claims only with the approval of the reversionary heir.

**Section 2119**  
**Investment of money**

Money that is to be invested in the long-term under the rules of proper management may be invested by the provisional heir only under the provisions applying to the investment of money held in trust for a ward.

**Section 2120**  
**Duty of reversionary heir to consent**

If, for proper management, in particular in order to discharge obligations of the estate, a disposition is necessary that the provisional heir may not make with effect in relation to the reversionary heir, then the reversionary heir has a duty to the provisional heir to grant their consent to the disposition. On demand, the consent is to be declared in publicly certified form. The costs of the certification are borne by the provisional heir.

**Section 2121**  
**List of objects of inheritance**

- (1) On demand, the provisional heir is to provide to the reversionary heir a list of the objects that are part of the inheritance. The list is to state the date when it was drawn up and is to be signed by the provisional heir; on demand, the provisional heir is to have their signature publicly certified.
- (2) The reversionary heir may require that they be involved in drawing up the list.
- (3) The provisional heir is entitled, and on the request of the reversionary heir obliged, to have the list drawn up by the competent authority or by a competent official or notary.
- (4) The costs of drawing up the list and certifying it are borne by the inheritance.

**Section 2122**  
**Determination of the condition of the inheritance**

The provisional heir may at their own cost have the condition of the things that are part of the inheritance determined by experts. The reversionary heir is entitled to the same right.

**Section 2123**  
**Economic plan**

- (1) If a forest is part of the inheritance, both the provisional heir and the reversionary heir may require that the degree of use and the nature of the economic treatment be laid down in an economic plan. If a substantial change of circumstances occurs, each party may require a corresponding change of the economic plan. The costs are borne by the inheritance.
- (2) The same applies if a mine or another installation designed to extract soil constituents is part of the inheritance.

**Section 2124**  
**Costs of maintenance**

- (1) The provisional heir bears the customary cost of maintenance towards the reversionary heir.
- (2) The provisional heir may pay from the inheritance other expenses that, in the circumstances, they may by rights regard as necessary for the purpose of preserving objects of the inheritance. If they pay them out of their own assets, then the reversionary heir is obliged to reimburse the provisional heir in the event of reversionary succession occurring.

**Section 2125**  
**Outlays; right to remove**

- (1) If the provisional heir makes outlays in relation to the inheritance that do not fall under the provision of section 2124, then the reversionary heir, in the case where reversionary

succession occurs, is obliged to reimburse under the provisions on voluntary agency without specific authorisation.

(2) The provisional heir is entitled to remove an installation with which they have furnished a thing that is part of the inheritance.

**Section 2126**  
**Extraordinary burdens**

The provisional heir is not obliged, in relation to the reversionary heir, to bear the extraordinary burdens, which are to be regarded as charged on the original value of the objects of the inheritance. These burdens are governed by the provision in section 2124 (2).

**Section 2127**  
**Right to information of reversionary heir**

The reversionary heir is entitled to require information from the provisional heir regarding the condition of the inheritance if there is reason to assume that by their management, the provisional heir is substantially infringing the rights of the reversionary heir.

**Section 2128**  
**Provision of security**

(1) If the conduct of the provisional heir or their unfavourable financial situation give rise to the concern that there may be a substantial injury to the rights of the reversionary heir, the reversionary heir may require the provision of security.

(2) The provisions of section 1052 applying to the obligation of the usufructuary to provide security apply accordingly.

**Section 2129**  
**Effect of deprivation of management**

(1) If the provisional heir is deprived of the management under the provision of section 1052, they lose the right to dispose over objects of the inheritance.

(2) The provisions to the benefit of those who derive rights from an unauthorised person apply accordingly. For the claims that are part of the inheritance, the deprivation of management is effective towards the debtor only if they become aware of the order made or if a notification of the order is served on them. The same applies to the termination of the deprivation.

**Section 2130**  
**Duty to surrender after the occurrence of reversionary succession, duty to render accounts**

(1) The provisional heir is obliged, after the occurrence of reversionary succession, to surrender the inheritance to the reversionary heir in the condition that results from a continued proper management until the date of surrender. The surrender of an agricultural plot of land is governed by the provision of section 596a, and the surrender of a farm is governed by the provisions of sections 596a and 596b accordingly.

(2) On demand, the provisional heir is to render accounts.

**Section 2131**  
**Scope of duty of care**

With regard to the management, the provisional heir owes the reversionary heir only the care that they customarily exercise in their own affairs.

**Section 2132**  
**No liability for ordinary wear and tear**

The provisional heir is not responsible for alterations or deteriorations of things of the inheritance that are brought about by proper use.

**Section 2133**  
**Improper or excessive taking of fruits**



If the provisional heir takes fruits contrary to the rules of proper management, or if they take fruits in excess because this has become necessary as a result of a particular event, they are only entitled to the value of the fruits to the extent that the fruits due to them are adversely affected by the improper or excessive taking of fruits, and the value of the fruits is not to be used to restore the thing under the rules of proper management.

#### **Section 2134**

##### **Own use**

If the provisional heir has used an object of the inheritance for themselves, then after reversionary succession begins they are obliged to the reversionary heir to compensate the value. A more extensive liability for fault remains unaffected.

#### **Section 2135**

##### **Lease and usufructuary lease in reversionary succession**

Where a provisional heir has let a plot of land or registered ship on a lease or a usufructuary lease that is part of the inheritance, then, if the lease or usufructuary lease still exists at the date when reversionary succession occurs, the provision of section 1056 applies accordingly.

#### **Section 2136**

##### **Release of the provisional heir**

The testator may release the provisional heir from the restrictions and obligations of section 2113 (1) and sections 2114, 2116 to 2119, 2123, 2127 to 2131, 2133 and 2134.

#### **Section 2137**

##### **Rule of interpretation for the release**

- (1) If the testator has appointed the reversionary heir to what will remain of the inheritance when reversionary succession occurs, the release of all restrictions and obligations set out in section 2136 is deemed to have been ordered.
- (2) The same is to be assumed in case of doubt if the testator has provided that the provisional heir is to be entitled to dispose freely of the inheritance.

#### **Section 2138**

##### **Restricted duty to surrender**

- (1) The duty to surrender of the provisional heir is restricted in cases of section 2137 to the objects of the estate that the heir still has. The heir may not require reimbursement of outlays on objects that the heir is not to surrender under this restriction.
- (2) If the provisional heir, contrary to the provision of section 2113 (2), has alienated an object of the estate or if they have reduced the inheritance with the intention of placing the reversionary heir at a disadvantage, they are liable in damages to the reversionary heir.

#### **Section 2139**

##### **Effect of occurrence of reversionary succession**

When the situation giving rise to reversionary succession occurs, the provisional heir ceases to be heir and the inheritance devolves to the reversionary heir.

#### **Section 2140**

##### **Dispositions of the provisional heir after occurrence of reversionary succession**

Even after the situation giving rise to reversionary succession occurs, the provisional heir is still entitled to dispose over objects of the estate to the same extent as previously, until they obtain knowledge of the occurrence of reversionary succession or ought to have knowledge. A third party cannot rely on this right if they know, at the time they enter into a transaction, of the occurrence or ought to know.

#### **Section 2141**

##### **Maintenance for the mother-to-be of a reversionary heir**

If, when the circumstances giving rise to reversionary succession occur, the birth of a reversionary heir is expected, then the claim to maintenance of the mother is governed by the provision of section 1963 accordingly.

#### **Section 2142**

##### **Disclaimer of reversionary succession**

- (1) The reversionary heir may disclaim the inheritance as soon as the devolution of the inheritance has occurred.
- (2) If the reversionary heir disclaims the inheritance, it remains with the provisional heir, unless otherwise provided by the testator.

#### **Section 2143**

##### **Restoration of extinguished legal relationships**

If reversionary succession occurs, the legal relationships extinguished on the devolution of the inheritance by merger of right and obligation or of right and encumbrance are deemed not to be extinguished.

#### **Section 2144**

##### **Liability of the reversionary heir for the obligations of the estate**

- (1) The provisions on the restriction of the liability of the heir for the obligations of the estate also apply to the reversionary heir; the place of the estate is taken by what the reversionary heir receives of the inheritance, including the claims they have against the provisional heir as such.
- (2) The inventory filed by the provisional heir also benefits the reversionary heir.
- (3) The reversionary heir may rely on the limitation of their liability in relation to the provisional heir even if they have unlimited liability in relation to the other creditors of the estate.

#### **Section 2145**

##### **Liability of the provisional heir for the obligations of the estate**

- (1) After the occurrence of reversionary succession, the provisional heir is still liable for the obligations of the estate to the extent that the reversionary heir is not liable. The liability also continues in existence for those obligations of the estate that in the relationship between the provisional heir and the reversionary heir are borne by the provisional heir.
- (2) After the occurrence of the reversionary succession, the provisional heir may refuse the discharge of the obligations of the estate, unless they have unlimited liability, to the extent that what they are owed from the inheritance is not sufficient. The provisions of sections 1990 and 1991 apply accordingly.

#### **Section 2146**

##### **Duty of provisional heir to notify creditors of the estate**

- (1) The provisional heir has a duty to the creditors of the estate to notify the occurrence of reversionary succession without undue delay to the probate court. The notice of the reversionary heir takes the place of the notice of the provisional heir.
- (2) The probate court is to allow any person who satisfactorily demonstrates an interest of a legal nature to inspect the notification.

### **Title 4**

#### **Legacies**

#### **Section 2147**

##### **Person charged with a legacy**

The heir or a legatee may be charged with a legacy. Unless the testator provides otherwise, the heir is charged.

#### **Section 2148**

##### **More than one person charged with a legacy**

If more than one heir or more than one legatee is charged with the same legacy, then in case of doubt the heirs are charged in proportion to their shares of the inheritance, and the legatees in proportion to the value of their legacies.

#### **Section 2149**

##### **Legacy for heirs on intestacy**

If the testator has provided that an object of the estate is not to devolve to the appointed heir, the object is deemed to be left to the heirs on intestacy. The treasury is not one of the heirs on intestacy within the meaning of this provision.

#### **Section 2150**

##### **Preferential legacy**

A legacy given to an heir (preferential legacy) is deemed to be a legacy even if the heir is charged.

#### **Section 2151**

##### **Right to decide of the person charged or of a third person in the event of more than one person provided for**

(1) The testator may give a legacy to more than one person in such a way that the person charged or a third person is to decide which of the plurality of persons is to receive the legacy.

(2) The decision of the person charged is made by declaration to the person who is to receive the legacy; the decision of the third person is made by declaration to the person charged.

(3) If the person charged or the third person is unable to make a decision, the persons provided for are joint and several obligees. The same applies if, upon application by one of the persons concerned, the probate court specifies a period for the person charged or the third person to make the declaration and the period has passed, unless the declaration is made before then. The person receiving the legacy is, in case of doubt, not obliged to divide the legacy.

#### **Section 2152**

##### **Choice of persons provided for**

If the testator has given a legacy to more than one person in such a way that only one or the other is to receive the legacy, it is to be presumed that the person charged is to decide which of them is to receive the legacy.

