

IV. GERMAN CIVIL CODE (BGB)

Book 1

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.

Section 13 Consumer

A consumer means every natural person who enters into a legal transaction for purposes that predominantly are outside his 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 entering into a legal transaction, acts in exercise of his or its trade, business or profession.

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

Section 90 Concept of the thing

Only corporeal objects are things as defined by law.

Section 90a Animals

¹Animals are not things. ²They are protected by special statutes. ³They are governed by the provisions that apply to things, with the necessary modifications, except insofar as otherwise provided.

Section 104 Incapacity to contract

A person is incapable of contracting if

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

Section 105 Voidness of declaration of intent

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

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

Section 105a

Everyday transactions

1If a person of full age incapable of contracting enters into an everyday transaction that can be effected with funds of low value, the contract he enters into is regarded as effective with regard to performance and, if agreed, consideration, as soon as performance has been effected and consideration rendered. 2Sentence 1 above does not apply in the case of considerable danger to the person or the property of the person incapable of contracting.

Section 106

Limited capacity for minors to contract

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

Section 107

Consent of legal representative

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

Section 108

Entry into a contract without consent

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

(2) 1If the other party requests the representative to declare his ratification, the declaration can only be made to the other party; a declaration or refusal of ratification made to the minor before the request of the other party is ineffective. 2The ratification may only be declared before the expiry of two weeks after receipt of the demand; if ratification is not declared, it is considered to have been refused.

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

Section 109

Right of revocation of the other party

(1) 1Until the contract is ratified, the other party is entitled to revoke it. 2Declaration of revocation may also be made to the minor.

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

Section 110

Payment by minor with own means

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

Section 111

Unilateral legal transactions

¹A unilateral legal transaction that a minor undertakes without the necessary consent of the legal representative is ineffective. ²If 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 due delay. ³Rejection is not possible if the representative had given the other person notice of consent.

Section 113

Service or employment relationship

(1) ¹If 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. ²Contracts are excluded for which the legal representative needs the ratification of the family court.

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

(3) ¹If the legal representative is a guardian, the authorisation, if he refuses it, may, on the application of the minor, be replaced by the family court. ²The family court must give substitute authorisation if it is in the interest of the ward.

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

Section 119

Voidability for mistake

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

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

Section 120

Voidability for incorrect transmission

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

Section 121

Period for avoidance

(1) ¹Avoidance must be effected, in the cases set out in sections 119 and 120, without culpable delay (without undue delay) after the person entitled to avoid obtains knowledge of the ground for avoidance. ²Avoidance made to an absent person is regarded as effected in good time if the declaration of avoidance is forwarded without undue delay.

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

Section 122

Liability in damages of the person declaring avoidance

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

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

Section 123

Voidability on the grounds of deceit or duress

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

(2) ¹If a third party committed this deceit, a declaration that had to be made to another may be avoided only if the latter knew of the deceit or ought to have known it. ²If a person other than the person to whom the declaration was to be made acquired a right as a direct result of the declaration, the declaration made to him may be avoided if he knew or ought to have known of the deceit.

Section 124

Period for avoidance

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

(2) ¹In the case of deceit, the period commences at the time when the person entitled to avoid discovers the deceit, and in case of duress, from the time when the duress stops. ²The provisions in sections 206, 210 and 211 applicable to limitation apply with the necessary modifications to the running of the period.

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

Section 125

Voidness resulting from a defect of form

¹A legal transaction that lacks the form prescribed by statute is void. ²In case of doubt, lack of the form specified by legal transaction also results in voidness.

Section 126

Written form

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

(2) ¹In the case of a contract, the signature of the parties must be made on the same document. ²If more than one counterpart of the contract is drawn up, it suffices if each party signs the document intended for the other party.

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

(4) Notarial recording replaces the written form.

Section 126a

Electronic form

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

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

Section 126b

Text form

1If 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. 2A durable medium is any medium that

1. enables the recipient to retain or store a declaration included on the medium that is addressed to him personally such that it is accessible to him 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 under sections 126, 126a or 126b also apply, in case of doubt, to the form specified by legal transaction.

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

(3) 1For compliance with the electronic form required by legal transaction, unless a different intention is to be assumed, an electronic signature other than provided for in section 126a also suffices and, in the case of a contract, the exchange of a declaration of an offer and of acceptance which are each provided with an electronic signature. 2If such a form is chosen, an electronic signature in accordance with section 126a may be demanded subsequently, or if this is not possible for one of the parties, notarial recording in compliance with section 126.

Section 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) 1If the official certification of a declaration is prescribed by law, the declaration must be put in writing and the signature of the person declaring be certified by a notary. 2If the declaration is signed by the issuer making his mark, the certification of the initials provided for in section 126 (1) is necessary and sufficient.

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

Section 130

Effectiveness of a declaration of intent to absent parties

- (1) ¹A declaration of intent that is to be made to another becomes effective, if made in his absence, at the point of time when this declaration reaches him. ²It does not become effective if a revocation reaches the other previously or at the same time.
- (2) The effectiveness of a declaration of intent is not affected if the person declaring dies or loses capacity to contract after making a declaration.
- (3) These provisions apply even if the declaration of intent is to be made to a public authority.

Section 131

Effectiveness in relation to persons without full capacity to contract

- (1) If a declaration of intent is made to a person incapable of contracting, it does not become effective until it has reached his legal representative.
- (2) ¹The same applies if the declaration of intent is made to a person with limited capacity to contract. ²If, however, the declaration merely provides a legal advantage to the person with limited capacity to contract, or if the legal representative has given his consent, the declaration becomes effective at the time when it reaches the person with limited capacity.

Section 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 138

Legal transaction contrary to public policy; usury

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

Section 139

Partial invalidity

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

Section 140

Re-interpretation

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

Section 141
Confirmation of a void legal transaction

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

Section 142
Effect of avoidance

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

Section 143
Declaration of avoidance

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

Section 144
Confirmation of a voidable legal transaction

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

Section 145
Binding effect of an offer

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

Section 146
Expiry of an offer

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

Section 147
Period for acceptance

(1) ¹An offer made to a person who is present may only be accepted immediately. ²This also applies to an offer made by one person to another using a telephone or another technical facility.

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

Section 148
Fixing a period for acceptance

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

Section 149
Late receipt of a declaration of acceptance

¹If a declaration of acceptance received late by the offeror was sent in such a way that it would have reached him in time if it had been forwarded in the usual way, and if the offeror ought to have recognised this, he must notify the acceptor of the delay after receipt of the declaration without undue delay, unless this has already been done. ²If he delays the sending of the notification, the acceptance is deemed not to be late.

Section 150
Late and altered acceptance

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

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

Section 151
Acceptance without declaration to the offeror

¹A 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. ²The point of time when the offer expires is determined in accordance with the intention of the offeror, which is to be inferred from the offer or the circumstances.

Section 157
Interpretation of contracts

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

Section 164
Effect of a declaration made by the agent

(1) ¹A declaration of intent which a person makes within the scope of his own power of agency in the name of a principal takes effect directly in favour of and against the principal. ²It is irrelevant whether the declaration is made explicitly in the name of the principal, or whether it may be gathered from the circumstances that it is to be made in his name.

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

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

Section 165
Agent with limited capacity to contract

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

Section 166
Absence of intent; imputed knowledge

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

(2)¹ If, in the case of a power of agency granted by a legal transaction (authority), the agent has acted c with certain instructions given by the principal, then the latter may not invoke the lack of knowledge of the agent with regard to circumstances of which the principal himself knew. ²The 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

¹The expiry of the authority depends on the legal relationship on which its conferment is based. ²The authority is also revocable if the legal relationship is continued, unless this relationship leads to a different conclusion. ³The provision under section 167 (1) applies with the necessary modifications to the declaration of revocation.

