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The German Civil Code  
(Bürgerliches Gesetzbuch)

Excerpt from Forrester, Goren & Ilgen: The German Civil Code

Attention: Some §§ may have been amended meanwhile, as the quoted book is from 1975.  
This excerpt is only for educational purpose.

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The statutes:

§ 1. [Beginning of legal capacity] The legal capacity of a human being begins with the completion of birth.

§ 2. (Attainment of majority] Majority is attained upon the completion of the eighteenth year of age.

§ 104. [Incompetency to enter into legal transactions] A person is incompetent to enter into legal transactions:

1. who has not completed his seventh year of age;
2. who suffers from a mental disturbance preventing the free exercise of his will, unless the condition is temporary in nature;
3. who has been declared incapable because of mental illness.

§ 105. [Nullity of declaration of intention]

(1) A declaration of intention made by an incompetent person is void.

(2) A declaration of intention which is made in a condition of unconsciousness or temporary insanity is also void.

§ 106. [Limited competency of minors] A minor who has completed his seventh year of age is limited in competency to enter legal transactions according to the provisions of §§ 107 to 113.

§ 107. [Consent of legal representative] A minor requires, for a declaration of intention whereby he does not merely acquire a legal benefit, the consent of his legal representative.

§ 108. [Contracting without consent]

(1) If the minor concludes a contract without the necessary consent of his legal representative, the validity of the contract depends on the consent of the legal representative.

(2) If the other party requests the legal representative to declare his approval the declaration can be made only to the other party; a declaration or refusal of approval to the minor before the request is of no effect. The approval can be given only up to the expiration of two weeks following the receipt of the request; if it is not given it is deemed to have been refused.

(3) If the minor has become unlimited in competency to enter legal transactions, his own approval takes the place of the approval of the representative.

§ 109. [Right of revocation by the other party]

(1) Before approval is given to the contract the other party is entitled to revoke. Revocation may also be declared to the minor.

(2) If the other party had notice of the minority, he may revoke only if the minor had declared, falsely, that he had the approval of his representative; even in this case he may not revoke if he knew, at the time the contract was entered into, that the approval had not been given.

§ 110. ["Pocket money contracts"] A contract entered into by a minor without the consent of his legal representative is deemed to be valid from the outset if the minor has performed his part with means given to him, for this purpose or for his free disposal, by the representative or, with the latter's consent, by a third party. § 111. [Unilateral legal transactions] A unilateral legal transaction which the minor enters into without the necessary consent of the legal representative is ineffective. If the minor enters into such a legal transaction with another party with this consent, the legal transaction is ineffective if the minor does not produce the consent in writing, and the other party without delay rejects the legal transaction for this reason. The right to reject is barred if the representative had made the other party aware of the consent.

§ 112. [Independent conduct of a business]

(1) If the legal representative, with the approval of the guardianship Court, authorizes the minor to carry on a gainful occupation independently, the minor is then unlimited in competency to enter into such legal transactions as are within the scope of the enterprise. Transactions for which the representative needs the approval of the guardianship Court are not included.

(2) The authorization may be revoked by the legal representative only with the approval of the guardianship Court.

§ 113. [Entering service or employment]

(1) If the legal representative authorizes the minor to enter service or employment, the minor is then unlimited in competency to enter into such legal transactions as relate to the entry into or the termination of the relationship of service or employment of the kind authorized, or to the performance of the obligations arising from such a relationship. Transactions for which the legal representative needs the approval of the guardianship Court are not included.

(2) The authorization may be recalled or limited by the representative.

(3) If the legal representative is a guardian the authorization may, if refused by him, be substituted by the guardianship Court on the application of the minor. The guardianship Court shall substitute such authorization if it is in the interest of the ward.

(4) An authorization given for a particular case is deemed, in case of doubt, to be a general authorization for entering into relationships of the same kind.

## SECOND TITLE

### Declaration of Intention

§ 116. [Mental reservation] A declaration of intention is not void by reason of the fact that the declarant has made a mental reservation of not being in favor of the declaration made. The declaration is void if made to a person who is aware of the reservation.

§ 117. [Sham transaction]

(1) If a declaration of intention required to be made to a person is, with his knowledge, made only in pretence, it is void.