#### **Section 2153**

##### **Determination of shares**

(1) The testator may give a legacy to more than one person in such a way that the person charged or a third person has to determine what each person is to receive from the object of the legacy. The determination is made in accordance with section 2151 (2).

(2) If the person charged or the third person is unable to make the decision, then the persons provided for are entitled to equal shares. The provision of section 2151 (3) sentence 2 applies accordingly.

#### **Section 2154**

##### **Optional legacy**

(1) The testator may direct that a legacy be granted in such a way that the person provided for is only to receive one or the other of more than one object. If in such a case the choice is transferred to a third person, it is made by declaration to the person charged.

(2) If the third person is unable to make the choice, the right to choose devolves to the person charged. The provision of section 2151 (3) sentence 2 applies accordingly.

#### **Section 2155**

##### **General legacy**

- (1) If the testator has specified the thing bequeathed only by class, a thing commensurate with the circumstances of the person provided for is to be given.
- (2) If the person provided for or a third party is entrusted with the specification of the thing, the provisions set out in section 2154, governing the third party's choice, apply.
- (3) If the specification made by the person provided for or the third person is evidently not commensurate with the circumstances of the person provided for, the person charged has to execute the legacy as if the testator had not given any directions concerning the specification of the thing.

**Section 2156**  
**Legacy for a special purpose**

When the testator makes a legacy the purpose of which they have specified, the testator may leave the determination of the performance of the legacy to the reasonable discretion of the person charged or of a third party. The provisions of sections 315 to 319 apply accordingly to such a legacy.

**Section 2157**  
**Joint legacy**

If the same object is left to more than one person, the provisions of sections 2089 to 2093 apply accordingly.

**Section 2158**  
**Accrual**

- (1) Where the same object is left to more than one person, then if one of them ceases to be a person provided for before or after the devolution of the inheritance, their share accrues to the other persons provided for in proportion to their shares. This applies even if the testator has specified the shares of the persons provided for. If some of the persons provided for are entitled to the same share, accrual occurs among these persons first.
- (2) The testator may exclude the accrual.

**Section 2159**  
**Independence of the accrual**

A share that devolves to a legatee by accrual is, with regard to the legacies and the testamentary burdens with which such legatee or the legatee ceasing to be a legatee is charged, deemed to be a separate legacy.

**Section 2160**  
**Prior death of person provided for**

A legacy is ineffective if the person provided for is no longer alive at the time of the devolution of the inheritance.

**Section 2161**  
**Where the person charged does not inherit**

A legacy remains effective, unless it is to be assumed that the testator intended otherwise, if the person charged does not become heir or legatee. In this case, the person charged is the person who benefits directly when the person originally charged does not inherit.

**Section 2162**  
**Thirty-year period for a suspended legacy**

- (1) A legacy that is created subject to a condition precedent or with the specification of a commencement date becomes ineffective at the end of a thirty-year period after the devolution of the inheritance, if the condition has not been satisfied or the date has not arrived before then.
- (2) If the person provided for has not yet been conceived at the time of the devolution of the inheritance, or if their identity is established by an event that does not happen until after the devolution of the inheritance, then the legacy becomes ineffective at the end of a thirty-year

period after the devolution of the inheritance, unless before then the person provided for is conceived or the event that determines their identity has occurred.

### **Section 2163**

#### **Exceptions to the thirty-year period**

(1) In the cases governed by section 2162, a legacy remains effective even after the expiry of 30 years:

1. if it has been directed for the case in which a particular event occurs relating to the person of the person charged or the person provided for, and the person or person provided for concerning whom the event is to occur is alive at the time of the devolution of the inheritance;
2. if an heir, a reversionary heir or a legatee is charged with a legacy to the benefit of their brother or sister in the event that such a brother or sister is born.

(2) If the person charged or the person provided for with regard to whom the event is to occur is a legal person, the period of 30 years applies.

### **Section 2164**

#### **Extension to accessories and claims to compensation**

(1) The legacy of a thing extends, in case of doubt, to the accessories existing at the time of the devolution of the inheritance.

(2) If the testator has a claim to compensation for the reduction in value, as a result of damage to the thing after the legacy has been created, the legacy extends, in case of doubt, to this claim.

### **Section 2165**

#### **Charges**

(1) If an object belonging to the inheritance is bequeathed, the legatee may not, in case of doubt, demand the discharge of the rights with which the object is charged. If the testator is entitled to the discharge, then in case of doubt the legacy extends to this claim.

(2) If a plot of land bequeathed is subject to a mortgage, land charge or annuity land charge to which the testator is entitled, it is to be inferred from the circumstances whether the mortgage, land charge or annuity land charge is to be deemed as having been bequeathed together with the land.

### **Section 2166**

#### **Charge with a mortgage**

(1) If a bequeathed plot of land that is part of the inheritance is charged with a mortgage for a debt of the testator, or for a debt which the testator is obliged to the debtor to settle, the legatee is, in case of doubt, obliged in relation to the heir to satisfy the creditor in good time to the extent that the debt is met by the value of the plot of land. The value is determined according to the date on which the ownership devolves to the beneficiary; it is calculated by deducting the charges that have priority over the mortgage.

(2) If a third party is obliged in relation to the testator to settle the debt, the obligation of the legatee exists, in case of doubt, only to the extent that the heir cannot require the third party to effect the discharge.

(3) A mortgage of the kind described in section 1190 is not governed by these provisions.

### **Section 2167**

#### **Charge with a blanket mortgage**

If, in addition to the bequeathed plot of land, other plots of land belonging to the inheritance are encumbered by the mortgage, the obligation of the legatee specified in section 2166 is, in case of doubt, restricted to the part of the debt that corresponds to the value of the bequeathed plot of land in proportion to the value of all the plots of land. The value is calculated under section 2166 (1) sentence 2.

### **Section 2168**

#### **Charge with a blanket land charge**

(1) If a blanket land charge or a blanket annuity land charge exists over more than one plot of land belonging to an inheritance and if one of these plots of land has been bequeathed, the beneficiary is, in case of doubt, obliged in relation to the heir to satisfy the creditor to the amount of the share of the land charge or the annuity land charge which is proportional to the value that the bequeathed plot of land has compared to the value of all of the plots of land. The value is calculated under section 2166 (1) sentence 2.

(2) Where, in addition to the bequeathed plot of land, a plot of land not belonging to the inheritance is encumbered by a blanket land charge or blanket annuity land charge, the provisions of section 2166 (1) and of section 2167 apply accordingly, if at the time of the devolution of the inheritance the testator is obliged, in relation to the owner of the other plot of land, or a predecessor in title of the owner, to satisfy the creditor.

### **Section 2168a**

#### **Application to ships, ships under construction and ship mortgages**

Section 2165 (2) and sections 2166 and 2167 apply accordingly to registered ships, ships under construction and to ship mortgages.

### **Section 2169**

#### **Legacy of foreign objects**

(1) The legacy of a specific object is ineffective to the extent that the object, at the time of the devolution of the inheritance, does not belong to the inheritance, unless the object is to be bequeathed to the person provided for even in the event that it does not belong to the inheritance.

(2) If the testator only had the bequeathed thing in their possession, its possession is, in case of doubt, deemed to be bequeathed, unless it does not grant any legal advantage to the person provided for.

(3) If the testator is entitled to a claim to the delivery of the bequeathed object or, if the object was destroyed or taken away from the testator after directions were given concerning the legacy, or to the reimbursement of its value, the claim is, in case of doubt, deemed to be bequeathed.

(4) An object does not belong to the inheritance within the meaning of subsection (1) if the testator is obliged to alienate it.

### **Section 2170**

#### **Legacy to be procured**

(1) If the legacy of an object which does not belong to the inheritance at the time of devolution is effective in accordance with section 2169 (1), the person charged is to procure the object for the person provided for.

(2) If the person charged is incapable of procuring the object, they are to pay the value thereof. If the procurement is possible only at disproportionate costs, the person charged can obtain release by paying the value.

### **Section 2171**

#### **Impossibility, statutory prohibition**

(1) A legacy that is directed at an act of performance that at the time of devolution is impossible for everyone or infringes a statutory prohibition existing at this time is ineffective.

(2) The validity of the legacy is not precluded by the impossibility of performance, if the impossibility can be rectified and the legacy is to be bequeathed in the event that performance becomes possible.

(3) Where a legacy which is impossible of performance is bequeathed subject to another condition precedent or to commence from a given date, the legacy is valid if the impossibility is rectified before the fulfilment of the condition or the arrival of the date.

### **Section 2172**

#### **Combination, intermixture, mingling of the bequeathed thing**

(1) The delivery of a bequeathed thing is also deemed to be impossible if the thing is combined, intermixed or mingled with another thing in such a way that pursuant to sections 946 to 948 the ownership of the other thing extends to it, or co-ownership has arisen, or if it has been processed or transformed in such a manner that pursuant to section 950 the person who produced the new thing has become the owner.

(2) Where the combination, intermixture or mingling is carried out by a person other than the testator and where the testator has acquired co-ownership in this way, co-ownership is, in case of doubt, deemed to be bequeathed; if the testator is entitled to a right to take away the combined thing, this right is, in case of doubt, deemed to be bequeathed. In the case of processing or transformation by a person other than the testator, the provision of section 2169 (3) remains applicable.

### **Section 2173**

#### **Claim as a legacy**

If the testator has bequeathed a claim due to them, then, if the claim is settled before the devolution of the inheritance, and if the object delivered is still in existence as part of the inheritance, it is to be presumed, in case of doubt, that this object is to be bequeathed to the person provided for. If the claim was for the payment of a sum of money, then in case of doubt the appropriate amount of money is deemed to be bequeathed, even if such a sum of money is not available in the inheritance.

### **Section 2174**

#### **Claim arising under a legacy**

A legacy creates a right for the person provided for to demand delivery of the bequeathed object from the person charged.

### **Section 2175**

#### **Restoration of extinguished legal relationships**

If the testator has bequeathed a claim that they have against the heir, or if they have bequeathed a right with which a thing or a right of the heir is charged, the legal relationships extinguished by the merger of a right and an obligation or of a right and a charge as a result of the devolution of the inheritance are deemed not to have been extinguished in relation to the legacy.

### **Section 2176**

#### **Devolution of the legacy**

The claim of the legatee comes into existence (devolution of the legacy) on the devolution of the inheritance, notwithstanding the right to disclaim the legacy.

### **Section 2177**

#### **Devolution in the event of a condition or a time limit**

If a legacy has been created subject to a condition precedent or with the specification of a commencement date, and if the condition is satisfied or the date arrives only after the devolution of the inheritance, the devolution of the legacy occurs on the satisfaction of the condition or on the arrival of the date.

### **Section 2178**

#### **Devolution in the event of a person provided for not yet conceived or determined**

If a person provided for has not yet been conceived at the time of the devolution of the inheritance, or if their identity is to be established by an event occurring only after the devolution of the inheritance, the devolution of the legacy occurs on the date of birth in the former case, on the occurrence of the event in the latter case.

### **Section 2179**

#### **Period pending fulfilment**

For the time between the devolution of the inheritance and the devolution of the legacy, the cases set out in sections 2177 and 2178 are governed by the provisions applying to a case where an act of performance is owed subject to a condition precedent.