Section 172
Letter of authorisation

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

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

Section 174
Unilateral legal transaction by an authorised representative

¹A 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. ²Rejection is excluded if the principal notified the other of the authorisation.

Section 177

Entry into contract by an unauthorised agent

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

(2) 1If the other party requires the principal to make a declaration as to whether or not he ratifies the contract, the declaration may only be made to that other party; a ratification or a refusal of ratification declared to the agent before the demand is without effect. 2The ratification may only be declared before the expiry of two weeks after receipt of the demand; if it is not declared, it is considered to have been refused.

Section 178

Right of revocation of the other party

1Until the ratification of the contract, the other party is entitled to revoke it, unless he knew of the lack of power of agency when he entered into the contract. 2The revocation may also be declared to the agent.

Section 179

Liability of an unauthorised agent

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

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

(3) 1The agent is not liable, if the other party knew or ought to have known of the lack of power of agency. 2The agent is also not liable if he had limited capacity to contract, unless he acted with the consent of his legal representative.

Section 181

Contracting with oneself

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

Section 182

Approval

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

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

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

Section 183
Revocability of consent

1Prior approval (consent) may be revoked until the legal transaction is undertaken, unless the legal relationship on which this consent is based leads to a different conclusion. 2Revocation may either be declared to one party or to the other.

Section 184
Retroactive effect of ratification

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

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

Section 185
Disposition by an unauthorised person

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

(2) 1The 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. 2In the last two cases, if more than one conflicting disposition has been made in respect of the thing, then only the first disposition is effective.

Book 2

Section 241
Duties arising from an obligation

(1) 1By virtue of an obligation a creditor is entitled to claim performance from the debtor. 2The performance may also consist in forbearance.

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

Section 241a
Unsolicited performance

(1) The supply of movable things that are not being sold by way of an execution of judgment or otherwise by authority of law (goods), or the provision of other services to the consumer by a trader, does not create 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 if he had taken reasonable care.

(3) 1There may be no derogation from the stipulations of this provision to the disadvantage of the consumer. 2The stipulations apply even if they are circumvented by other constructions.

Section 242
Performance in good faith

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

Section 243
Obligation in kind

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

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

Section 246
Statutory interest rate

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

Section 247
Basic rate of interest

(1) ¹The 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. ²The reference rate is the rate of interest for the most recent main refinancing operation of the European Central Bank before the first calendar day of the relevant six-month period.

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

Section 249
Nature and extent of damages

(1) A person who is liable in damages must restore the position that would exist if the circumstance obliging him to pay damages had not occurred.

(2) ¹Where damages are payable for injury to a person or damage to a thing, the creditor may demand the required monetary amount in lieu of restoration. ²When a thing is damaged, the monetary amount required under sentence 1 only includes value-added tax if and to the extent that it is actually incurred.

Section 250
Damages in money after the specification of a period of time

¹The creditor may specify a reasonable period of time for the person liable in damages to undertake restoration and declare that he will reject restoration after the period of time ends. ²After the end of the period of time the creditor 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 creditor, the person liable in damages must compensate the creditor in money.

(2) ¹The person liable in damages may compensate the creditor in money if restoration is only possible with disproportionate expenses. ²Expenses 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

1The damage to be compensated for also comprises the lost profits. 2Those profits are considered lost that in the normal course of events or in the special circumstances, particularly due to the measures and precautions taken, could probably be expected.

Section 253

Intangible damage

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

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

Section 254

Contributory negligence

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

(2) 1This also applies if the fault of the injured person is limited to failing to draw the attention of the debtor to the danger of unusually extensive damage, where the debtor neither was nor ought to have been aware of the danger, or to failing to avert or reduce the damage. 2The provision of section 278 applies with the necessary modifications.

Section 271

Time of performance

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

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

Section 275

Exclusion of the duty of performance

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

(2) 1The debtor may refuse performance to the extent that performance requires expense and effort which, taking into account the subject matter of the obligation and the requirements of good faith, is grossly disproportionate to the interest in performance of the creditor. 2When it is determined what efforts may reasonably be required of the debtor, it must also be taken into account whether he is responsible for the obstacle to performance.

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

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

Section 276
Responsibility of the debtor

- (1) ¹The debtor is responsible for intention and negligence, if a higher or lower degree of liability is neither laid down nor to be inferred from the other subject matter of the obligation, including but not limited to the giving of a guarantee or the assumption of a procurement risk. ²The provisions of sections 827 and 828 apply with the necessary modifications.
- (2) A person acts negligently if he fails to exercise reasonable care.
- (3) The debtor may not be released in advance from liability for intention.

Section 277
Standard of care in ones own affairs

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

Section 278
Responsibility of the debtor for third parties

¹The debtor is responsible for fault on the part of his legal representative, and of persons whom he uses to perform his obligation, to the same extent as for fault on his own part. ²The provision of section 276 (3) does not apply.

Section 280
Damages for breach of duty

- (1) ¹If the debtor breaches a duty arising from the obligation, the creditor may demand damages for the damage caused thereby. ²This does not apply if the debtor is not responsible for the breach of duty.
- (2) Damages for delay in performance may be demanded by the creditor only subject to the additional requirement of section 286.
- (3) Damages in lieu of performance may be demanded by the creditor only subject to the additional requirements of sections 281, 282 or 283.

Section 281
Damages in lieu of performance for nonperformance or failure to render performance as owed

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

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

Section 282

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

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

Section 283

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

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

Section 284

Reimbursement of futile expenses

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

Section 286

Default of the debtor

(1) 1If the debtor, following a warning notice from the creditor that is made after performance is due, fails to perform, he is in default as a result of the warning notice. 2Bringing an action for performance and serving a demand for payment in summary debt proceedings for recovery of debt have the same effect as a warning notice.

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

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

(3) 1The debtor of a claim for payment is in default at the latest if he does not perform within thirty days after the due date and receipt of an invoice or equivalent statement of payment; this applies to an debtor who is a consumer only if these consequences are specifically referred to in the invoice or statement of payment. 2If the time at which the invoice or payment statement is received by the debtor is uncertain, a debtor who is not a consumer is in default at the latest thirty days after the due date and receipt of the consideration.

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

Section 287

Liability during default

1While he is in default, the debtor is responsible for all negligence. 2He is liable for performance in the case of chance as well, unless the damage would have occurred even if performance had been made in good time.

Section 288

Default interest

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

Section 305

Incorporation of standard business terms into the contract

- (1) 1Standard business terms are all contract terms pre-formulated for more than two contracts which one party to the contract (the user) presents to the other party upon the entering into of the contract. 2It is irrelevant whether the provisions take the form of a physically separate part of a contract or are made part of the contractual document itself, what their volume is, what typeface or font is used for them and what form the contract takes. 3Contract terms do not become standard business terms to the extent that they have been negotiated in detail between the parties.
- (2) Standard business terms only become a part of a contract if the user, when entering into the contract,
1. refers the other party to the contract to them explicitly or, where explicit reference, due to the way in which the contract is entered into, is possible only with disproportionate difficulty, by posting a clearly visible notice at the place where the contract is entered into, and
 2. gives the other party to the contract, in an acceptable manner, which also takes into reasonable account any physical handicap of the other party to the contract that is discernible to the user, the opportunity to take notice of their contents,
- and if the other party to the contract agrees to their applying.
- (3) The parties to the contract may, while complying with the requirements set out in subsection (2) above, agree in advance that specific standard business terms are to govern a specific type of legal transaction.