(2) If one legal transaction is hidden by a sham transaction, the provisions applicable to the hidden legal transaction apply.

§ 118. [Lack of seriousness] A declaration of intention not seriously intended which is made in the expectation that it will be understood not to be seriously intended, is void.

§ 119. [Rescission due to error]

(1) A person who, when making a declaration of intention, is in error as to its content, or did not intend to make a declaration of such content at all, may rescind the declaration if it may be assumed that he would not have made it with knowledge of the facts and with reasonable appreciation of the situation.

(2) An error as to the content of the declaration is regarded in the same way as an error as to those characteristics of a person or thing which are regarded in business as essential.

§ 120. [Rescission because of incorrect transmission] A declaration of intention which has been incorrectly transmitted by the person or institution employed for its transmission may be rescinded under the same condition as a declaration of intention made in error as provided for by § 119.

## BOOK 1: § 121-126

§ 121. [Period for rescission]

(1) The rescission must be made, in cases provided for by §§ 119, 120, without culpable delay (immediately) after the person entitled to rescind has gained knowledge of the grounds for rescission. A rescission as against a person who is not present is deemed to have been effected in due time if the rescission has been

forwarded immediately. (2) Rescission is barred in a declaration of intention if thirty years have expired since the making of the

§ 122. [Rescinding party's obligation to compensate]

(1) If a declaration of intention is void under § 118, or rescinded under §§ 119, 120, the declarant shall, if the declaration was required to be made to another party, compensate that party, or otherwise any third party, for the damage which the other or the third party has sustained by relying upon the validity of the declaration, not, however, beyond the value of the interest which the other or the third party has in the validity of the declaration.

(2) The obligation to compensate does not arise if the injured party knew the ground of the nullity or rescission or did not know it due to negligence (should have known it).

123. [Rescission on grounds of fraud or threats]

(1) Whoever has been induced to make a declaration of intention by fraud or unlawfully by threats may rescind the declaration.

(2) If a third party was guilty of the fraud, a declaration which was required to be made to another person may be rescinded only if the latter knew or should have known of the fraud.

Insofar as a person other than the one to whom the declaration was required to be made has acquired a right directly through the declaration, the declaration may be rescinded as against him if he knew or should have known of the fraud.

124. [Period for rescission]

(1) The rescission of a declaration of intention rescindable under § 123 may take place only within the period of one year.

(2) The period begins to run, in the case of fraud, from the moment at which the person entitled to rescind discovers the fraud, and in case of threats, from the moment at which the duress ceases.

The provisions of § 203(2) and of §§ 206, 207, applicable to prescription, apply mutatis mutandis to the running of this period. (3) The rescission is barred if thirty years have expired since the making of the declaration of intention.

125. [Nullity due to defect in form] A legal transaction which is not in the form prescribed by law is void. Lack of the form required by legal transaction results also, in case of doubt, in nullity.

126. [Requirement of writing]

(1) If writing is prescribed by law the document must be signed by the maker in his own hand by signature of his name, or by his mark notarially authenticated.

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

(3) A notarial record may be substituted for writing.

§ 127. [Optional form] The provisions of § 126 apply also, in case of doubt, to writing required by legal transaction. It is sufficient, however, for compliance with the form, unless a contrary intention is to be presumed, if it is by telegraphic transmission and, in the case of a contract, by exchange of letters; if such a form is selected, authentication in accordance with § 126 may be subsequently demanded.

§ 127a. [Substitution for notarial authentication] In the case of a court settlement, the recording of the declarations in a protocol drawn up according to the provisions of the Code of Civil Procedure, will substitute for notarial authentication.

§ 128. [Notarial authentication] If notarial authentication of a contract is prescribed by law, it is sufficient if first the offer and later the acceptance of the offer be authenticated by a notary.

§ 129. [Official certification]

(1) If it is prescribed by law that a declaration shall be officially certified, the declaration must be drawn up in writing, and the signature of the declarant be certified by a notary. If the declaration is subscribed by the maker with his mark, the certification of the mark described in § 126(1) is necessary and sufficient.

(2) Notarial authentication of the declaration may be substituted for the public certification.