#### **Section 2180**

##### **Acceptance and disclaimer**

- (1) The legatee can no longer disclaim the legacy after they have accepted it.
- (2) The acceptance and the disclaimer of the legacy are made by declaration to the person charged. The declaration may be made only after the devolution of the inheritance; it is ineffective if it is made subject to a condition or a stipulation as to time.
- (3) The provisions of section 1950, section 1952 subsections (1) and (3) and section 1953 subsections (1) and (2), governing the acceptance or disclaimer of an inheritance, apply accordingly.

#### **Section 2181**

##### **Discretionary due date**

If the time to execute the legacy is left to the free discretion of the person charged therewith, then in case of doubt performance becomes due on the death of the person charged.

#### **Section 2182**

##### **Liability for defects of title**

- (1) If an object specified only by class is bequeathed, the person charged has the same obligations as a seller under the provisions set out in section 433 (1) sentence 1 and sections 436, 452 and 453. They are to procure the object for the legatee free of defects of title within the meaning of section 435. Section 444 applies accordingly.
- (2) In case of doubt, the same applies if a particular object which does not belong to the inheritance is bequeathed, notwithstanding the limitation of liability following from section 2170.
- (3) If a plot of land is the object of the legacy, then in case of doubt the person charged therewith is not responsible for the freedom of the plot of land from easements, restricted personal easements and charges on land.

#### **Section 2183**

##### **Liability for material defects**

Where a thing specified only by class is bequeathed, then if the thing delivered is defective, the legatee may demand that they be given a thing free from defects instead of the defective thing. If the person charged has fraudulently concealed a material defect, the legatee may demand damages for non-performance in lieu of delivery of a thing free of defects without having to set a deadline for cure. The provisions governing liability for material defects with regard to the purchase of a thing apply to these claims accordingly.

#### **Section 2184**

##### **Fruits and emoluments**

If a particular object belonging to the inheritance is bequeathed, the person charged is also to deliver to the legatee the fruits taken after the devolution of the legacy and whatever else they have acquired by reason of the bequeathed right. The person charged is not obliged to provide compensation for emoluments that are not part of the fruits.

#### **Section 2185**

##### **Reimbursement of outlays and expenses**

If a specific thing belonging to the inheritance is bequeathed, the person charged may demand compensation under the provisions that govern the relationship between the possessor and the owner for the outlays made on the thing after the devolution of the inheritance and for expenses they incurred after the devolution of the inheritance to pay the charges on the thing.



### **Section 2186**

#### **Due date of sublegacy or testamentary burden**

If a legatee is charged with a legacy or a testamentary burden, they are not obliged to perform the legacy or testamentary burden until they are entitled to demand the performance of the legacy bequeathed to them.

### **Section 2187**

#### **Liability of the main legatee**

- (1) A legatee who is charged with a legacy or a testamentary burden may refuse to perform the legacy bequeathed to them even after it has been accepted to the extent that whatever they have received from the legacy is insufficient for performance.
- (2) If, under section 2161, another person takes the place of the charged legatee, this person does not have greater liability than the legatee would have.
- (3) The provisions of section 1992, governing the liability of the heir, apply accordingly.

### **Section 2188**

#### **Reduction of the charges**

If the performance due to a legatee is reduced on the basis of the limitation of the liability of the heir, on the basis of a claim to a compulsory share or under section 2187, the legatee may, unless it is to be assumed that the testator intended otherwise, reduce the charges imposed on them in the same proportion.

### **Section 2189**

#### **Directions concerning priority**

To provide for the situation where the legacies and testamentary burdens imposed on the heir or a legatee are reduced by reason of the limitation of the liability of the heir, as a result of a claim to a compulsory share, or under sections 2187 and 2188, the testator may direct by disposition mortis causa that a legacy or a testamentary burden is to have priority over the other charges.

### **Section 2190**

#### **Substitute legatee**

If the testator has bequeathed the object of the legacy to another in the case where the original person provided for does not acquire it, the provisions of section 2097 to 2099, governing appointment of a substitute heir, apply accordingly.

### **Section 2191**

#### **Subsequent legatee**

- (1) Where a testator bestows a bequeathed object on a third party at a particular time or upon an event occurring after the devolution of the legacy, the first legatee is deemed to be charged.
- (2) The provisions of sections 2102, 2106 (1), 2107 and of section 2110 (1), governing the appointment of a reversionary heir, apply to the legacy accordingly.

## **Title 5**

### **Testamentary burden**

#### **Section 2192**

##### **Applicable provisions**

A testamentary burden is governed, accordingly, by the provisions set out in sections 2065, 2147, 2148, 2154 to 2156, 2161, 2171 and 2181 that apply to testamentary gifts.

#### **Section 2193**

##### **Appointment of the beneficiary, period for fulfilment**

- (1) The testator, upon making a testamentary burden the purpose of which they have specified, may leave it to the person charged or to a third party to determine the person to whom performance is to be rendered.

(2) Where the person charged has the right of determination, and where they have been ordered by a final judgment to fulfil the testamentary burden, the plaintiff may specify a reasonable time limit for them to fulfil the testamentary burden; after the expiry of the period of time the plaintiff is entitled to make the determination if the fulfilment is not effected in good time.

(3) If a third party has the right of determination, it is exercised by declaration to the person charged. If the third person is unable to make such a determination, the right of determination devolves to the person charged. The provision under section 2151 (3) sentence 2 applies accordingly; those concerned within the meaning of this provision include the person charged and those entitled to demand the fulfilment of the testamentary burden.

#### **Section 2194** **Claim for fulfilment**

The fulfilment of a testamentary burden may be demanded by an heir, a co-heir and any person who would directly benefit from the end of the involvement of the person initially charged with the testamentary burden. If the fulfilment is in the public interest, the public authority responsible may also demand fulfilment.

#### **Section 2195** **Relationship between testamentary burden and gift**

The ineffectiveness of a testamentary burden results in the ineffectiveness of the gift made under the testamentary burden only if it is to be presumed that the testator would not have made the gift without the testamentary burden.

#### **Section 2196** **Impossibility of fulfilment**

(1) Where the fulfilment of a testamentary burden becomes impossible as a result of a circumstance for which the person charged is responsible, the person who would benefit directly if the person initially charged ceases to be involved may, in accordance with the provisions on the surrender of unjust enrichment, demand the surrender of the gift to the extent that this gift ought to have been used to fulfil the testamentary burden.

(2) The same applies if the person charged has been ordered by a final and binding judgment to fulfil a testamentary burden which cannot be executed by a third person and the admissible enforcement measures have been applied against them without obtaining a result.

### **Title 6** **Executor**

#### **Section 2197** **Appointment of an executor**

(1) A testator may appoint one or more executors by will.

(2) The testator may appoint another executor to provide for the event that the appointed testator ceases to be an executor before or after acceptance of the office.

#### **Section 2198** **Determination of the executor by a third person**

(1) The testator may leave the determination of the person who is to act as executor to a third party. The determination is made by declaration to the probate court; the declaration is to be submitted in publicly certified form.

(2) The right of determination of the third party is extinguished on the expiry of a period specified for them by the probate court upon application by one of the persons concerned.

#### **Section 2199** **Appointment of co-executor or successor**

(1) The testator may authorise the executor to appoint one or more co-executors.

(2) The testator may authorise the executor to appoint a successor.

(3) The appointment is made in accordance with section 2198 (1) sentence 2.

#### **Section 2200**

##### **Appointment by the probate court**

- (1) If the testator, in the will, has requested the probate court to appoint an executor, the probate court may make the appointment.
- (2) As a rule, the probate court is to hear the persons concerned, before making this appointment, if this can be done without any significant delay and without disproportionate costs.

#### **Section 2201**

##### **Ineffectiveness of the appointment**

The appointment of the executor is ineffective if, at the time when they are to take up their office, they are incapable of contracting or have limited capacity to contract or have been given a custodian to attend to their financial affairs in accordance with section 1896.

#### **Section 2202**

##### **Acceptance and refusal of office**

- (1) The office of the executor begins at the time when the appointed person accepts the office.
- (2) The acceptance and the refusal of the office is made by declaration to the probate court. The declaration may be made only after the devolution of the inheritance; it is ineffective if it is made subject to a condition or a stipulation as to time.
- (3) The probate court may, on application by one of the persons concerned, specify a period for the person appointed to declare whether or not they will accept the office. On the expiry of the period the office is deemed to have been refused unless the acceptance thereof is declared before then.

#### **Section 2203**

##### **Task of the executor**

The executor is to execute the testamentary dispositions of the testator.

#### **Section 2204**

##### **Partitioning of the estate between co-heirs**

- (1) If there is more than one heir, then the executor is to effect a partitioning of the estate among them in accordance with sections 2042 to 2057a.
- (2) The executor is to hear the heirs on the scheme of partitioning prior to the execution thereof.

#### **Section 2205**

##### **Administration of the estate, power of alienation**

The executor is to administer the estate. In particular, they are entitled to take possession of the estate and to alienate the objects of the estate. They are entitled to make gratuitous dispositions only to the extent that they are made to comply with a moral duty or to show consideration for decency.

#### **Section 2206**

##### **Incurring obligations**

- (1) An executor is entitled to incur obligations on behalf of the estate to the extent that it is necessary to incur them for the proper administration thereof. If the executor is entitled to alienate an object of the estate, they may also incur an obligation on account of the estate.
- (2) The heir is obliged to grant their consent to the incurring of such obligations, notwithstanding their right to assert the limitation of their liability for the obligations of the estate.

#### **Section 2207**

##### **Extended authority**

The testator may direct that the executor is not to be restricted in incurring obligations on account of the estate. Even in such a case, the executor is entitled to make a promise of donation only in compliance with section 2205 sentence 3.

#### **Section 2208**

##### **Limitation of the rights of the executor, execution by the heir**

- (1) The executor does not have the rights specified in sections 2203 to 2206 to the extent that it is to be presumed that the testator did not intend for the executor to have them. If only individual objects of the estate are subject to the administration of the executor, they are entitled to the powers specified in section 2205 sentence 2 only in respect of these objects.
- (2) If the executor is not required to execute the dispositions of the testator on their own, they may demand execution from the heir, unless it is to be assumed that the testator intended otherwise.

#### **Section 2209**

##### **Permanent execution**

The testator may entrust an executor with the administration of the estate without assigning to them any tasks other than those of the administration; the testator also may direct that the executor is to continue the administration after the completion of any other tasks assigned to them. In case of doubt, it is to be presumed that such an executor has been granted the authorisation set out in section 2207.

#### **Section 2210**

##### **Thirty-year period for permanent execution**

A direction made under section 2209 becomes ineffective if 30 years have passed since the devolution of the inheritance. The testator may, however, direct that the administration is to continue until the death of the heir or of the executor, or until the occurrence of another event relating to the person of one or other of them. The provision of section 2163 (2) applies accordingly.

#### **Section 2211**

##### **Limitation on dispositions of the heir**

- (1) The heir may not alienate an object of the estate subject to the administration of the executor.
- (2) The provisions to the benefit of those who derive rights from an unauthorised person apply accordingly.