Section 305a

Incorporation in special cases

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

1. the tariffs and regulations of the railways issued with the approval of the competent transport authority or on the basis of international conventions, and the terms of transport approved under the Passenger Transport Act [Personenbeförderungsgesetz], of trams, trolley buses and motor vehicles in regular public transport services,

2. the standard business terms published in the gazette of the Federal Network Agency for Electricity, Gas, Telecommunications, Post and Railway [Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen] and kept available on the business premises of the user,

a) into transport contracts entered into off business premises by the posting of items in postboxes,

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

Section 305b

Priority of individually agreed terms

Individually agreed terms take priority over standard business terms.

Section 305c

Surprising and ambiguous clauses

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

(2) Any doubts in the interpretation of standard business terms are resolved against the user.

Section 306

Legal consequences of non-incorporation and ineffectiveness

(1) If standard business terms in whole or in part have not become part of the contract or are ineffective, the remainder of the contract remains in effect.

(2) To the extent that the terms have not become part of the contract or are ineffective, the contents of the contract are determined by the statutory provisions.

(3) The contract is ineffective if upholding it, even taking into account the alteration provided in subsection (2) above, would be an unreasonable hardship for one party.

Section 306a

Prohibition of circumvention

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

Section 307

Test of reasonableness of contents

(1) Provisions in standard business terms are ineffective if, contrary to the requirement of good faith, they unreasonably disadvantage the other party to the contract with the user. ²An unreasonable disadvantage may also arise from the provision not being clear and comprehensible.

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

1. is not compatible with essential principles of the statutory provision from which it deviates,

or

2. limits essential rights or duties inherent in the nature of the contract to such an extent that attainment of the purpose of the contract is jeopardised.

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

Section 308

Prohibited clauses with the possibility of evaluation

In standard business terms the following are in particular ineffective

1. (Period of time for acceptance and performance) a provision by which the user reserves to himself the right to unreasonably long or insufficiently specific periods of time for acceptance or rejection of an offer or for rendering performance; this does not include the reservation of the right not to perform until after the end of the period of time for withdrawal under section 355 subsections (1) and (2);
2. (Additional period of time) a provision by which the user, contrary to legal provisions, reserves to himself the right to an unreasonably long or insufficiently specific additional period of time for the performance he is to render;
3. (Reservation of the right to revoke) the agreement of a right of the user to free himself from his obligation to perform without any objectively justified reason indicated in the contract; this does not apply to continuing obligations;
4. (Reservation of the right to modify) the agreement of a right of the user to modify the performance promised or deviate from it, unless the agreement of the modification or deviation can reasonably be expected of the other party to the contract when the interests of the user are taken into account;
5. (Fictitious declarations) a provision by which a declaration by the other party to the contract with the user, made when undertaking or omitting a specific act, is deemed to have been made or not made by the user unless
 - a) the other party to the contract is granted a reasonable period of time to make an express declaration, and
 - b) the user agrees to especially draw the attention of the other party to the contract to the intended significance of his behaviour at the beginning of the period of time;
6. (Fictitious receipt) a provision providing that a declaration by the user that is of special importance is deemed to have been received by the other party to the contract;
7. (Reversal of contracts) a provision by which the user, to provide for the event that a party to the contract revokes the contract or gives notice of termination of the contract, may demand
 - a) unreasonably high remuneration for enjoyment or use of a thing or a right or for performance rendered, or
 - b) unreasonably high reimbursement of expenses;
8. (Unavailability of performance) the agreement, admissible under no. 3, of the reservation by the user of a right to free himself from the duty to perform the contract in the absence of availability of performance, if the user does not agree to
 - a) inform the other party to the contract without undue delay, of the unavailability, and
 - b) reimburse the other party to the contract for consideration, without undue delay.

Section 309

Prohibited clauses without the possibility of evaluation

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

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

...

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

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

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

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

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

...

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;

...

14. (waiver of claim) a provision according to which the other party to the contract may assert its claims against the user in court only after it has attempted an amicable settlement in a procedure for out-of-court settlement of a dispute;

Section 310

Scope of application

(1) ...

(2) ...

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

Section 311

Obligations created by legal transaction and obligations similar to legal transactions

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

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

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

(3) ¹An obligation with duties under section 241 (2) may also come into existence in relation to persons who are not themselves intended to be parties to the contract. ²Such an obligation comes into existence in particular if the third party, by laying claim to being given a particularly high degree of trust, substantially influences the pre-contract negotiations or the entering into of the contract.

Section 311a

Obstacle to performance when contract is entered into

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

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

Section 311b

Contracts on plots of land, assets and an estate

(1) ¹A contract by which one party agrees to transfer or acquire ownership of a plot of land must be recorded by a notary. ²A contract not entered into in this form becomes valid with all its contents if a declaration of conveyance and registration in the Land Register are effected.

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

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

(4) ¹A contract relating to the estate of a third party who is still living is void. ²The same applies to a contract relating to a compulsory portion or a legacy from the estate of a third party who is still living.

(5) ¹Subsection (4) above does not apply to a contract entered into between future heirs on intestacy relating to the hereditary share on intestacy or the compulsory portion of one of them. ²Such a contract must be recorded by a notary.

Section 312

Scope of application

(1) The provisions of chapters 1 and 2 of this subtitle apply only to consumer contracts within the meaning of section 310 (3) that have as their subject matter the nongratuitous performance by the trader.

(2) ...

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 which 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 number 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 which 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 him.

Section 312c

Distance contracts

(1) Distance contracts are contracts for which the trader, or a person acting in the trader's name or on his 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 which can be used to initiate or to conclude a contract, without requiring the simultaneous physical presence of the parties to the contract, 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

Information requirements

(1) ¹In 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]. ²Unless the parties to the contract have expressly agreed otherwise, the information the trader provides by way of fulfilling this obligation shall become part of the contract's subject matter.

(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 312g

Right of withdrawal

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

(2) ¹Unless otherwise agreed by the parties, the right of withdrawal shall 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 which are highly perishable, or which may quickly pass their expiration date,
3. contracts for the supply of sealed goods which 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 which, according to 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 thirty days following the conclusion of the sales contract, and the current value of which is dependent on fluctuations in the market which cannot be controlled by the trader,
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, whose price is dependent on fluctuations on the financial market which cannot be controlled by the trader and which 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 Capital Investment Code [Kapitalanlagegesetzbuch], and with other tradeable securities, foreign currency, derivatives or money market instruments,
9. subject to the stipulations of sentence 2, 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 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 shall 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 his contract declaration by telephone or the contract is an off-premises contract, and

13. contracts that are notarially recorded; this shall 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.

²The exception made in sentence 1 number 9 does not apply to contracts relating to travel services pursuant to section 651a if they are off-premises contracts, unless the oral negotiations on the basis of which the contract is concluded were conducted in response to a previous order placed by the consumer.

(3) In addition, the right of withdrawal does not exist for contracts regarding which the consumer, under sections 495 and 506 to 512, is already 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 Capital Investment Code [Kapitalanlagegesetzbuch].

Section 323

Revocation for nonperformance or for performance not in conformity with the contract

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

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

1. the debtor seriously and definitively refuses performance,
2. the debtor does not render performance by a date specified in the contract or within a period specified in the contract, in spite of the fact that, according to a notice given by the creditor to the debtor 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 specified is of essential importance to the creditor, or
3. in the case of work not having been carried out in accordance with the contract, special circumstances exist which, when the interests of both parties are weighed, justify immediate revocation.