§ 130. [Effectiveness of declaration as against party]

- (1) A declaration of intention required to be made to another, if made in his absence, becomes effective at the moment when it reaches him. It does not become effective if a revocation reaches him previously or simultaneously.
- (2) The effectiveness of the declaration is not affected by the fact that the declarant dies or becomes incompetent to enter into legal transactions after making them.
- (3) These provisions apply even if the declaration of intention is required to be made to a public authority.

§ 131. [Effectiveness as against a not fully competent party]

- (1) If a declaration of intention is made to a person incompetent to enter legal transactions, it does not become effective until it reaches his legal representative.
- (2) The same applies if the declaration of intention is made to a person limited in competency to enter legal transactions. If, however, the declaration merely brings a legal advantage to the person of limited competency, or if the legal representative has given his approval, the declaration becomes effective at the moment when it reaches the person of limited competency.

§ 132. [Substitution for delivery]

- (1) A declaration of intention is also deemed to have become effective if it has been delivered through the use of a bailiff. The delivery is made in accordance with the provisions of the Code of Civil Procedure.
- (2) If the declarant, not because of negligence, does not know the person to whom the declaration must be made, or if the whereabouts of this person is unknown, the delivery may be effected in accordance with the provisions of the Code of Civil Procedure relating to the public service of a summons. In the former situation the District Court competent to grant approval is the one in whose district the declarant has his residence, or, if he has no residence within the country, his abode; and in the latter situation the District Court competent to grant approval is the one in whose district the person to whom delivery is required to be made had his last residence, or, if he had no residence within the country, his last abode.

§ 133. [Interpretation of a declaration of intention] In interpreting a declaration of intention the true intention shall be sought without regard to the declaration's literal meaning.

§ 134. [Statutory prohibition] A legal transaction which violates a statutory prohibition is void, unless a contrary intention appears from the statute.

§ 135. [Statutory prohibition of alienation]

- (1) If the disposition of an object violates a statutory prohibition against alienation which aims only at the protection of particular persons, the disposition is without effect only as regards these persons. A contractual disposition is equivalent to a disposition which is effected by means of compulsory execution or attachment.
- (2) The provisions in favor of those who derive rights from a person without title apply *mutatis mutandis*.

§ 136. [Official prohibition of alienation] A prohibition against alienation which is competently issued by a Court or by any other authority, is equivalent to a statutory prohibition against alienation of the kind specified in § 135.

§ 137. [Prohibition of alienation in legal transaction] The power to dispose of an alienable right may not be excluded or limited by legal transaction. The validity of an obligation not to dispose of such a right is not affected by this provision.

§ 138. [Legal transaction against public policy; usury]

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

(2) A legal transaction is also void whereby a person exploiting the need, carelessness or inexperience of another, causes to be promised or granted to himself or to a third party in exchange for a performance, pecuniary advantages which exceed the value of the performance to such an extent that, under the circumstances, the pecuniary advantages are in obvious disproportion to the performance.

§ 139. [Partial nullity] If part of a legal transaction is void the whole legal transaction is void, unless it may be assumed that it would have been entered into even if the void part had been omitted.

§ 140. [Re-interpretation] If a void legal transaction satisfies the requirements of another legal transaction, the latter is deemed valid if it may be assumed that its validity would have been intended if there had been knowledge of the nullity.

§ 141. [Confirmation of void legal transaction]

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

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

§ 142. [Effect of rescission]

(1) If a legal transaction which is liable to be rescinded is rescinded it is deemed to have been rescinded from the outset.

(2) If a person knew or should have known of the possibility of rescission, he is treated, in the event of rescission, as if he had known or should have known of the nullity of the legal transaction.

§ 143. [Declaration of rescission]

(1) The rescission is effected by declaration to the opposing party.

(2) The opposing party is, in the case of a contract, the other party to the contract, and in the case of § 123(2) sent. 2, the person who has acquired a right directly from the contract.

(3) In the case of a unilateral legal transaction to be entered into with another person, that other person is the opposing party. The same rule applies in the case of a legal transaction required to be entered into with another person or with a public authority, even if the legal transaction has already been entered into with the authority.

(4) In the case of a unilateral legal transaction of another kind, the person who has acquired a legal advantage directly arising out of the legal transaction is the opposing party. The rescission may, however, if the declaration of intention was required to be made to a public authority, be effected by a declaration to the authority; the authority should communicate the rescission to whomever is directly affected by the legal transaction.