#### **Section 2212**

##### **Assertion in court of the rights subject to the execution of the will**

A right subject to the administration of the executor may be asserted in court only by the executor.

#### **Section 2213**

##### **Assertion in court of claims against the estate**

- (1) A claim that is directed against the estate may be asserted in court both against the heir and against the executor. If the executor is not entitled to administer the estate, the claim may be asserted only against the heir. A claim to a compulsory share may be asserted only against the heir, even if the executor is entitled to administer the estate.
- (2) The provision set out in section 1958 does not apply to the executor.
- (3) A creditor of the estate who asserts their claim against the heir may also assert their claim against the executor to the extent that the latter is required to permit compulsory enforcement against the objects of the estate subject to their administration.

#### **Section 2214**

##### **Creditors of the heir**

Creditors of the heir who are not creditors of the estate may not have recourse to the objects of the estate subject to the administration of the executor.

**Section 2215**  
**Inventory of the estate**

- (1) The executor is to provide to the heir an inventory of the objects of the estate subject to their administration, and of any known obligations of the estate, without undue delay after the acceptance of the office, and render any other assistance required to take an inventory.
- (2) The inventory is to show the date on which the inventory was taken and bear the signature of the executor; upon demand, the executor is to have their signature publicly certified.
- (3) The heir may demand that they be asked to take part in taking the inventory.
- (4) The executor is entitled and, at the demand of the heir, is obliged to have the inventory taken by the competent public authority or by a competent official or notary.
- (5) The costs of taking the inventory and the official certification are charged to the estate.

**Section 2216**  
**Proper administration of the estate, compliance with directions**

- (1) The executor is obliged to administer the estate in a proper manner.
- (2) Directions for the administration that the testator has given by testamentary disposition are to be complied with by the executor. Upon application by the executor or by any other party concerned, they may, however, be cancelled by the probate court if compliance with them would substantially endanger the estate. Insofar as this is appropriate, the court as a rule is to hear the persons concerned prior to making a decision.

**Section 2217**  
**Making available objects of the estate**

- (1) The executor is to make available, upon demand, to the heir for the latter's free disposition any objects of the estate which the executor evidently does not require to perform their duties. Upon the objects so having been made available, the executor's right to administer these objects is extinguished.
- (2) The executor may not refuse to make available the objects by reason of any obligations of the estate which are not based on a legacy or a testamentary burden, or by reason of any legacies or testamentary burdens that are subject to a condition or due on a specific date, if the heir provides security for the discharge of the obligations or for the fulfilment of the legacies or testamentary burdens.

**Section 2218**  
**Legal relationship with the heir; rendering of accounts**

- (1) The legal relationship between the executor and the heir is governed, accordingly, by the provisions of sections 664, 666 to 668, 670, of section 673 sentence 2 and section 674 applying to a mandate.
- (2) If the administration lasts for longer, the heir may demand that accounts be rendered every year.

**Section 2219**  
**Liability of the executor**

- (1) Where the executor commits a breach of the duties imposed upon them, then if they are at fault, they are responsible to the heir and, to the extent that a legacy is to be fulfilled, also to the legatee for the damage arising therefrom.
- (2) If there is more than one executor who is at fault, they are liable as joint and several debtors.

**Section 2220**  
**Mandatory law**

The testator may not release the executor from the duties imposed upon them by sections 2215, 2216, 2218 and 2219.

#### **Section 2221**

##### **Remuneration of the executor**

The executor may demand reasonable remuneration to perform the duties of their office, unless the testator has provided otherwise.

#### **Section 2222**

##### **Executor for the reversionary heir**

The testator may also appoint an executor for the purpose of exercising the rights and performing the duties of a reversionary heir until the occurrence of the directed reversionary succession.

#### **Section 2223**

##### **Executor of a legacy**

The testator may also appoint an executor for the purpose of this person ensuring the execution of the charges imposed on a legatee.

#### **Section 2224**

##### **More than one executor**

(1) More than one executor perform the duties of the office jointly; in the case of a difference in opinion, the probate court decides. If one of them ceases to be involved, the other executors are to perform the duties of the office alone. The testator may give different directions.

(2) Each executor is entitled to take any measures, without the approval of the other executors, that are necessary to preserve an object of the estate that is subject to their joint administration.

#### **Section 2225**

##### **Expiry of the office of the executor**

The office of the executor expires if they die or if an event occurs which would render their appointment under section 2201 ineffective.

#### **Section 2226**

##### **Notice of termination by the executor**

The executor may give notice of termination of the office at any time. Notice is given by declaration to the probate court. The provision of section 671 subsections (2) and (3) applies accordingly.

#### **Section 2227**

##### **Dismissal of the executor**

The probate court may, upon the application of one of the persons concerned, dismiss the executor if a compelling reason exists; a compelling reason is, in particular, a gross breach of duty, or the person's incapacity to effect proper management.

#### **Section 2228**

##### **Inspection of records**

The probate court is to permit any person who satisfactorily demonstrates an interest of a legal nature to inspect the declarations made in accordance with section 2198 (1) sentence 2, section 2199 (3), section 2202 (2) and section 2226 sentence 2.

### **Title 7**

#### **The making and revocation of a will**

#### **Section 2229**

##### **Testamentary capacity of minors, lack of testamentary capacity**

- (1) A minor may make a will only once they have reached the age of 16.
- (2) The minor does not need the consent of their legal representative to make a will.
- (3) (repealed)

(4) A person who is incapable of realising the importance of a declaration of intent made by them and of acting in accordance with this realisation on account of pathological mental disturbance, mental deficiency or derangement of the senses may not make a will.

**Section 2230  
(repealed)**

**Section 2231  
Regular wills**

A will can be made in a regular form

1. by having a notary record it,
2. by a declaration made by the testator in accordance with section 2247.

**Section 2232  
Public will**

A will recorded by a notary is made by the testator declaring their last will to the notary or handing the notary a document with the statement that the document contains their last will. The testator can hand over the document either unsealed or sealed; it need not have been written by them.

**Section 2233  
Special cases**

- (1) If the testator is a minor, then they can make a will only by oral declaration to a notary or by handing over an unsealed document.
- (2) If the testator is, according to their own statement or the conviction of the notary, incapable of reading text, they can make the will only by making a declaration to the notary.

**Sections 2234 - 2246  
(repealed)**

**Section 2247  
Holographic will**

- (1) The testator can make a will by a declaration written and signed in their own hand.
- (2) As a rule, the testator is to state in the declaration the time (day, month and year) and the place at which they wrote it down.
- (3) As a rule, the signature is to include the first name and the last name of the testator. If the testator signs in another manner and this signature suffices to establish the identity of the testator and the seriousness of their declaration, then such a signature does not invalidate the will.
- (4) A person who is a minor or is incapable of reading text cannot make a will in accordance with the above provisions.
- (5) Where a will made under subsection (1) does not include any information about the time at which it was made and where this gives rise to doubts about its validity, the will is to be considered valid only if it is possible to make the necessary determinations about the time at which it was made in some other manner. The same applies accordingly to a will that does not contain any information about the place at which it was made.

**Section 2248  
Custody of a holographic will**

A will made in accordance with section 2247 is to be taken into special official custody upon demand by the testator.

**Section 2249  
Emergency will made before the mayor**

- (1) Where there is the concern that the testator will die sooner than it is possible to make a will before a notary, they may make the will by means of a record drawn up by the mayor of

the municipality in which they reside. The mayor must call in two witnesses for the authentication. A person who is provided for or appointed as an executor in the will to be recorded may not be called as a witness; the provisions of sections 7 and 27 of the Law on Attestations (*Beurkundungsgesetz*) apply accordingly. The making of the will is governed by the provisions of sections 2232 and 2233 as well as the provisions of sections 2, 4, 5 (1), sections 6 to 10, 11 (1) sentence 2 subsection (2), section 13 subsections (1) and (3), sections 16, 17, 23, 24, 26 (1) no. 3, 4, subsection (2), and sections 27, 28, 30, 32, 34 and 35 of the Law on Attestations (*Beurkundungsgesetz*); the mayor takes the place of the notary. The record must also be signed by the witnesses. If the testator, according to their own statement or the conviction of the mayor, is incapable of signing their name, the signature of the testator is replaced by the determination of this fact or of this conviction being included in the record.

(2) The concern that it will no longer be possible to make a will before a notary as a rule is to be stated in the record. The validity of the will is not affected if the concern was unfounded.

(3) As a rule, the mayor is to draw the attention of the testator to the fact that the will becomes invalid if the testator survives the expiry of the period provided by section 2252 subsections (1) and (2). The mayor is to state in the record that this notification has been given.

(4) (repealed)

(5) The will also may be made before a person who, according to statutory provisions, is appointed to represent the mayor. As a rule, the representative is to state in the record the basis of their power of agency.

(6) If formal errors were made when drafting the record concerning the making of the will as provided for in the above subsections, but it can nevertheless be assumed with certainty that the will contains a reliable rendering of the testator's declaration, then the procedural error does not detract from the effectiveness of the recording.

#### **Section 2250**

##### **Emergency will before three witnesses**

(1) A person who is staying in a place which, as a result of extraordinary circumstances, is blocked off in such a way that making a will before a notary is not possible or extremely difficult, may make the will in the form specified by section 2249 or by oral declaration before three witnesses.

(2) A person who is in such imminent mortal danger that it is probable that even making a will in accordance with section 2249 is no longer possible may make the will by oral declaration before three witnesses.

(3) If the will is made by oral declaration before three witnesses, a record to this effect must be made. The witnesses are governed accordingly by the provisions of section 6 (1) nos. 1 to 3, sections 7 and 26 (2) nos. 2 to 5 and section 27 of the Law on Attestations (*Beurkundungsgesetz*), and the record is governed accordingly by the provisions of sections 8 to 10, section 11 (1) sentence 2, (2), section 13 (1), (3) sentence 1, sections 23 and 28 of the Law on Attestations (*Beurkundungsgesetz*) as well as the provisions of section 2249 (1) sentences 5 and 6, section 2249 (2) and (6). The record may be made in another language apart from German. The testator and the witnesses must be sufficiently familiar with the language of the record; as a rule, this is to be stated in the record if it is written in a language other than German.

#### **Section 2251**

##### **Emergency will made at sea**

A person who during a sea voyage is on board a German ship beyond a domestic port may make a will by oral declaration before three witnesses in accordance with section 2250 (3).

#### **Section 2252**

##### **Period of validity of emergency wills**



(1) A will made in accordance with section 2249, section 2250 or section 2251 is deemed not to have been made if three months have passed since it was made and the testator is still alive.

(2) The beginning and the running of the period are suspended for as long as the testator is incapable of making a will before a notary.

(3) If, in the case provided for by section 2251, the testator sets off on a new sea voyage before the expiry of the period, the period is interrupted with the effect that at the end of the new voyage the entire period starts to run from the beginning.

(4) Where after the expiry of the period the testator is declared dead, or where the time of their death is established in accordance with the provisions of the Missing Persons Act (*Verschollenheitsgesetz*), the will remains effective if the period had not yet ended at the time when, according to available information, the testator was still alive.

#### **Section 2253 Revocation of the will**

The testator may revoke a will and also an individual disposition contained in a will at any time.

