

# § 13 Other fields regulated in the German Civil Code

## I. Unjustified enrichment [Bereicherungsrecht] (sect. 812 et seq. BGB)

**Sect. 812(1) BGB:** "A person who obtains something as a result of the performance of another person or otherwise at that person's expense without legal grounds for doing so is under a duty to surrender to that person what has been obtained. This duty also exists if the legal grounds later cease to exist or if the result intended to be achieved by an act of performance in accordance with the substance of the legal transaction does not materialise."

- the by far most difficult area within German private law
- partially above all a necessary consequence of the principle of abstraction
- complicated arrangements under the law of obligations to reverse or compensate for transfers of assets ("enrichments") that occurred on another person's expense and are not justified by legal grounds ("unjust")
- correction of the undesired asset situation by the way of "*condictions*" ["Kondiktionen"], i.e. claims to surrender the benefit, following the model of Roman law
  - *performance condicions*: of benefits obtained through claimant's performance (several subtypes)
  - *condicions by other means*: after an encroachment on claimant's rights (interference condition), after claimant has performed an obligation for someone else (recourse condition) or for expenses to improve things of someone else (condition for expenses)
- important exception: *no claim for surrender if* and to the extent that the recipient is *no longer enriched* (sect. 818(3) BGB)

## II. Law of torts [Recht der unerlaubten Handlungen] (sect. 823 et seq. BGB)

- liability for wrongful acts: under the Civil Code only for fault (intention or negligence)
  - for own fault and the fault of deployed vicarious agents
  - strict liability (without fault) only in exceptional cases under special laws
    - e.g. for operating cars, airplanes or atomic plants
- most frequent case: liability for the violation of absolute rights (sect. 823(1) BGB)
  - of life, body, health, freedom, property and other rights that can be enforced against anyone
    - practically important: the right to an established an operating business
  - not protected: the assets as a whole
- liability for the breach of a protective law (sect. 823(2) BGB)
  - of statutory law intended to protect another person
  - in particular for criminal offences
- liability for intentional (!) damaging offending common decency (sect. 826 BGB)
- liability under special clauses (sect. 824, 833 et seq. BGB)
  - for endangering credit, of animal keepers, of land owners etc.

## III. Property law [Sachenrecht] (Book 3, sect. 854 et seq. BGB)

- the legal norms governing the relation between a person and a thing; this is not about rights *to* a thing (claims, rights in personam) but *over* a thing (rights in rem)
- *rights in rem* [dingliche Rechte]
  - absolute rights: directed and defensible against everyone
  - types regulated conclusively in the Civil Code and a few complementing laws
  - distinction between *unlimited and limited rights in rem*
    - unlimited: → ownership
    - limited: usage and exploitation rights; security rights in rem (mortgage, land charge, pledge (lien) etc.)
  - creation, transfer or cancellation of a right in rem to a plot of land requires registration in the Land Register [Grundbuch], which is operated by the local district court

- *principle of speciality*: a right in rem always relates to one specific thing; changes for an entirety of items require a legal transaction for each individual thing
  - example: transfer of ownership of a stock of goods requires a transfer of ownership for each individual item
  - however, the general consent is interpreted as including all necessary declarations of intent...
- *ownership of things*
  - important distinction between possession (actual control) and ownership
  - in principle, the owner may deal with his thing at his discretion and exclude others from exercising any influence whatsoever (sect. 903 BGB)
  - he may require an illegitimate possessor to surrender the thing (sect. 985, 986 BGB) and a disturber to remove/stop the interference (sect. 1004 BGB)
- *transfer of ownership of a thing*
  - of a movable thing in principle by agreement and delivery (sect. 929 BGB)
  - also *good faith acquisition from a person not entitled*, except if the thing was stolen, missing or lost in another way (sect. 932, 935 BGB)
  - of a plot of land by agreement (recorded by a notary) and registration in the Land Register (sect. 873 BGB)

#### IV. Family law [Familienrecht] (Book 4, sect. 1297 et seq. BGB)

- regulation of marriage, relationship (incl. parental custody) and guardianship, curatorship and legal guardianship
- since 2017 also *same-sex marriage* (cf. sect. 1353(1) BGB)
  - from 2010 to 2017 there was already a less close option: the registered partnership for life [Lebenspartnerschaft]
- spouses live in *community of accrued gains* [Zugewinnngemeinschaft] unless they agree on separation or community of property by marriage contract; their assets stay separated, but if marriage ends the accrued gains acquired will be equalised (sect. 1363 BGB)
- divorce only by judicial decision and only if marriage has broken down (if spouses have lived apart for 1 year and both consent to divorce or if they have lived apart for 3 years; moral aspects are irrelevant)
  - after divorce equalisation of accrued gains [Zugewinnausgleich] and complicated equalisation of pension rights [Versorgungsausgleich] under a special law
- lineal relatives (grandparents - parents - children/grandchildren) obliged to maintain each other
  - maintenance obligations for parents may arise if the parents become dependent on care and their pensions and care insurance does not cover all nursing expenses

#### V. Law of succession [Erbrecht] (Book 5, sect. 1922 et seq. BGB)

- the law on the devolution of the inheritance from the decedent to his legal successor, the heir
- guiding principles: universal succession, testamentary freedom, inheritance by family (at least the compulsory share)
- unless otherwise provided in a [last] will, the decedent's spouse inherits  $\frac{1}{2}$  of the inheritance ( $\frac{1}{4}$  as inheritance +  $\frac{1}{4}$  by equalisation of accrued gains), alongside the decedent's descendants
- *compulsory share*: a spouse or descendent excluded from succession by [last] will is still entitled to a compulsory share of half of the value of the regular share (sect. 2303 BGB)
  - can only be deprived of that in serious exceptional cases that usually involve a criminal offence
- testator can make his [last] will only in person, by a declaration written and signed in his own hand or recorded by a notary (sect. 2064, 2231, 2247 BGB)
- common: the so-called "*Berliner Testament*", a joint will made by spouses, in which they appoint each other as sole heirs and stipulate that after the death of the longest-living spouse, a third party (usually their children) shall become the heirs