§ 144. [Confirmation of legal transaction liable to rescission]

(1) Rescission is excluded if the legal transaction liable to rescission is confirmed by the opposing party.

(2) The confirmation need not be in the form prescribed for the legal transaction.

### THIRD TITLE

#### Contract

§ 145. [Binding effect of offer] Whoever offers to another to enter a contract is bound by the offer, unless he has excluded being so bound.

§ 146. [Expiration of offer] An offer expires if it is refused as against the offerer, or if it is not accepted by him in due time according to §§ 147 to 149.

§ 147. [Time for acceptance]

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

(2) An offer made to a person who is not present may be accepted only up to the moment when the offerer may expect to receive an answer under ordinary circumstances.

§ 148. [Fixing of time for acceptance] If the offerer has fixed a period of time for acceptance of the offer, the acceptance may take place only within that period.

§ 149. [Late acceptance] If an acceptance reaches the offerer late and was sent in such a way that it would have arrived in time with ordinary forwarding, and the offerer must have recognized this, on receipt of the acceptance he shall immediately notify the acceptor of the delay, unless this has already been done. If he delays sending the notification the acceptance is deemed not to have been late.

§ 150. [Late and modified acceptance]

(1) The late acceptance of an offer is deemed a new offer.

(2) An acceptance under amplifications, limitations or other alterations is deemed a refusal combined with a new offer.

§ 151. [Acceptance without declaration to the offerer] The contract is concluded by the acceptance of the offer, without the necessity that the offerer be notified of the acceptance, if such notification is not to be expected according to common usage, or if the offerer has waived it. The moment at which the offer expires is determined according to the intention of the offerer in the light of the offer or the circumstances.

§ 152. [Acceptance by notarial authentication] If a contract is notarially authenticated without both parties being simultaneously present, the contract is, unless otherwise provided, concluded upon authentication of the acceptance as provided for in § 128. The provision of § 151, sent. 2, applies.

§ 153. [Death or incompetency of offerer] The conclusion of a contract is not prevented by the fact that the offerer dies or becomes incompetent to enter legal transactions before acceptance, unless a contrary intention on the part of the offerer may be inferred.

§ 154. [Clear lack of agreement; lack of authentication]

(1) Until the parties have agreed upon all points of a contract upon which, according to the declaration of even only one party, agreement had to be reached, the contract is, in case of doubt, not concluded. An agreement concerning individual points is not legally binding, even if the same have been recorded.

(2) If it has been planned that the contract contemplated be authenticated, in case of doubt the contract is not concluded until the authentication has taken place.

§ 155. [Hidden lack of agreement] If the parties to a contract which they regard as concluded have in fact not agreed upon a point upon which an agreement should have been arrived at, that which is agreed upon is valid if it may be assumed that the contract would have been concluded even without a settlement of this point.

§ 156. [Auctions] At an auction a contract is not concluded until the knocking down of the object. A bid expires if a higher bid is made, or if the auction is closed without knocking down the object.

§ 157. [Interpretation of contracts] Contracts shall be interpreted according to the requirements of good faith, giving consideration to common usage.

#### FOURTH TITLE

##### Condition. Fixing of Time

§ 158. [Conditions precedent and subsequent]

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

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

§ 159. [Retroactivity of consequences] If, according to the terms of the legal transaction, the consequences of the fulfilment of the condition are to become operative as from an earlier time, then upon the fulfilment of the effectiveness of the condition the parties are bound to perform reciprocally what they would have been bound to perform, if the consequences had become effective at the earlier time.

§ 160. [Liability while fulfilment pending]

(1) Whoever is given rights subject to a condition precedent may, on the fulfilment of the condition demand compensation from the other party, if the latter, during the time fulfilment was pending, has by his fault destroyed or impaired the rights dependent upon the condition.

(2) In the case of a legal transaction entered into subject to a condition subsequent, the person in whose favor the previous legal position is restored has the like claim under the same conditions.

§ 161. [Ineffectiveness of dispositions while fulfilment pending]

(1) If a person has disposed of an object subject to a condition precedent, any further disposition which he makes of the object pending the fulfilment of the condition is invalid on the fulfilment of the condition insofar as it would frustrate or impair the effect dependent upon the condition.