#### **Section 2254 Revocation by will**

The revocation is made by will.

#### **Section 2255 Revocation by destruction or changes**

A will also may be revoked by the testator, with the intention of revocation, destroying the testamentary instrument or making changes to it that customarily express the intention to revoke a written declaration of intent. If the testator has destroyed the testamentary instrument or changed it in the manner described, it is presumed that they intended to revoke the will.

#### **Section 2256 Revocation by the revocation of the will from official custody**

(1) A will made before a notary, or in accordance with section 2249, is deemed to have been revoked if the document taken into special official custody is returned to the testator. As a rule, the office returning the document is to inform the testator of the consequence of the return stated in sentence 1, note this on the document and place on record that both these things have been done.

(2) The testator may demand the return of the will at any time. The will may only be returned to the testator personally.

(3) The provisions of subsection (2) also govern a will deposited in accordance with section 2248; the return does not affect the effectiveness of the will.

#### **Section 2257 Revocation of the revocation**

If the revocation by will of a testamentary disposition is revoked, the disposition is, in case of doubt, effective as if it had not been revoked.

#### **Section 2258 Revocation by a later will**

(1) The making of a will revokes an earlier will to the extent that the later will is at variance with the former.

(2) If the later will is revoked, the earlier will is, in case of doubt, effective in the same way as if it had not been revoked.

#### **Section 2258a (repealed)**

**Section 2258b  
(repealed)**

**Section 2259  
Obligation to deliver**

- (1) A person who is in possession of a will which has not been placed in special official custody is obliged to deliver it to the probate court without undue delay after they have obtained knowledge of the death of the testator.
- (2) If a will is in the official custody of a public authority other than a court, it is to be delivered to the probate court after the death of the testator. The probate court is to arrange for its delivery once it has obtained knowledge of the will.

**Section 2260  
(repealed)**

**Section 2261  
(repealed)**

**Section 2262  
(repealed)**

**Section 2263  
Voidness of a prohibition on opening the will**

A direction given by the testator prohibiting the opening of their will immediately after their death is void.

**Section 2263a, 2264  
(repealed)**

**Title 8  
Joint will**

**Section 2265  
Joint will made by spouses**

A joint will may be made only by spouses.

**Section 2266  
Joint emergency will**

A joint will may be made in accordance with sections 2249 and 2250, even if the prerequisites set out therein are given only for one of the spouses.

**Section 2267  
Joint holographic will**

To make a joint will in accordance with section 2247, it suffices if one of the spouses makes a will in the manner provided there, and the other spouse co-signs the joint declaration in their own hand. In doing so, the co-signing spouse as a rule is to state the time (day, month and year) and the place at which the signature was affixed.

**Section 2268  
Effect of nullity or dissolution of marriage**

- (1) A joint will is ineffective in its entirety in the cases governed by section 2077.
- (2) If the marriage is dissolved before the death of one of the spouses, or if the prerequisites set out in section 2077 (1) sentence 2 or 3 are met, the dispositions remain effective to the extent that it is to be assumed that they would also have been made for this case.

**Section 2269  
Reciprocal appointment**

(1) If the spouses have specified in a joint will, by which they reciprocally appointed each other heir, that after the death of the survivor the estate of both is to devolve to a third party, then it is to be assumed, in case of doubt, that the third party has been appointed the heir, for the whole estate, of the spouse to die later.

(2) If in such a joint will the spouses have directed that a legacy be given that is to be performed after the death of the survivor, it is to be assumed, in case of doubt, and that the legacy is not to devolve to the person provided for until the death of the survivor.

#### **Section 2270**

##### **Reciprocal dispositions**

(1) If the spouses have made dispositions in a joint will of which it is to be assumed that the disposition of one spouse would not have been made without the disposition of the other, the voidness or revocation of one of the dispositions results in the ineffectiveness of the other.

(2) Such a relationship of the dispositions to one another is, in case of doubt, to be presumed if the spouses mutually provide for each other in the will, or if one spouse makes a testamentary gift to the other and for the event of the survival of the beneficiary a disposition is made to the benefit of a person who is related to the other spouse or is close to them in another way.

(3) Dispositions other than appointments of heirs, legacies, testamentary burdens, and the selection of the laws of inheritance that are to be applied are not governed by subsection (1).

#### **Section 2271**

##### **Revocation of reciprocal dispositions**

(1) The revocation of a disposition which is related to a disposition of the other spouse in the way described in section 2270 is to be effected during the lifetimes of the spouses in accordance with the provision of section 2296 governing revocation of a contract of inheritance. A spouse may not, during the lifetime of the other, make a new disposition mortis causa unilaterally revoking their original disposition.

(2) The right of revocation expires on the death of the other spouse; the survivor may, however, revoke their disposition if they disclaim the testamentary gift made to them. Even after the acceptance of the testamentary gift, the survivor is entitled to revoke in accordance with section 2294 and section 2336.

(3) If a testamentary gift has been given to a descendant of both spouses or of one of the spouses who is entitled to compulsory share, the provision of section 2289 (2) applies accordingly.

#### **Section 2272**

##### **Revocation of official custody**

A joint will may be revoked under section 2256 only by both spouses.

#### **Section 2273**

**(repealed)**

#### **Division 4**

##### **Contract of inheritance**

#### **Section 2274**

##### **Entering into contract in person**

The testator can enter into a contract of inheritance only in person.

#### **Section 2275**

##### **Prerequisites**

A person can only enter into a contract of inheritance as testator if they have unlimited capacity to contract.

#### **Section 2276**

##### **Form**

(1) A contract of inheritance may be made only by being recorded by a notary in the simultaneous presence of both parties. The provisions of section 2231 no. 1 and sections 2232 and 2233 are applicable; what applies for a testator under these provisions also applies to each of the contractual parties.

(2) For a contract of inheritance between spouses or between engaged persons that is joined with a marriage contract in the same document, the form prescribed for a contract of marriage suffices.

**Section 2277  
(repealed)**

**Section 2278  
Permissible contractual dispositions**

(1) In a contract of inheritance, each of the contractual parties may make contractual dispositions mortis causa.

(2) Dispositions other than appointments of heirs, legacies, testamentary burdens, and the selection of the inheritance laws to be applied may not be made contractually.

**Section 2279  
Contractual gifts and burdens, application of section 2077**

(1) Contractual gifts and contractual burdens are governed by the provisions applying to testamentary gifts and testamentary burdens accordingly.

(2) The provision of section 2077 also applies to a contract of inheritance between spouses, life partners or engaged persons to the extent that a third party is provided for.

**Section 2280  
Application of section 2269**

If spouses or life partners have provided in a contract of inheritance by which they mutually appoint each other heirs that the estate of both is to devolve to a third party after the death of the survivor, or have made a legacy that is to be performed after the death of the survivor, the provision under section 2269 applies accordingly.

**Section 2281  
Avoidance by the testator**

(1) A contract of inheritance also may be avoided by the testator on the basis of sections 2078 and 2079; for avoidance on the basis of section 2079 it is necessary that the person entitled to a compulsory share is alive at the time of the avoidance.

(2) If, after the death of the other contractual party, a disposition made to the benefit of a third party is to be avoided, the avoidance is to be declared to the probate court. As a rule, the probate court is to communicate the declaration to the third party.

**Section 2282  
Representation, form of the avoidance**

(1) The avoidance may not be effected by an agent of the testator.

(2) If a testator is incapable of contracting, their custodian may avoid a contract of inheritance for him; ratification by the custodianship court is required.

(3) A declaration of avoidance is to be recorded by a notary.

**Section 2283  
Period of avoidance**

(1) Avoidance may be effected by a testator only within a period of one year.

(2) In the case of avoidance for duress, the period begins on the date on which the duress ends, and in the other cases on the date on which the testator obtains knowledge of the ground for avoidance. The provisions of sections 206 and 210, governing limitation, apply accordingly to the running of the period.

(3) If, in the case set out in section 2282 (2), the legal representative did not avoid the contract of inheritance in good time, the testator himself or herself may, upon their incapacity

to contract having ceased, avoid their contract of inheritance in the same way as if they had been without a legal representative.

**Section 2284**  
**Confirmation**

The confirmation of a voidable contract of inheritance may be effected only by the testator personally.

**Section 2285**  
**Avoidance by third parties**

The persons specified in section 2080 may no longer avoid a contract of inheritance on the basis of sections 2078 and 2079 if the right of avoidance of the testator is extinguished at the time of the devolution of the inheritance.

**Section 2286**  
**Dispositions *inter vivos***

A contract of inheritance does not restrict the right of the testator to dispose over their assets by a legal transaction *inter vivos*.

**Section 2287**  
**Gifts adversely affecting the contractual heir**

- (1) If the testator has made a gift with the intention of adversely affecting their contractual heir, the contractual heir may, after the inheritance has devolved upon them, demand from the recipient that they surrender the gift in accordance with the provisions relating to the surrender of unjust enrichment.
- (2) The standard limitation period of the claim begins with the devolution of the inheritance.

**Section 2288**  
**Prejudice to the legatee**

- (1) If the testator has destroyed, removed or damaged the object of a contractual legacy with the intention of adversely affecting the person provided for, then, to the extent that the heir is thereby rendered incapable of performing the legacy, the value of the object replaces the object.
- (2) If the testator has alienated or created a charge on the object with the intention of adversely affecting the person provided for, the heir is obliged to procure the object or to remove the charge for the person provided for; the provision set out in section 2170 (2) applies accordingly to this obligation. If the alienation or charge is made by way of gift, the person provided for has, to the extent that they may not demand compensation from the heir, the claim specified in section 2287 against the recipient of the gift.

**Section 2289**  
**Effect of the contract of inheritance on testamentary dispositions; application of section 2338**

- (1) A prior testamentary disposition by the testator is cancelled by a contract of inheritance to the extent that it would adversely affect the right of a person provided for under the contract. A later disposition *mortis causa* is, notwithstanding the provision of section 2297, ineffective to the same extent.
- (2) If the person provided for is a descendant of the testator who is entitled to a compulsory share, the testator may, by a later testamentary disposition, give the directions permitted by section 2338.

**Section 2290**  
**Cancellation by contract**

- (1) A contract of inheritance or an individual contractual disposition may be cancelled by contract between the persons who concluded the contract of inheritance. Cancellation may no longer be effected after the death of either of these persons.
- (2) The testator may enter into the contract only personally.

(3) Where a custodian has been appointed for the other party and if the cancellation falls under the scope of functions of the custodian, ratification by the custodianship court is required.

(4) The contract requires the form prescribed for the contract of inheritance in section 2276.

#### **Section 2291**

##### **Cancellation by will**

(1) A contractual disposition by which a legacy or a testamentary burden is directed and a selection is made in terms of the applicable law may be cancelled by the testator by will. For the effectiveness of the cancellation, the approval of the other contractual party is necessary; the provision of section 2290 (3) applies.

(2) The declaration of approval is to be recorded by a notary; the approval is irrevocable.

#### **Section 2292**

##### **Cancellation by joint will**

A contract of inheritance concluded between spouses or life partners also may be cancelled by a joint will of the spouses or of the life partners; the provision of section 2290 (3) applies.