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

(4) The creditor may revoke the contract before performance is due if it is obvious that the requirements for revocation will be met.

(5) 1If the debtor has performed in part, the creditor may revoke the whole contract only if he has no interest in part performance. 2If the debtor has not performed in conformity with the contract, the creditor may not revoke the contract if the breach of duty is trivial.

(6) Revocation is excluded if the creditor is solely or very predominantly responsible for the circumstance that would entitle him to revoke the contract or if the circumstance for which the debtor is not responsible occurs at a time when the creditor is in default of acceptance.

Section 326

Release from consideration and revocation where the duty of performance is excluded

(1) 1If, under section 275 (1) to (3), the debtor is not obliged to perform, there is no entitlement to consideration; in the case of part performance, section 441 (3) applies with the necessary modifications. 2Sentence 1 does not apply if the debtor, in the case of failure to perform in conformity with the contract, does not, under section 275 (1) to (3), have to effect cure.

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

(3) 1If the creditor demands, under section 285, return of reimbursement obtained for the object owed or assignment of the claim to reimbursement, he remains obliged to render consideration. 2However, the latter is reduced under section 441 (3) to the extent that the value of the reimbursement or of the claim to reimbursement falls short of the value of the performance owed.

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

(5) If, under section 275 (1) to (3), the debtor does not have to perform, the creditor may revoke; section 323 applies with the necessary modifications to the revocation, subject to the provision that it is not necessary to specify a period of time.

Section 346

Effects of revocation

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

(2) 1In lieu of restitution or return, the debtor must provide compensation for value, to the extent that

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

2If consideration is specified in the contract, then this is to be used as a basis when the compensation for value is calculated; if compensation for value for the benefit of use of a loan is to be paid, it can be shown that the value of the benefit of use was lower.

(3) 1The 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 creditor is responsible for the deterioration or destruction or that the damage would also have occurred if the object had remained with the creditor,
3. if in case of statutory revocation the deterioration or destruction occurred with the person entitled, although the latter showed the care that he customarily exercises in his own affairs.

2Any remaining enrichment must be returned.

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

Section 349

Declaration of revocation

Revocation is effected by declaration to the other party.

Section 355

Right of withdrawal in consumer contracts

(1) 1If 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 intention to conclude the contract if the consumer withdraws from his declaration of intention within the period specified. 2The withdrawal is effected by a declaration being made to the trader. 3The declaration must unambiguously reflect the consumer's decision to withdraw from the contract. 4The withdrawal does not have to provide any grounds. 5Dispatch of the withdrawal in good time is sufficient to comply with the time limit.

(2) 1The withdrawal period is fourteen days. 2Unless otherwise provided, it begins upon the contract having been concluded.

(3) 1In the case of the contract being withdrawn from, the performance received is to be returned without undue delay. 2Where the law has specified a maximum period within which restitution is to be made, this shall commence running for the trader upon receipt of the declaration of withdrawal and, for the consumer, upon dispatch of the declaration of withdrawal. 3A consumer will be complying with this period by dispatching the goods in good time. 4In the event of withdrawal, the trader bears the risk of the return shipment of the goods.

Section 356

Right of withdrawal in off-premises contracts and distance contracts

(1) 1The 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 number 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. 2Where the consumer avails himself 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) ¹The 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 number 1 or of Article 246b section 2 (1) of the Introductory Act to the Civil Code [Einführungsgesetz zum Bürgerlichen Gesetzbuche]. ²The right of withdrawal expires 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) ¹In the case of a contract for the provision of services, the right of withdrawal expires 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 his express consent thereto and concurrently acknowledged that he would lose the right to withdraw from the contract once the trader has fully performed the contract. ²In the case of a contract relating to the provision of financial services, the right of withdrawal expires, 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 his 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 expires 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 his consent, he would lose the right to withdraw from the contract upon the performance of the contract having commenced.

Section 357

Legal consequences of 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) ¹The trader must also retribute any payments the consumer may have made for the delivery. ²This does not apply inasmuch as the consumer has incurred additional costs because he opted for a type of delivery other than the least expensive type of standard delivery offered by the trader.
- (3) ¹In making the repayment, the trader must use the same means of payment that the consumer used in making the payment. ¹Sentence 1 does not apply if the parties expressly have agreed otherwise and the consumer does not incur any costs as a result.
- (4) ¹In the case of a sale of consumer goods, the trader may refuse to make repayment until he has received the returned goods or the consumer has provided proof that he has dispatched the goods. ²This 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) ¹The 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 number 2 of the Introductory Act to the Civil Code [Einführungsgesetz zum Bürgerlichen Gesetzbuche] of this obligation. ²Sentence 1 does not apply if the trader has stated that he is prepared to bear these costs. ³In 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 his own costs if, by their nature, these goods cannot be returned by post.

(7) The consumer shall be liable for any 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 Article 246a section 1 (2) sentence 1 number 1 of the Introductory Act to the Civil Code [Einführungsgesetz zum Bürgerlichen Gesetzbuche] of his right of withdrawal.

(8) ¹Where 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 shall owe the trader compensation for the value of the performance provided until the time of the withdrawal in those cases in which the consumer has expressly demanded that the trader begin with the performance prior to expiry of the withdrawal period. ²The 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 number 1 and 3 of the Introductory Act to the Civil Code [Einführungsgesetz zum Bürgerlichen Gesetzbuche]. ³For off-premises contracts, the claim pursuant to sentence 1 exists only in those cases in which the consumer has transmitted his request pursuant to sentence 1 on a durable medium. ⁴In calculating the compensation for value, the total price agreed upon is to be used as a basis. ⁴If the total price agreed upon is excessive, the compensation for value shall be calculated on the basis of the market value of the performance provided.

(9) Where the consumer withdraws from a contract for the supply of digital content that is not contained in a tangible medium, he shall not compensate for value.

Section 362

Extinction by performance

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

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

Section 387

Requirements of set-off

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

Section 388
Declaration of set-off

1Set-off is effected by declaration to the other party. 2The 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 433
Typical contractual duties in a purchase agreement

- (1) 1By 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. 2The seller must procure the thing for the buyer free from material and legal defects.
- (2) The buyer is obliged to pay the seller the agreed purchase price and to accept delivery of the thing purchased.

Section 434
Material defects

(1) 1The thing is free from material defects if, upon the passing of the risk, the thing has the agreed quality. 2To the extent that the quality has not been agreed, the thing is free of material defects

1. if it is suitable for the use intended under the contract,
2. if it is suitable for the customary use and its quality is usual in things of the same kind and the buyer may expect this quality in view of the type of the thing.

3Quality under sentence 2 no. 2 above includes characteristics which the buyer can expect from the public statements on specific characteristics of the thing that are made by the seller, the producer (section 4 (1) and (2) of the Product Liability Act [Produkthaftungsgesetz]) or his assistant, including without limitation in advertising or in identification, unless the seller was not aware of the statement and also had no duty to be aware of it, or at the time when the contract was entered into it had been corrected in a manner of equal value, or it did not influence the decision to purchase the thing.

(2) 1It is also a material defect if the agreed assembly by the seller or persons whom he used to perform his obligation has been carried out improperly. 2In addition, there is a material defect in a thing intended for assembly if the assembly instructions are defective, unless the thing has been assembled without any error.