Equivalent to such a disposition is a disposition which is effected, before the condition is fulfilled, by means of compulsory execution or attachment, or by a trustee in bankruptcy.

(2) The same applies, in the case of a condition subsequent, to the dispositions of a person whose right lapses upon the fulfilment of the condition.

(3) The provisions in favor of those who derive rights from a person without title apply *mutatis mutandis*.

§ 162. [Prevention of, or bringing about the condition]

(1) If the fulfilment of a condition is prevented in bad faith by the party to whose disadvantage it would operate, the condition is deemed to have been fulfilled. (2) If the fulfilment of a condition is brought about in bad faith by the party to

whose advantage it would operate, the condition is deemed not to have been fulfilled.

§ 163. [Stipulation of time] If, when a legal transaction is entered into, a time has been fixed for the beginning or the end of its being operative, then in the former case the provisions applicable to conditions precedent and in the latter case those applicable to conditions subsequent, contained in §§ 158, 160, 161, apply *mutatis mutandis*.

## FIFTH TITLE

### Agency. Power of Attorney

#### § 164. [Effect of declaration by a representative]

(1) A declaration of intention which a person makes in the name of a principal within the scope of his agency operates directly both in favor of and against the principal. It makes no difference whether the declaration is made expressly in the name of the principal, or if the circumstances indicate that it was to be made in his name.

(2) If the intention to act in the name of another is not apparent, the agent's absence of intention to act in his own name is not taken into consideration.

(3) The provisions of (1) apply mutatis mutandis if a declaration of intention required to be made to another is made to his agent.

§ 165. [Representative limited in competency] The validity of a declaration of intention made by or to an agent is not impaired by the fact that he is limited in competency to enter into legal transactions.

#### § 166. [Lack of intention; knowledge; power of attorney]

(1) Insofar as the legal effectiveness of a declaration of intention is vitiated by lack of intention, or by knowledge or by attributable knowledge of certain circumstances, the person not of the principal, but of the agent, is taken into consideration.

(2) When a power of agency (power of attorney) is conferred by legal transaction, if the agent has acted according to specific instructions of the principal, the latter may not rely on the ignorance of the agent with regard to circumstances known to him. The same applies to circumstances which the principal should have known, so far as attributable knowledge is equivalent to knowledge.

#### § 167. (Granting of power of attorney)

(1) A power of attorney is conferred by declaration to the person who is given the power of attorney, or to the third party with whom the matter delegated is to be transacted.

(2) The declaration need not be in the form prescribed for the legal transaction to which the power of attorney relates.

§ 168. [Expiration of power of attorney] The expiration of the power of attorney depends on the legal relationship upon which its creation is based. The power of attorney is also revocable during the subsistence of the legal relationship, unless a contrary intention appears from such relationship. The provision of § 167(1) applies mutatis mutandis to the declaration of revocation.

§ 169. (No fiction of continuation as against those in bad faith) Insofar as a terminated power of attorney of an agent or a managing partner is deemed to continue as provided for in §§ 674, 729, it is not valid in favor of a third party who, at the time when a legal transaction is entered into, knows or should know of the termination.

§ 170. [Period of effectiveness of power of attorney] If a power of attorney is conferred by declaration to a third party, it remains in force with respect to him until he is notified of the termination by the principal.

#### § 171. [Period of effectiveness in case of public notification]

(1) If a person has announced by special notification to a third party or by public notice that he has given power of attorney to another, then the latter on the basis of the notice becomes authorized to

represent, in the former case as regards the particular third party, in the latter case as regards any third party.

(2) The power of representation remains in force until the notice is revoked in the same manner as it was given.

§ 172. [Written power of attorney]

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

(2) The power of representation remains in force until the written power of attorney is returned to the principal or declared invalid.

§ 173. [Knowledge of expiration] The provisions of §§ 17D, 171(2) and 172(2) do not apply if the third party knows or should know of the termination of the agency at the time when the legal transaction is entered into.

§ 174. [Unilateral legal transaction by a representative] A unilateral legal transaction which an agent enters into with another party is ineffective, if the agent does not produce a written power of attorney and the other party without delay rejects the legal transaction for this reason. The right to reject is barred if the principal had informed him of the authorization.