#### **Section 2293**

##### **Revocation in the event of reservation**

The testator may revoke their contract of inheritance if they have reserved the right to do so in the contract.

#### **Section 2294**

##### **Revocation in the event of the misconduct of the person provided for**

The testator may revoke a contractual disposition where the person provided for is at fault for misconduct that entitles the testator to deprive that person of their compulsory share, or, where the person provided for is not one of those entitled to a compulsory share, that would entitle the testator to deprive the person provided for of their compulsory share if they were a descendant of the testator.

#### **Section 2295**

##### **Revocation in the event of the extinction of a mutual obligation**

The testator may revoke a contractual disposition, if the disposition is made in consideration of a contractual obligation of the person provided for to make periodic payments to the testator during the lifetime of the latter, in particular to provide support, and the obligation is cancelled before the death of the testator.

#### **Section 2296**

##### **Representation, form of revocation**

(1) The revocation may not be made by means of an agent.

(2) The revocation is effected by declaration to the other contractual party. The declaration requires notarial recording.

#### **Section 2297**

##### **Revocation by will**

To the extent that the testator is entitled to revoke, they may cancel the contractual disposition by will after the death of the other contractual party. In the cases governed by section 2294, the provision of section 2336 subsections (2) and (3) applies accordingly.

#### **Section 2298**

##### **Mutual contract of inheritance**

(1) If both parties have made contractual dispositions in a contract of inheritance, the voidness of one of these dispositions results in the ineffectiveness of the whole contract.

(2) If revocation is reserved in such a contract, the whole contract is cancelled by the revocation of one of the contractual parties. The right of revocation expires on the death of

the other contractual party. The surviving party may, however, if they disclaim the gift made to them by the contract, revoke their disposition by will.

(3) The provisions of subsection (1) and subsection (2) sentences 1 and 2 are not applicable if it is to be assumed that the parties intended otherwise.

#### **Section 2299**

##### **Unilateral dispositions**

(1) Either of the contractual parties may, in the contract of inheritance, unilaterally make any disposition that may be made by will.

(2) For a disposition of this kind the same applies as if it had been made by will. The disposition also may be cancelled in a contract by which a contractual disposition is cancelled.

(3) If the contract of inheritance is cancelled by the exercise of the right of revocation or by contract, the disposition ceases to be effective, unless it is to be assumed that the testator intended otherwise.

#### **Section 2300**

##### **Application of sections 2259 and 2263; removal from official or notarial custody**

(1) Sections 2259 and 2263 are to be applied accordingly to the contract of inheritance.

(2) A contract of inheritance which contains only dispositions *mortis causa* may be withdrawn from official or notarial custody and returned to the contractual parties. The return may only be made to all of the contractual parties jointly; the provision of section 2290 (1) sentence 2 subsection (2) and (3) applies. If a contract of inheritance is revoked in accordance with sentences 1 and 2, section 2256 (1) applies accordingly.

#### **Section 2300a**

**(repealed)**

#### **Section 2301**

##### **Promise of donation *mortis causa***

(1) A promise of a donation made subject to the condition that the donee survives the donor is governed by the provisions concerning dispositions *mortis causa*. The same applies to a promise to fulfil an obligation or an acknowledgement of debt of the kind described in sections 780 and 781, made by way of donation subject to this condition.

(2) If the donor executes the donation by delivery of the object given, the provisions concerning gifts *inter vivos* apply.

#### **Section 2302**

##### **Unlimited testamentary freedom**

A contract by which a person agrees to make or not to make, to cancel or not to cancel, a disposition *mortis causa* is void.

#### **Division 5**

##### **Compulsory share**

#### **Section 2303**

##### **Person entitled to a compulsory share of the estate; amount of the share**

(1) If a descendant of the testator is excluded by disposition *mortis causa* from succession, then they may demand their compulsory share from the heir. The compulsory share is one-half of the value of the intestate portion.

(2) The parents and spouse of the testator have the same right if they have been excluded from succession by disposition *mortis causa*. The provision of section 1371 remains unaffected.

#### **Section 2304**

##### **Rules of interpretation**

In case of doubt, the giving of a compulsory share is not to be considered as the appointment of an heir.

#### **Section 2305**

##### **Additional compulsory share**

If a person entitled to a compulsory share is left a share of the inheritance which is less than one-half of the intestate portion, then the person entitled to a compulsory share may claim from the co-heirs as his or her compulsory share the amount by which his or her share is less than one-half. Limitations and charges of the nature referred to in section 2306 are not taken into consideration when calculating the value.

#### **Section 2306**

##### **Limitations and charges**

- (1) Where a person entitled to inherit a compulsory share who becomes an heir has been limited by the designation of a reversionary heir, the appointment of an executor, or a direction concerning the partitioning of the estate, or where they have been charged with a legacy or a testamentary burden, they may claim their compulsory share if they disclaim their share of the inheritance; the period for filing a disclaimer does not commence until after the person entitled to a compulsory share has obtained knowledge of the limitation or charge.
- (2) If the person entitled to a compulsory share has been appointed a reversionary heir, this is equivalent to a limitation of the appointment of an heir.

#### **Section 2307**

##### **Bequest of a legacy**

- (1) Where a legacy has been bequeathed to a person entitled to a compulsory share, they may claim their compulsory share if they disclaim the legacy. If they do not disclaim it, then they are not entitled to the compulsory share up to the value of the legacy; when the value is calculated, limitations and charges of the kind stated in section 2306 are not taken into consideration.
- (2) The heir who is charged with the legacy may specify a reasonable period for the person entitled to a compulsory share to declare whether or not they will accept the legacy. Upon the expiry of the period the legacy is deemed to have been disclaimed unless acceptance is declared before this time.

#### **Section 2308**

##### **Avoidance of the disclaimer**

- (1) Where a person entitled to a compulsory share, who as an heir or a legatee is limited or charged in the manner stated in section 2306, has disclaimed the inheritance or legacy, they may avoid the disclaimer if the limitation or charge had ceased by the time of the disclaimer and this cessation was unknown to them.
- (2) The avoidance of the disclaimer of a legacy is governed by the provisions governing the avoidance of an inheritance, accordingly. Avoidance is effected by declaration to the person charged.

#### **Section 2309**

##### **Right of parents and remoter descendants to a compulsory share**

Remoter descendants and the parents of the testator are not entitled to a compulsory share to the extent that a descendant who would exclude them in the event of intestate succession is entitled to demand a compulsory share or accepts whatever has been left them.

#### **Section 2310**

##### **Determination of the share of the inheritance for the calculation of the compulsory share**

In the determination of the share of the inheritance that is relevant for calculating the value of a compulsory share, the calculation is to include those persons who are excluded from succession by testamentary disposition or have disclaimed the inheritance or have been



declared unworthy to inherit. A person who is excluded from intestate succession by renunciation of the inheritance is not included in the calculation.

**Section 2311**  
**Value of the estate**

(1) The calculation of the compulsory share is based on the condition and value of the estate at the time of the devolution of the inheritance. In the calculation of the compulsory share of a descendant and the parents of the testator, the preferential benefit of the surviving spouse is not taken into account.

(2) The value is to be determined, to the extent necessary, by estimate. A valuation made by the testator is not relevant.

**Section 2312**  
**Value of a farm**

(1) Where the testator has directed, or where it is to be assumed in accordance with section 2049, that it is intended for one out of more than one heirs to have the right to take over a farm forming part of the estate at the capitalised value of its anticipated yield, then if this right is exercised said capitalised value also will be relevant for the calculation of the compulsory share. Where the testator has fixed a different price for taking over the farm, this will be relevant if it is no less than the capitalised value and no more than the estimated value.

(2) If the testator has only one heir, then the testator may direct that the calculation of the compulsory share is to be based on the capitalised value of the anticipated yield or another value determined as specified in subsection (1) sentence 2.

(3) These provisions apply only if the heir who acquires the farm is one of the persons entitled to a compulsory share designated in section 2303.

**Section 2313**  
**Taking account of conditional, uncertain or unsecured rights; duty of determination of the heir**

(1) In the determination of the value of the estate, rights and obligations that are subject to a condition precedent are not taken into account. Rights and obligations that are subject to a condition subsequent are taken into account as unconditional. If the condition is fulfilled, a reasonable adjustment is to be made to reflect the change in the legal situation.

(2) For uncertain or unsecured rights and for doubtful obligations, the same applies as for rights and obligations that are subject to a condition precedent. The heir is obliged in relation to the person entitled to a compulsory share to ascertain an uncertain right and to pursue an unsecured right to the extent that this is compatible with orderly administration.

**Section 2314**  
**Duty of the heir to provide information**

(1) If the person entitled to a compulsory share is not an heir, then the heir is to give to that person, on demand, information on the condition of the estate. The person entitled to a compulsory share may demand that they be called to participate in the drawing up of the inventory of the objects of the estate, in accordance with section 260, and that the value of the objects of the estate be determined. They may also demand that the inventory be drawn up by the competent public authority, or by a competent official or notary.

(2) The costs are charged to the estate.

**Section 2315**  
**Counting gifts towards the compulsory share**

(1) The person entitled to a compulsory share is to allow to be credited against their compulsory share anything given to them as a gift by the testator by a legal transaction *inter vivos* with the provision that it is to be credited against their compulsory share.

(2) The value of the gift is added to the estate in determining the compulsory share. The value is determined on the basis of the date on which the gift was given.

(3) If the person entitled to a compulsory share is a descendant of the testator, the provision of section 2051 (1) applies accordingly.

#### **Section 2316**

##### **Duty to adjust advancements**

(1) If there is more than one descendant and, in the event of intestate succession, a gift by the testator or payments of the kind specified in section 2057a would be adjusted among them, the compulsory share of each descendant is determined by what would accrue to the intestate portion, taking into consideration the duties to adjust advancements on the partitioning of the estate. A descendant who has been excluded from intestate succession by renunciation of the inheritance is not included in the calculation.

(2) If the person entitled to a compulsory share is an heir, and if the compulsory share under subsection (1) has a greater value than the share of the inheritance left to them, they may demand from the co-heirs the additional amount as their compulsory share, even if the share of the inheritance left to them is equal to or exceeds one-half of their intestate portion.

(3) The testator may not to the disadvantage of a person entitled to a compulsory share exclude any gift of the kind specified in section 2050 (1) from being taken into account.

(4) If any gift to be taken into account under subsection (1) is at the same time to be deducted from the compulsory share in accordance with section 2315, it is to be counted at one-half of its value.

#### **Section 2317**

##### **Creation and transferability of the claim to a compulsory share**

(1) The claim to a compulsory share is created upon the devolution of the inheritance.

(2) The claim is inheritable and transferable.

#### **Section 2318**

##### **Burden of the compulsory share in the case of legacies and testamentary burdens**

(1) The heir may refuse the performance of a legacy with which they are charged to the extent that the burden of the compulsory share is borne proportionately by the heir and the legatee. The same applies to a testamentary burden.

(2) This reduction is permissible in relation to a legatee who is entitled to a compulsory share only to the extent that their compulsory share remains with them.