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

Section 435
Legal defects

1The thing is free of legal defects if third parties, in relation to the thing, can assert either no rights, or only the rights taken over in the purchase agreement, against the buyer. 2It is equivalent to a legal defect if a right that does not exist is registered in the Land Register.

Section 437

Rights of buyer in the case of defects

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

1. under section 439, demand cure,
2. revoke the agreement under sections 440, 323 and 326 (5) or reduce the purchase price under section 441, and
3. under sections 440, 280, 281, 283 and 311a, demand damages, or under section 284, demand reimbursement of futile expenditure.

Section 438

Limitation of claims for defects

(1) The claims cited in section 437 nos. 1 and 3 become statute-barred

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

(2) In the case of a plot of land the limitation period commences upon the delivery of possession, in other cases upon delivery of the thing.

(...)

(5) Section 218 and subsection (4) sentence 2 above apply with the necessary modifications to the right to reduce the price set out in section 437.

Section 439

Cure

(1) As cure the buyer may, at his choice, demand that the defect is remedied or a thing free of defects is supplied.

(2) The seller must bear all expenses required for the purpose of cure, in particular transport, workmen's travel, work and materials costs.

(3) ¹If the buyer has installed the defective thing, in accordance with its nature and its intended use, into or onto another thing, in regard to cure the seller is obliged to reimburse the buyer for the necessary expenses for removing the defective thing and for installation or attachment of the repaired or delivered thing free of material defects. ²Section 442 (1) shall apply subject to the proviso that, for determining knowledge of the buyer, the time when the contract is entered into shall be replaced by the installation or attachment of the thing free of material defects by the buyer.

(4) ¹Without prejudice to section 275 (2) and (3), the seller may refuse to provide the kind of cure chosen by the buyer, if this cure is possible only at disproportionate expense. ²In this connection, account must be taken in particular, without limitation, of the value of the thing when free of defects, the importance of the defect and the question as to whether recourse could be had to the alternative kind of cure without substantial detriment to the buyer. ³The claim of

the buyer is restricted in this case to the alternative kind of cure; the right of the seller to refuse the alternative kind of cure too, subject to the requirements of sentence 1 above, is unaffected.

(5) If the seller supplies a thing free of defects for the purpose of cure, he may demand the return of the defective thing in accordance with sections 346 to 348.

Section 440

Special provisions on revocation and damages

1Except in the cases set out in section 281 (2) and section 323 (2), it is also not necessary to specify a period of time if the seller has refused to carry out both kinds of cure under section 439 (4) or if the kind of cure that the buyer is entitled to receive has failed or cannot reasonably be expected of him. 2A repair is deemed to have failed after the second unsuccessful attempt, unless in particular the nature of the thing or of the defect or the other circumstances leads to a different conclusion.

Section 441

Reduction of price

(1) 1Instead of revoking the agreement, the buyer may, by declaration to the seller, reduce the purchase price. 2The ground for exclusion under section 323 (5) sentence 2 does not apply.

(2) If more than one person comprises either the buyer or the seller, price reduction may be declared only by all or to all of them.

(3) 1In the case of a price reduction, the purchase price is to be reduced in the proportion in which the value of the thing free of defects would, at the time when the contract was entered into, have had to the actual value. 2To the extent necessary, the price reduction is to be established by appraisal.

(4) 1If the buyer has paid more than the reduced purchase price, the excess amount is to be reimbursed by the seller. 2Section 346 (1) and section 347 (1) apply with the necessary modifications.

Section 442

Knowledge of the buyer

(1) 1The rights of the buyer due to a defect are excluded if he has knowledge of the defect at the time when the contract is entered into. 2If the buyer has no knowledge of a defect due to gross negligence, the buyer may assert rights in relation to this defect only if the seller fraudulently concealed the defect or gave a guarantee of the quality of the thing.

(2) A right registered in the Land Register must be removed by the seller even if the buyer is aware of it.

Section 443

Guarantee

(1) Where the seller, the producer or some other third party enters into obligation, in addition to his statutory liability for defects, by way of making a declaration or in relevant advertising that was available prior to the purchase agreement 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 exhibit the quality or not fulfil other requirements than those concerning its freedom from defects, in each case as described in the declaration or in the relevant advertisement (guarantee), the buyer shall be entitled, in the case of a guarantee having been given, and notwithstanding his 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 having a specified quality for a specified period (guarantee of durability), the presumption will be that a material defect which appears during the guarantee period triggers the rights under the guarantee.

Section 444

Exclusion of liability

The seller may not invoke an agreement that excludes or restricts the rights of the buyer with regard to a defect insofar as the seller fraudulently concealed the defect or gave a guarantee of the quality of the thing.

Section 446

Passing of risk and of charges

1The risk of accidental destruction and accidental deterioration passes to the buyer upon delivery of the thing sold. 2From the time of delivery the emoluments of the thing accrue to the buyer and he bears the charges on it. 3If the buyer is in default of acceptance of delivery, this is equivalent to delivery.

Section 449

Retention of title

(1) If the seller of a movable thing has retained title until payment of the purchase price, then in case of doubt it is to be assumed that ownership is transferred subject to the condition precedent that the purchase price is paid in full (retention of title).

(2) Retention of title entitles the seller to demand the return of the thing only if he has revoked the agreement.

(3) An agreement on retention of title is void to the extent that the passing of ownership is made subject to the satisfaction by the buyer of third-party claims, including, without limitation, those of an enterprise associated with the seller.

Section 453

Purchase of rights

(1) The provisions on the purchase of things apply with the necessary modifications to the purchase of rights and other objects.

(2) The seller bears the costs of creation and transfer of the right.

(3) If a right comprising the right to possession of a thing is sold, the seller is obliged to deliver the thing to the buyer free of material and legal defects.

Section 474

The concept of sale of consumer goods

(1) 1Sales of consumer goods are contracts by which a consumer buys a movable thing from a trader. 2A contract will likewise constitute a sale of consumer goods where its subject matter comprises, in addition to the sale of a movable thing, the provision of a service by the trader.

(2) 2The following rules of this subtitle have concomitant application for the sale of consumer goods. 2This does not apply to second-hand things that are sold at a publicly accessible auction which the consumer may attend in person.

Section 475

Applicable provisions

(1) ¹Where 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 creditor may only demand the rendering of such performance, in derogation from section 271 (1), without undue delay. ²In this case, the trader must deliver the thing at the latest thirty days after the contract has been concluded. ³The parties to the contract may effect the respective performance immediately.

(2) Section 447 (1) applies subject to the proviso that the risk of accidental destruction and accidental deterioration shall devolve to the buyer only if the buyer has instructed the forwarder, carrier or other person or body tasked with carrying out the shipment and the trader has not named this person or body to the buyer previously.

(3) ¹Section 439 (5) applies to the purchase contracts regulated by this subtitle subject to the proviso that benefits are not to be surrendered or substituted by their value. ²Sections 445 and 447 (2) do not apply.

(4) ¹If one kind of cure is excluded pursuant to section 275 (1) or if the trader can refuse this kind of cure pursuant to section 275 (2) or (3) or section 439 (4) sentence 1, he cannot refuse the alternative kind of cure due to disproportionate expenses according to section 439 (4) sentence 1. ²If the alternative kind of cure is disproportionate due to the amount of expenses pursuant to section 439 (2) or (3) sentence 1, the trader can restrict the compensation for expenditures to a reasonable amount. ³When calculating this amount, account must be taken in particular, without limitation, of the value of the thing when free of defects and of the importance of the defect.