(3) If the heir is himself or herself a person entitled to a compulsory share, then they may, on account of their compulsory share burden, reduce the legacy and the testamentary burden such that they retain their own compulsory share.

#### **Section 2319**

##### **Person entitled to a compulsory share as co-heir**

If one of several heirs is himself or herself a person entitled to a compulsory share, they may, after the partitioning of the estate, refuse to satisfy another person entitled to a compulsory share such that they retain their own compulsory share. The other heirs are liable for the shortfall.

#### **Section 2320**

##### **Compulsory share burden on the heir taking the place of the person entitled to a compulsory share**

(1) A person who becomes heir on intestacy in the place of a person entitled to a compulsory share is to bear, in relation to co-heirs, the burden of the compulsory share, and, if the person entitled to a compulsory share accepts a legacy given to them, is to bear the burden of the legacy in the amount of the benefit obtained.

(2) In case of doubt, the same applies to a person to whom the testator has, by disposition mortis causa, given the share of the inheritance of the person entitled to a compulsory share.

#### **Section 2321**

##### **Compulsory share burden in the event of a disclaimer of a legacy**

If a person entitled to a compulsory share disclaims a legacy given to them, then the person who benefits from the disclaimer is to bear, in the relationship of the heirs and the legatees amongst each other, the burden of the compulsory share in the amount of the benefit obtained.

#### **Section 2322**

##### **Reduction of legacies and testamentary burdens**

If an inheritance or a legacy disclaimed by a person entitled to a compulsory share has been charged with a legacy or a testamentary burden, the person who benefits from the disclaimer may reduce the legacy or the testamentary burden such that the amount required to pay the burden of the compulsory share remains for them.

#### **Section 2323**

##### **Heir not charged with a compulsory share**

The heir may not refuse to fulfil a legacy or a testamentary burden on the basis of section 2318 (1) to the extent that they are not required to bear the compulsory share burden in accordance with sections 2320 to 2322.

#### **Section 2324**

##### **Deviating directions by the testator concerning the compulsory share burden**

The testator may, by disposition mortis causa, impose the compulsory share burden, in the proportion of the heirs to each other, on one or more heirs, and may give directions deviating from the provisions of section 2318 (1) and sections 2320 to 2323.

#### **Section 2325**

##### **Claim for the augmentation of compulsory shares in the event of gifts**

(1) Where the testator made a gift to a third party, a person entitled to a compulsory share may claim, as an augmentation of their compulsory share, the amount by which the compulsory share is increased if the object given is added to the estate.

(2) A consumable thing is assessed at the value that it had at the time of the donation. Any other object is assessed at the value which it had at the time of the devolution of the inheritance; if its value was lower at the time of the donation, then only this value is taken into account.

(3) The gift is fully taken into account within the first year prior to the devolution of the inheritance, and is taken into account by one-tenth less within each further year prior to the devolution of the inheritance. If 10 years have passed since the donated object was given, the gift is not taken into account. If the gift was made to the spouse, the period does not commence until the dissolution of the marriage.

#### **Section 2326**

##### **Augmentation to more than half of the intestate portion**

The person entitled to a compulsory share may claim the augmentation of their compulsory share even if one half of the intestate portion has been left to them. If more than one-half has been left to them, such claim is excluded to the extent that they have been left more.

#### **Section 2327**

##### **Receipt of gift by a person entitled to a compulsory share**

(1) If a person entitled to a compulsory share has himself or herself received a gift from the testator, the gift is to be added to the estate in the same way as a gift given to a third party, and at the same time is to be counted towards the augmentation granted to the person entitled to a compulsory share. The value of a gift to be taken into account in accordance with section 2315 is to be counted towards the total value of the compulsory share and the augmentation.

(2) If the person entitled to a compulsory share is a descendant of the testator, the provision of section 2051 (1) applies accordingly.

### **Section 2328**

#### **Heir as person entitled to a compulsory share**

If an heir himself or herself is entitled to a compulsory share, they may refuse the augmentation of their compulsory share to the extent that they would retain their own compulsory share, including what would be due to them as an augmentation of their own compulsory share.

### **Section 2329**

#### **Claim against the recipient of a gift**

- (1) To the extent that an heir is not obliged to augment a compulsory share, the person entitled to a compulsory share may, in accordance with the provisions concerning the surrender of unjust enrichment, demand from the recipient of a gift that they surrender it for the purpose of making up the shortfall. If the person entitled to a compulsory share is the sole heir, they have the same right.
- (2) The recipient may avoid the return of the gift through the payment of the shortfall.
- (3) Among more than one recipient of gifts, a prior recipient is liable only to the extent that a subsequent recipient is not obliged.

### **Section 2330**

#### **Gift arising from a moral duty**

The provisions of sections 2325 to 2329 do not apply to gifts made to comply with a moral duty or to show consideration for decency.

### **Section 2331**

#### **Gifts made from common matrimonial property**

- (1) A gift made out of the common matrimonial property subject to the regime of community of property is deemed to have been made by the spouses at one half each. If, however, the gift was made to a descendant of only one of the spouses, or to a person of whom only one of the spouses is a descendant, or if one of the spouses has to provide compensation to the common matrimonial property for the value of the gift, it is deemed to have been made by this spouse alone.
- (2) These provisions are to be applied accordingly to a gift made out of common matrimonial property under continued community of property.

### **Section 2331a**

#### **Deferral**

- (1) The heir may demand that the satisfaction of the compulsory share be deferred if the immediate satisfaction of the entire claim would constitute an inequitable hardship for them on account of the nature of the objects of the estate, in particular if it would force them to give up their family residence or to alienate business assets that form the economic basis for the everyday life of the heir and their family. The interests of the person entitled to a compulsory share are to be adequately taken into account.
- (2) The probate court has jurisdiction over the decision on the claim for additional time, if it is not contested. Section 1382 (2) to (6) applies accordingly; the probate court takes the place of the family court.

### **Section 2332**

#### **Limitation**

- (1) The limitation period of the claim that a person entitled to a compulsory share has against a recipient of a gift under section 2329 commences with the devolution of the inheritance.
- (2) The limitation of the claim to a compulsory share and of the claim pursuant to section 2329 is not suspended by the fact that these claims may be asserted only after the disclaimer of the inheritance or legacy.

### **Section 2333**

#### **Deprivation of a compulsory share**

- (1) A testator may deprive a descendant of their compulsory share if the descendant
1. makes an attempt on the life of the testator, of the spouse of the testator, or of another descendant or of a person similarly close to the testator,
  2. is guilty of a major offence or of a serious intentional minor offence against one of the persons designated in no. 1,
  3. wilfully violates the statutory obligation to the testator incumbent upon them to maintain the testator, or
  4. is finally sentenced to at least one year's imprisonment without probation because of an intentional criminal offence and participation of the descendant in the estate is hence unreasonable for the testator. The same applies if the accommodation of the descendant in a psychiatric hospital or in a withdrawal clinic is finally ordered because of a similarly serious intentional offence.
- (2) Subsection (1) applies accordingly to the revocation of the parental or spousal compulsory share.

**Section 2334  
(repealed)**

**Section 2335  
(repealed)**

**Section 2336**

**Form, burden of proof and ineffectiveness of deprivation**

- (1) The deprivation of the right to a compulsory share is effected by testamentary disposition.
- (2) The reason for the deprivation must exist at the time when the disposition is made and must be stated in the disposition. For deprivation under section 2333 (1) no. 4, the offence must have been committed at the time of the establishment and the reason for the unreasonableness must apply; both must be stated in the order.
- (3) The burden of proving the reason lies on the person who asserts the deprivation.
- (4) (repealed)

**Section 2337  
Forgiveness**

The right to deprive a person of their compulsory share expires as a result of forgiveness. A disposition by which the testator has directed the deprivation becomes ineffective as a result of forgiveness.

**Section 2338  
Limitation of the compulsory share**

- (1) If a descendant gives themselves up to extravagance to such a degree or is so heavily indebted that their future livelihood is seriously endangered, the testator may limit the right of the descendant to a compulsory share by directing that after the death of the descendant, the testator's heirs on intestacy are to receive, as reversionary heirs or as subsequent legatees, the share which is left to the descendant, or the compulsory share to which the descendant is entitled, in proportion to their shares of the inheritance on intestacy. The testator may also transfer the administration to an executor during the lifetime of the descendant; in such a case the descendant has a claim to the annual net proceeds.
- (2) The provisions of section 2336 (1) to (3) apply accordingly to directions of this kind. The directions are ineffective if, at the time of the devolution of the inheritance, the descendant has permanently given up their extravagant life, or the heavy indebtedness creating the reason for such directions no longer exists.

**Division 6**  
**Unworthiness to inherit**

**Section 2339**  
**Grounds for unworthiness to inherit**

(1) A person is unworthy to inherit:

1. If they have intentionally and unlawfully killed or attempted to kill the deceased, or has put the deceased in a state as a result of which the deceased was incapable until their death of making or revoking a disposition mortis causa,
2. If they have intentionally and unlawfully prevented the deceased from making or revoking a disposition mortis causa,
3. if they have, by deceit or unlawfully by duress, induced the deceased to make or revoke a disposition mortis causa,
4. if they are, in respect of a disposition mortis causa made by the deceased, guilty of a criminal offence under the provisions of sections 267, 271 to 274 of the Criminal Code (*Strafgesetzbuch*).

(2) In the cases governed by subsection (1) nos. 3 and 4, unworthiness to inherit does not occur if, before the occurrence of the devolution of the inheritance, the disposition that the testator was induced to make or in respect of which the criminal offence was committed has become ineffective, or the disposition which they were induced to revoke would have become ineffective.

**Section 2340**  
**Enforcement of the unworthiness to inherit by avoidance**

- (1) Unworthiness to inherit is enforced by avoidance of the acquisition of the inheritance.
- (2) Avoidance is admissible only after the devolution of the inheritance. Avoidance may be effected as against a reversionary heir as soon as the inheritance has devolved upon the provisional heir.
- (3) Avoidance may be effected only within the periods specified in section 2082.

**Section 2341**  
**Persons entitled to avoid**

Any person is entitled to avoid if they benefit from the cessation of entitlement of a person unworthy to inherit, even if this is only on the cessation of another person.

**Section 2342**  
**Action for avoidance**

- (1) Avoidance is effected by bringing an action for avoidance. The action is to be directed at having the heir declared unworthy to inherit.
- (2) The avoidance does not enter into effect until the judgment is final and binding.

**Section 2343**  
**Forgiveness**

Avoidance is excluded if the testator has forgiven the person unworthy to inherit.

**Section 2344**  
**Effect of a declaration of unworthiness to inherit**

- (1) If an heir is declared unworthy to inherit, the inheritance is deemed not to have devolved upon them.
- (2) The inheritance devolves to the person who would be entitled to inherit if the person unworthy to inherit had not been alive at the time of the devolution of the inheritance; the devolution is deemed to have occurred upon the devolution of the inheritance.

### **Section 2345**

#### **Unworthiness to receive a legacy; unworthiness to receive a compulsory share**

- (1) If a legatee is guilty of one of the examples of misconduct set out in section 2339 (1), then their claim arising under the legacy is voidable. The provisions of sections 2082, 2083, 2339 (2) and sections 2341 and 2343 apply.
- (2) The same applies to a claim to a compulsory share, if the person entitled to the compulsory share is guilty of such misconduct.

### **Division 7**

## **Renunciation of inheritance**

### **Section 2346**

#### **Effect of the renunciation of inheritance, possibility of limitation**

- (1) Relatives and the spouse of the testator may renounce their right of intestate succession by contract with the testator. The person renouncing is excluded from intestate succession as though they had no longer been alive at the time of the devolution of the inheritance; they do not have a right to a compulsory share.
- (2) The renunciation may be restricted to the right to a compulsory share.

### **Section 2347**

#### **Personal requirements, representation**

- (1) If the person renouncing is under guardianship, ratification by the family court is required for the renunciation of the inheritance; if they are under parental custody, the same applies. Ratification by the custodianship court is required for a renunciation by the custodian.
- (2) The testator may enter into the contract only in person; if they have limited capacity to contract, they do not require the approval of their legal representative. If the testator is incapable of contracting, the contract may be concluded by the legal representative; the ratification of the family court or custodianship court is required to the same extent as specified in subsection (1).

### **Section 2348**

#### **Form**

The contract on the renunciation of the inheritance is to be recorded by a notary.

### **Section 2349**

#### **Extension to descendants**

If a descendant or a collateral relative of the testator renounces their right of intestate succession, the effect of the renunciation extends to their descendants, unless otherwise provided.

### **Section 2350**

#### **Renunciation to the benefit of another**

- (1) If a person renounces their right of intestate succession to the benefit of another, it is to be assumed, in case of doubt, that the renunciation is to take effect only in the event that the other becomes an heir.
- (2) If a descendant of the testator renounces their right of intestate succession, then it is to be assumed, in case of doubt, that the renunciation is to take effect only to the benefit of the other descendants and the spouse or life partner of the testator.

### **Section 2351**

#### **Revocation of a renunciation of the inheritance**

The provision of section 2348 and, in respect of the testator, also the provision of section 2347 (2) sentence 1 first half-sentence and second sentence, apply to a contract through which a renunciation of the inheritance is revoked.

### **Section 2352**

#### **Renunciation of gifts**

A person who has been appointed heir or left a legacy by will may renounce the testamentary gift by contract with the testator. The same applies to a gift made in a contract of inheritance to a third party. The provisions of sections 2347 to 2349 apply.

**Division 8**  
**Certificate of inheritance**

**Section 2353**

**Competence of the probate court, application**

The probate court is to issue to the heir on application a certificate concerning their right of succession, and, if they are entitled only to a share of the inheritance, concerning the size of their share (certificate of inheritance).

**Sections 2354 to 2359**  
**(repealed)**

**Section 2360**  
**(repealed)**

**Section 2361**

**Revocation or declaration of invalidity of an inaccurate certificate of inheritance**

If it transpires that a certificate of inheritance that has been issued is incorrect, the probate court is to revoke it. The certificate of inheritance becomes invalid upon its revocation.

**Section 2362**

**Claim to surrender of the true heir and claim to information**

- (1) The true heir may demand from a person in possession of an incorrect certificate of inheritance that the latter surrender it to the probate court.
- (2) A person to whom an incorrect certificate of inheritance has been issued is to provide the true heir with information concerning the condition of the inheritance and the location of the objects of the inheritance.

**Section 2363**

**Claim to surrender of the reversionary heir and of the executor**

The reversionary heir as well as the executor has the right specified in section 2362 (1).

**Section 2364**  
**(repealed)**

**Section 2365**

**Presumption of legitimacy of the certificate of inheritance**

It is presumed that the person who is named as heir in the certificate of inheritance has the right of succession stated in the certificate, and that they are not restricted by any directions other than those stated.

**Section 2366**

**Presumption of legal force of a certificate of inheritance**

If a person acquires from the person named in the certificate of inheritance as heir, by a legal transaction, an object of the inheritance, a right in such object, or a release from a right belonging to the inheritance, the contents of the certificate of inheritance are deemed in their favour to be correct as far as the presumption under section 2365 extends, unless they know of the incorrectness or know that the probate court has demanded the return of the certificate of inheritance for incorrectness.

**Section 2367**

**Performance for the person named as heir in the certificate of inheritance**

The provision of section 2366 applies accordingly if an act of performance has been effected to the person named as heir in the certificate of inheritance, on the basis of a right belonging



to the inheritance, or if a legal transaction, containing a disposition of the right and not falling under the provision of section 2366, has been entered into between them and another in respect of such a right.

**Section 2368**  
**Executor's certificate**

Upon application, the probate court is to issue to an executor a certificate of their appointment. The provisions on a certificate of inheritance apply accordingly to this certificate; upon the ending of the office of the testator the certificate becomes invalid.

**Section 2369**  
**(repealed)**

**Section 2370**  
**Presumption of legal force of a declaration of death**

(1) If a person who has been declared dead or whose time of death has been determined in accordance with the provisions of the Missing Persons Act (*Verschollenheitsgesetz*) survives the point in time that is deemed to be their time of death, or if they died before this point in time, the person who would be the heir on the basis of the declaration of death or the determination of the time of death is deemed for the benefit of the third party, even without the issuance of a certificate of inheritance, to be the heir with regard to the legal transactions designated in section 2366 and 2367, unless the third party is aware that the declaration of death or the determination of the time of death is incorrect or knows that they have been revoked.

(2) Where a certificate of inheritance has been issued, the person who has been declared to be dead, or whose time of death has been determined in accordance with the provisions of the Missing Persons Act (*Verschollenheitsgesetz*), has the rights specified in section 2362 if they are still alive. A person whose death, or the declaration of whose death or the determination of the time of whose death has been wrongly assumed, has the same rights.

**Division 9**  
**Purchase of an inheritance**

**Section 2371**  
**Form**

A contract by which an heir sells the inheritance which has devolved upon them is to be recorded by a notary.

**Section 2372**  
**Advantages due to purchaser**

The advantages which ensue from the lapse of a legacy or a testamentary burden, or from the duty of a co-heir to adjust advancements, are owed to the purchaser.

**Section 2373**  
**Parts remaining for the seller**

A share of the inheritance that devolves to the seller after the completion of the sale, by reversionary succession or as a result of a person ceasing to be a co-heir, and a preferential legacy given to the seller are, in case of doubt, not to be deemed included in the sale. The same applies to family papers and family pictures.

**Section 2374**  
**Duty to surrender**

The seller is obliged to surrender to the purchaser the objects of the inheritance existing at the time of the sale, including what they acquired before the sale by reason of a right belonging to the inheritance or as compensation for the destruction, damage or deprivation of an object of the inheritance, or by a legal transaction that related to the inheritance.

### **Section 2375**

#### **Duty to compensate**

(1) If before the sale the seller consumed, gratuitously alienated or gratuitously encumbered an object of the inheritance, the seller is obliged to compensate the purchaser for the value of the object consumed or alienated, or, in the event of encumbrance, for any reduction in value. The duty to compensate does not arise if, at the time of the purchase, the purchaser knew of the consumption or gratuitous disposition.

(2) In all other cases, the purchaser may not claim compensation for deterioration, destruction or impossibility of surrender of an object of the estate occurring for any other reason.

### **Section 2376**

#### **Liability of the seller**

(1) The liability of the seller for defects of title is limited to their having a right of succession, to it not being limited by the right of a reversionary heir or by the appointment of an executor, to there being no legacies, testamentary burdens, compulsory share burdens, duties to adjust advancements or directions concerning the partitioning of the estate and for there being no unlimited liability towards all the creditors of the estate or individual creditors of the estate.

(2) The seller is not liable for material defects in an object belonging to the inheritance unless they have fraudulently failed to disclose a defect or have assumed a guarantee for the nature of the object.

### **Section 2377**

#### **Restoration of extinguished legal relationships**

The legal relationships extinguished as a result of the devolution of an inheritance by the merger of a right with an obligation or of a right with a charge are, in the relationship between the purchaser and the seller, deemed not to have been extinguished. If necessary, such a legal relationship is to be reinstated.

### **Section 2378**

#### **Obligations of the estate**

(1) The purchaser is obliged in relation to the seller to perform the obligations of the estate, unless the seller is responsible under section 2376 for their not existing.

(2) If the seller performed an obligation of the estate before the sale, they may demand reimbursement from the purchaser.

### **Section 2379**

#### **Emoluments and charges prior to the sale**

The emoluments for the period before the sale remain with the seller. The seller bears the charges for that period, including the interest on the obligations of the estate. However, all charges payable from the inheritance and all extraordinary charges that are to be regarded as imposed on the original value of the objects of the inheritance are borne by the purchaser.

### **Section 2380**

#### **Devolution of the risk, emoluments and charges after the sale**

From the completion of the purchase on, the purchaser bears the risk of accidental destruction and of chance deterioration of the objects of the inheritance. From this date on, the emoluments are due to the purchaser and they bear the charges.

### **Section 2381**

#### **Reimbursement of outlays and expenses**

(1) The purchaser is to reimburse to the seller the necessary outlays that the seller made on the inheritance before the sale.

(2) For other outlays incurred before the sale, the purchaser is to effect reimbursement to the extent that the value of the inheritance is increased by them at the time of the sale.

### **Section 2382**

#### **Liability of the purchaser in relation to the creditors of the estate**

- (1) From the completion of the purchase on, the purchaser is liable to the creditors of the estate, notwithstanding the continuation of the liability of the seller. This also applies to the obligations for whose performance the purchaser is not obliged in relation to the seller under sections 2378 and 2379.
- (2) The liability of the purchaser in relation to the creditors may not be excluded or restricted by agreement between the purchaser and the seller.

### **Section 2383**

#### **Scope of liability of the purchaser**

- (1) The provisions concerning the limitation of the liability of an heir apply to the liability of the purchaser. They have unlimited liability to the extent that the seller, at the time of the sale, has unlimited liability. If the liability of the purchaser is restricted to the inheritance, their claims arising from the purchase are deemed to be part of the inheritance.
- (2) The filing of the inventory by the seller or the purchaser also benefits the other party, unless the latter has unlimited liability.

### **Section 2384**

#### **The duty of notification of the seller towards the creditors of the estate, right of inspection**

- (1) The seller is obliged to the creditors of the estate to notify the probate court of the sale of the inheritance and the name of the purchaser without undue delay. Notification by the purchaser replaces notification by the seller.
- (2) The probate court is to allow any person to inspect the notification who satisfactorily demonstrates an interest of a legal nature.

### **Section 2385**

#### **Application to similar contracts**

- (1) The provisions on the purchase of an inheritance apply accordingly to the purchase of an inheritance acquired by the seller contractually, and to other contracts the purpose of which is the alienation of an inheritance which has devolved to the alienor or which has been acquired by them in another way.
- (2) In the case of a donation, the giver is not obliged to compensate for any objects of the estate that were consumed or alienated gratuitously before the donation was made, nor for any charge upon such objects created gratuitously before the donation. The obligation specified in section 2376 concerning the warranty for defects of title does not affect the giver; if the giver has fraudulently concealed a defect, they are obliged to compensate the recipient of the gift for the damage arising from it.