(5) Section 440 sentence 1 shall also apply in those cases in which the seller restricts cure pursuant to (4) sentence 2.

(6) The consumer can demand an advance payment from the trader for expenses which he incurs as part of cure pursuant to section 439 (2) and (3) and which have to be borne by the trader.

Section 476

Deviating agreements

(1) ¹If an agreement is entered into before a defect is notified to the trader and deviates, to the disadvantage of the consumer, from sections 433 to 435, 437, 439 to 443 and from the provisions of this subtitle, the trader may not invoke it. ²The provisions referred to in sentence 1 apply even if circumvented by other constructions.

(2) The limitation of the claims cited in section 437 may not be alleviated by an agreement reached before a defect is notified to a trader if the agreement means that there is a limitation period of less than two years from the statutory beginning of limitation or, in the case of second-hand things, of less than one year.

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

Section 477

Shifting the burden of proof

If, within six months after the date of the passing of the risk, a material defect manifests itself, it is presumed that the thing was already defective when risk passed, unless this presumption is incompatible with the nature of the thing or of the defect.

Section 479

Special provisions for guarantees

(1) A declaration of guarantee (section 443) must be expressed simply and comprehensibly. It must contain

1. a reference to the statutory rights of the consumer and a statement that they are not restricted by the guarantee, and
2. the contents of the guarantee and all essential information required for asserting rights under the guarantee, including, without limitation, the duration and the area of territorial application of the guarantee protection as well as the name and address of the guarantor.

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

(3) The effectiveness of the duty under the guarantee is not affected by the fact that one of the above requirements is not satisfied.

Section 488

Typical contractual duties in a loan contract

(1) 1The loan contract obliges the lender to make available to the borrower a sum of money in the agreed amount. 2The borrower is obliged to pay 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 one year, upon repayment.

(3) 1If 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. 2The notice period is three months. 3If interest is not owed, the borrower is also entitled to repay without giving notice of termination.

Section 535

Contents and primary duties of the lease agreement

(1) 1A lease agreement imposes on the lessor a duty to grant the lessee use of the leased property for the lease period. 2The lessor must surrender the leased property to the lessee in a condition suitable for use in conformity with the contract and maintain it in this condition for the lease period. 3He must bear all costs to which the leased property is subject.

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

Section 540

Permitting use by third parties

(1) 1Without the permission of the lessor, the lessee is not entitled to permit a third party to use the leased property, in particular not to sublet it. 2If the lessor refuses permission, then the lessee may terminate the lease for cause with the statutory notice period unless the person of the third party constitutes cause.

(2) If the lessee permits a third party to use the property, then he is responsible for the culpability in the use of the property attributable to that third party even if the lessor has given permission for this.

Section 541

Application for injunction for use in breach of contract

If the lessee persists with use of the leased property in breach of contract despite a warning by the lessor, then the latter may seek a prohibitory injunction.

Section 542
End of the lease

- (1) If the lease period is indefinite, then each of the parties to the contract may give notice of termination in accordance with the statutory provisions.
- (2) A lease entered into for a definite period of time ends at the end of that period unless it
1. has been terminated for cause in legally permissible cases, or
 2. is extended.

Section 543
Termination for cause without notice for a compelling reason

(1) ¹Each party to the contract may terminate the lease for cause without notice for a compelling reason. ²A compelling reason is deemed to obtain if the party giving notice, with all circumstances of the individual case taken into account, including without limitation fault of the parties to the contract, and after weighing the interests of the parties, cannot be reasonably expected to continue the lease until the end of the notice period or until the lease ends in another way.

- (2) ¹A compelling reason is deemed to obtain in cases including without limitation where
1. the lessee is not permitted the use of the leased property in conformity with contract, in whole or in part, in good time, or is deprived of this use,
 2. the lessee violates the rights of the lessor to a substantial degree by substantially endangering the leased property by neglecting to exercise the care incumbent upon him or by allowing a third party to use it without authorisation, or
 3. the lessee
 - a) is in default, on two successive dates, of payment of the rent or of a portion of the rent that is not insignificant, or
 - b) in a period of time spanning more than two dates is in default of payment of the rent in an amount that is as much as the amount of rent for two months.

²In the case of sentence 1 no. 3, termination is excluded if the lessor has by then obtained satisfaction. ³It becomes ineffective if the lessee has succeeded in discharging his debt by set-off and declares set-off without undue delay after notice of termination is given.

(3) ¹If the compelling reason consists in the violation of an obligation under the lease, then the notice of termination is only permitted after the expiry without result of a reasonable period specified for the purpose of obtaining relief or after an unheeded warning notice. ²This does not apply if

1. a notice period or a warning notice obviously shows no chance of succeeding,
2. immediate termination for special reasons is justified, weighing the interests of both parties, or
3. the lessee is in default of payment of rent within the meaning of subsection (2) no.3.

(4) ¹Sections 536b and 536d are to be applied with the necessary modifications to the right to notice of termination to which the lessee is entitled under subsection (2) no. 1. ²If it is in dispute whether the lessor granted use of the leased property in good time or provided relief prior to expiry of the period specified for this purpose, then he bears the burden of proof.

Section 546

Duty of lessee to return

- (1) The lessee is obliged to return the leased property after termination of the lease.
- (2) If the lessee has permitted a third party to use the leased property, the lessor may also demand return of the leased property from the third party after termination of the lease.

Section 549

Provisions applicable to leases of residential space

- (1) Sections 535 to 548 apply to leases relating to residential space to the extent not otherwise stipulated by sections 549 to 577a.
- (2) The provisions relating to rent increases (sections 557 to 561) and to lessee protection upon termination of the lease as well as when residential property is created (section 568 (2), sections 573, 573a and 573 d (1), sections 574 to 575, 575a (1) and sections 577 and 577a) do not apply to leases of
 1. residential space that is leased only for temporary use,
 2. residential space that is part of the dwelling inhabited by the lessor himself and has largely to be furnished with furniture and fixtures by the lessor himself, provided that permission to use the residential space has not been given for permanent use to the lessee with his family or with persons with whom he maintains a joint household set up permanently,
 3. residential space that a legal person under public law or a recognised private welfare work organisation has leased to permit use by persons in urgent need of accommodation if, when the lease was entered into, it drew the attention of the lessee to the intended purpose of the residential space and to its exemption from the provisions referred to above.
- (3) Sections 557 to 561 and sections 573, 573a and 573d (1) and sections 575, 575a (1) and sections 577 and 577a do not apply to residential space in a student hostel or a hostel for young people.

Section 553

Permitting use by third parties

- (1) 1If the lessee, after entering into the lease agreement, acquires a justified interest in permitting a third party to use part of the residential space, then he may demand permission to do so from the lessor. 2This does not apply if there is a compelling reason in the person of the third party, if the residential space would be overcrowded or if the lessor cannot for other reasons reasonably be expected to permit third-party use.
- (2) If the lessor can only be expected to permit third-party use on a reasonable increase of the rent, then he may make permission dependent upon the lessee agreeing to such an increase in rent.
- (3) A deviating agreement to the disadvantage of the lessee is ineffective.

Section 568

Form and contents of the notice of termination

- (1) The notice of termination of the lease must be in written form.
- (2) The lessor should, in good time, draw the attention of the lessee to the possibility of an objection and the form and period for the objection under sections 574 to 574b.

Section 573

Notice of termination by the lessor

- (1) 1The lessor may only give notice if he has a justified interest in the termination of the lease.
2Notice of termination for the purpose of increasing the rent is excluded.
- (2) A justified interest of the lessor in the termination of the lease exists, without limitation, in cases where
1. the lessee has culpably and non-trivially violated his contractual duties,
 2. the lessor needs the premises as a dwelling for himself, members of his family or members of his household, or
 3. the lessor, by continuing the lease, would be prevented from making appropriate commercial use of the plot of land and would as a result suffer substantial disadvantages; the possibility of attaining a higher rent by leasing the residential space to others is disregarded; the lessor may likewise not invoke the fact that he wishes to dispose of the residential premises in connection with an intention to create apartment ownership, or in connection with a creation of apartment ownership that took place after use of the residential space was granted to the lessee.
- (3) 1The reasons for a justified interest of the lessor must be indicated in the notice of termination. 2Other 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 573c

Termination notice periods

- (1) 1Notice of termination is allowed at the latest on the third working day of a calendar month to the end of the second month thereafter. 2The notice period for the lessor is extended, by three months in each case, five and eight years after the lessee is permitted to use the residential space.
- (2) For residential space that is only leased for temporary use, a shorter notice period may be agreed.
- (3) For residential space under section 549 (2) no. 2, notice of termination is allowed at the latest on the fifteenth day of a month to the end of that month.
- (4) An agreement deviating from subsections (1) or (3) to the disadvantage of the lessee is ineffective.

Section 598

Typical contractual duties in the case of a gratuitous loan

By a gratuitous loan agreement, the lender of a thing is obliged to permit the borrower to use the item at no charge.

Section 611

Typical contractual duties in a service contract

- (1) By means of a service contract, a person who promises service is obliged to perform the services promised, and the other party is obliged to grant the agreed remuneration.
- (2) Services of any type may be the subject matter of service contracts.

Section 612

Remuneration

(1) Remuneration is deemed to have been tacitly agreed if in the circumstances it is to be expected that the services are rendered only for remuneration.

(2) If the amount of remuneration is not specified, then if a tariff exists, the tariff remuneration is deemed to be agreed; if no tariff exists, the usual remuneration is deemed to be agreed.

Section 622

Notice periods in the case of employment relationships

(1) The employment relationship of a wage-earner or a salary-earner (employee) may be terminated with a notice period of four weeks to the fifteenth or to the end of a calendar month.

(2) For notice of termination by the employer, the notice period is as follows if the employment relationship in the business or the enterprise

1. has lasted for two years, one month to the end of a calendar month,
2. has lasted for five years, two months to the end of a calendar month,
3. has lasted for eight years, three months to the end of a calendar month,
4. has lasted for ten years, four months to the end of a calendar month,
5. has lasted for twelve years, five months to the end of a calendar month,
6. has lasted for fifteen years, six months to the end of a calendar month,
7. has lasted for twenty years, seven months to the end of a calendar month.

In calculating the duration of employment, time periods prior to completion of the twenty-fifth year of life of the employee are not taken into account.

(3) During an agreed probationary period, at most for the duration of six months, the employment relationship may be terminated with a notice period of two weeks.

(4) Provisions differing from subsections (1) to (3) may be agreed in collective agreements. Within the scope of applicability of such a collective agreement, the different collective agreement provisions between employers and employees who are not subject to collective agreements apply if the application of collective agreements has been agreed between them.

(5) In an individual contract, shorter notice periods than those cited in subsection (1) may be agreed only

1. if an employee is employed to help out on a temporary basis; this does not apply if the employment relationship is extended beyond a period of three months;
2. if the employer as a rule employs not more than 20 employees with the exception of those employed for their own training and the notice period does not fall short of four weeks.

When the number of employees employed is determined, part-time employees with regular weekly working hours of not more than 20 hours are counted as 0.5 employees and those working not more than 30 hours are counted as 0.75 employees. ²The agreement in an individual contract of longer notice periods than those stated in subsections (1) to (3) is unaffected by this.

(6) For notice of termination of employment by the employee, no longer notice period may be agreed than for notice of termination by the employer.

Section 623

Written form of termination

Termination of employment by notice of termination or separation agreement requires written form to be effective; electronic form is excluded.

Section 626

Termination without notice for a compelling reason

- (1) The service relationship may be terminated by either party to the contract for a compelling reason without complying with a notice period if facts are present on the basis of which the party giving notice cannot reasonably be expected to continue the service relationship to the end of the notice period or to the agreed end of the service relationship, taking all circumstances of the individual case into account and weighing the interests of both parties to the contract.
- (2) ¹Notice of termination may only be given within two weeks. ²The notice period commences with the date on which the person entitled to give notice obtains knowledge of facts conclusive for the notice of termination. ³The party giving notice must notify the other party, on demand, of the reason for notice of termination without undue delay in writing.

Section 627

Termination without notice in the case of a position of trust

- (1) In a service relationship that is not an employment relationship within the meaning of section 622, notice of termination is allowed, even without the requirement specified in section 626, if the person obliged to perform services, without being in a permanent service relationship with fixed earnings, must perform services of a higher nature with which people are customarily entrusted on the basis of special trust.
- (2) ¹The person obliged to perform services may only give notice in such a manner that the person entitled to services can obtain the services elsewhere, unless there is a compelling reason for untimely notice of termination. ²If he should give notice in untimely fashion without such cause, then he must compensate the person entitled to services for damage arising from this.

Section 631

Typical contractual duties in a contract to produce a work

- (1) By a contract to produce a work, a contractor is obliged to produce the promised work and the customer is obliged to pay the agreed remuneration.
- (2) The subject matter of a contract to produce a work may be either the production or alteration of a thing or another result to be achieved by work or by a service.

Section 632

Remuneration

- (1) Remuneration for work is deemed to be tacitly agreed if the production of the work, in the circumstances, is to be expected only in return for remuneration.
- (2) If the amount of remuneration is not specified, then if a tariff exists, the tariff remuneration is deemed to be agreed; if no tariff exists, the usual remuneration is deemed to be agreed.
- (3) In case of doubt, remuneration is not to be paid for a cost estimate.

Section 705

Contents of partnership agreement

By a partnership agreement, the partners mutually put themselves under a duty to promote the achievement of a common purpose in the manner stipulated by the contract, in particular, without limitation, to make the agreed contributions.

Section 736
Retirement of a partner; continuing liability

- (1) If the partnership agreement stipulates that if a partner gives notice or dies or if insolvency proceedings are opened in relation to his assets, the partnership will be carried on by the remaining partners, then upon the occurrence of such an event the partner personally so affected retires from the partnership.
- (2) The provisions on the limitation of continuing liability relating to commercial partnerships apply with the necessary modifications.

Section 812
Claim for restitution

- (1) ¹A person who obtains something as a result of the performance of another person or otherwise at his expense without legal grounds for doing so is under a duty to make restitution to him. ²This duty also exists if the legal grounds later lapse or if the result intended to be achieved by those efforts in accordance with the contents of the legal transaction does not occur.
- (2) Performance also includes the acknowledgement of the existence or non-existence of an obligation.

Section 816
Disposition by an unauthorised person

- (1) ¹If an unauthorised person disposes of an object and the decision is effective against the authorised person, then he is obliged to make restitution to the authorised person of what he gains by the disposal. ²If the disposition is gratuitous, then the same duty applies to a person who as a result of the disposition directly gains a legal advantage.
- (2) If performance is rendered to an unauthorised person that is effective in relation to the authorised person, then the unauthorised person is under a duty to make restitution of the performance.

Section 817
Breach of law or public policy

¹If the purpose of performance was determined in such a way that that the recipient, in accepting it, was violating a statutory prohibition or public policy, then the recipient is obliged to make restitution. ²A claim for return is excluded if the person who rendered performance was likewise guilty of such a breach, unless the performance consisted in entering into an obligation; restitution may not be demanded of any performance rendered in fulfilment of such an obligation.

Section 818
Scope of the claim to enrichment

- (1) The duty to make restitution extends to emoluments taken as well as to whatever the recipient acquires by reason of a right acquired or in compensation for destruction, damage or deprivation of the object obtained.
- (2) If restitution is not possible due to the quality of the benefit obtained, or if the recipient is for another reason unable to make restitution, then he must compensate for its value.
- (3) The liability to undertake restitution or to reimburse the value is excluded to the extent that the recipient is no longer enriched.
- (4) From the time when the action is pending onwards, the recipient is liable under the general provisions of law.

Section 819

Increased liability in case of knowledge and breaches of law or public policy

- (1) If the recipient, at the time of receipt, knows of the defect in the legal basis or if he learns of it later, then he is obliged to make restitution from the moment of receipt or of obtaining knowledge of the defect to make restitution as if the claim for restitution had been pending from this time on.
- (2) If the recipient, in accepting the performance, violates a statutory prohibition or public policy, then he is likewise under the same obligation from receipt of payment onwards.

Section 821

Enrichment defence

A person who enters into an obligation without legal grounds to do so may also refuse fulfilment if the claim to release from the obligation is statute-barred.

Section 823

Liability in damages

- (1) A person who, intentionally or negligently, unlawfully injures the life, body, health, freedom, property or another right of another person is liable to make compensation to the other party for the damage arising from this.
- (2) 1The same duty is held by a person who commits a breach of a statute that is intended to protect another person. 2If, according to the contents of the statute, it may also be breached without fault, then liability to compensation only exists in the case of fault.

Section 826

Intentional damage contrary to public policy

A person who, in a manner contrary to public policy, intentionally inflicts damage on another person is liable to the other person to make compensation for the damage.

Section 828

Minors

- (1) A person who has not reached the age of seven is not responsible for damage caused to another person.
- (2) 1A person who has reached the age of seven but not the age of ten is not responsible for damage that he inflicts on another party in an accident involving a motor vehicle, a railway or a suspension railway. 2This does not apply if he intentionally caused the injury.
- (3) A person who has not yet reached the age of eighteen is, to the extent that his responsibility is not excluded under subsection (1) or (2), not responsible for damage he inflicts on another person if, when committing the damaging act, he does not have the insight required to recognise his responsibility.

Section 831
Liability for vicarious agents

- (1) ¹A person who uses another person to perform a task is liable to make compensation for the damage that the other unlawfully inflicts on a third party when carrying out the task. ²Liability in damages does not apply if the principal exercises reasonable care when selecting the person deployed and, to the extent that he is to procure devices or equipment or to manage the business activity, in the procurement or management, or if the damage would have occurred even if this care had been exercised.
- (2) The same responsibility is borne by a person who assumes the performance of one of the transactions specified in subsection (1) sentence 2 for the principal by contract.

Section 832
Liability of a person with a duty of supervision

- (1) ¹A person who is obliged by operation of law to supervise a person who requires supervision because he is a minor or because of his mental or physical condition is liable to make compensation for the damage that this person unlawfully causes to a third party. ²Liability in damages does not apply if he fulfils the requirements of his duty to supervise or if the damage would likewise have been caused in the case of proper conduct of supervision.
- (2) The same responsibility applies to any person who assumes the task of supervision by contract.

Book 3

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 873
Acquisition by agreement and registration

- (1) The transfer of the ownership of a plot of land, the encumbrance of a plot of land with a right and the transfer or encumbrance of such a right require agreement between the person entitled and the other person on the occurrence of the change of rights and the registration of the change of rights in the Land Register, except insofar as otherwise provided by law.
- (2) Before the registration, the parties are bound by the agreement only if the declarations are notarially recorded, or made before the Land Registry, or submitted to the Land Registry, or if the person entitled has delivered to the other person an approval of registration that satisfies the provisions of the Land Register Code [Grundbuchordnung].

Section 892
Presumption of the accuracy of the contents of the Land Register

(1) ¹In favour of the person who acquires a right in a plot of land or a right in such a right by legal transaction, the contents of the Land Register are presumed to be correct, unless an objection to the accuracy is registered or the inaccuracy is known to the acquirer. ²Where the person entitled is restricted in favour of a particular person in his disposition of a right entered in the Land Register, the restriction is effective in relation to the acquirer only if it is apparent from the Land Register or known to the acquirer.

(2) Where registration is necessary for the acquisition of the right, the knowledge of the acquirer at the date when the application for registration is made or, if the agreement required under section 873 is reached only later, the date of agreement is conclusive.

Section 925
Declaration of conveyance

(1) ¹The 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. ²Any notary is competent to receive the declaration of conveyance, notwithstanding the competence of other agencies. ³A declaration of conveyance may also be made in an in-court settlement or in an insolvency plan that has been finally and non-appealably confirmed.

(2) A declaration of conveyance that is made subject to a condition or a stipulation as to time is ineffective.

Section 929
Agreement and delivery

¹For the transfer of the ownership of a movable thing, it is necessary that the owner delivers the thing to the acquirer and both agree that ownership is to pass. ²If the acquirer is in possession of the thing, agreement on the transfer of the ownership suffices.

Section 932
Good faith acquisition from a person not entitled

(1) ¹As a result of a disposal carried out under section 929, the acquirer becomes the owner even if the thing does not belong to the alienor, unless the acquirer is not in good faith at the time when under these provisions he would acquire ownership. ²In the case of section 929 sentence 2, however, this applies only if the acquirer had obtained possession from the alienor.

(2) The acquirer is not in good faith if he is aware, or as a result of gross negligence he is not aware, that the thing does not belong to the alienor.

Section 935
No good faith acquisition of lost property

(1) ¹The 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. ²The 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 985
Claim for restitution

The owner may require the possessor to return the thing.

Section 986
Objections of the possessor

(1) 1The possessor may refuse to return the thing if he or the indirect possessor from whom he derives his right of possession is entitled to possession as against the owner. 2If the indirect possessor is not authorised in relation to the owner to permit the possessor to have possession, the owner may require the possessor to deliver the thing to the indirect possessor or, if the indirect possessor cannot or does not wish to take possession again, to the owner himself.

(2) The possessor of a thing that has been alienated under section 931 by assignment of the claim for return may raise against the new owner the objections that he is entitled to use against the claim assigned.

Section 1006
Presumption of ownership for possessor

(1) 1It is presumed in favour of the possessor of a movable thing that he is the owner of the thing. 2However, this does not apply in relation to a former possessor from whom the thing was stolen or who lost it or whose possession of it ended in another way, unless the thing is money or bearer instruments.

(2) It is presumed in favour of a former possessor that during the period of his possession he was the owner.

(3) In the case of indirect possession, the presumption is in favour of the indirect possessor.

Book 4

Section 1626
Parental custody, principles

(1) 1The parents have the duty and the right to care for the minor child (parental custody). 2The parental custody includes the care for the person of the child (care for the person of the child) and the property of the child (care for the property of the child).

(2) 1In the care and upbringing of the child, the parents take account of the growing ability and the growing need of the child for independent responsible action. 2They 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) 1The best interests of the child as a general rule include contact with both parents. 2The same applies to contact with other persons to whom the child has ties, if maintaining these ties is beneficial for its development.