§ 175. (Return of written power of attorney) After the termination of the power of attorney the agent shall return the written power of attorney to the principal; he has no right of lien on it.

§ 176. [Declaration of invalidity of written power of attorney]

(1) The principal may declare the written power of attorney invalid by public notice; the declaration of invalidity must be published according to the provisions of the Code of Civil Procedure applicable to public service of a citation. The declaration of invalidity takes effect upon the expiration of one month after the last appearance in the official newspapers.

(2) The District Court in whose district the principal generally is subject to jurisdiction and the District Court which would be competent to entertain an action for the return of the document, are equally competent to authorize the publication, without regard to the value of the object in dispute.

(3) The declaration of invalidity is ineffective if the principal cannot revoke the power of attorney.

§ 177. [Conclusion of contract by an unauthorized representative]

(1) If a person enters into a contract in the name of another without authority, the validity of the contract depends, as regards the principal, on his ratification. (2) If the other party demands the principal to declare whether or not he

ratifies, the declaration may be made only to him; a ratification or refusal to ratify declared to the agent before the demand is of no effect. The ratification must be declared before the expiration of two weeks after receipt of the demand; if it is not declared it is deemed to have been refused.

§ 178. (Right of other party to revoke) Until ratification of the contract the other party is entitled to revoke it, unless he knew of the absence of authority at the time when the contract was entered into. The revocation may also be declared to the agent.

§ 179. (Liability of an unauthorized agent)

(1) Whoever has entered into a contract as agent is, if he has not given proof of his authority, bound to the other party at his choice either to carry out the contract or to compensate him, if the principal refuses to ratify the contract.

(2) If the agent did not know that he had no authority, he is bound to compensate only for the damage which the other party has sustained by relying upon the authority; not, however, beyond the value of the interest which the other party has in the validity of the contract.

(3) The agent is not liable, if the other party knew or should have known of the lack of authority. The agent is also not liable if he was limited in his competency to enter into transactions, unless he had acted with the consent of his legal representative.

§ 180. [Unilateral legal transactions) In the case of a unilateral legal transaction, agency without authority is not permissible. However, if the person with whom such a legal transaction was to be entered into did not object to the authority claimed by the agent when the transaction was being entered into or if he agreed that the agent might act without authority, then the provisions governing contract apply *mutatis mutandis*. The same rule applies if a unilateral legal transaction is entered into with an unauthorized agent with his consent.

§ 181 . [Contracting with oneself] An agent may not without leave enter into a legal transaction in the name of his principal with himself in his own name, or as agent of a third party, unless the legal transaction consists exclusively in the fulfilment of an obligation.

## SIXTH TITLE

### Approval. Ratification

§ 182. [Consent]

(1) If the validity of a contract or of a unilateral legal transaction which is to be entered into with another party depends upon the consent of a third party, the granting and also the refusal of consent may be declared either to the one or to the other party.

(2) The consent need not be in the form prescribed for the legal transaction. (3)

If a unilateral legal transaction whose validity depends upon the consent of a third party is entered into with the approval of the third party, the provisions of § 111, sents. 2, 3 apply *mutatis mutandis*.

§ 183. [Revocability of approval] Prior assent (approval) is revocable until the legal transaction has been entered into, unless a contrary intention appears from the legal relationship to which the approval is granted. The revocation may be declared either to the one or to the other party.

§ 184. [Retroactive effect of ratification]

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

(2) Retroactive effect does not make invalid dispositions which were made before the ratification of the object of the legal transaction by the ratifying party, or which have been effected by means of compulsory execution or arrestment or by a trustee in bankruptcy.

§ 185. [Disposition by unauthorized person)

(1) A disposition affecting an object which is made by a person without title, if made with the approval of the person entitled, is valid.

(2) The disposition is valid if the person entitled ratifies it, or if the disposer acquires the object, or if the person entitled has succeeded to his estate and is liable without limitation for the obligations of the estate. In the last two cases, if several incompatible dispositions have been made affecting the object, only the first disposition is effective.

## FOURTH SECTION

### PERIODS OF TIME. TIME LIMITS

§ 186. [Applicability] The rules of interpretation of §§ 187 to 193 apply to the fixing of periods and dates contained in statutes, court orders and legal transactions.

§ 187. [Beginning of running of period]

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

(2) If the beginning of a day is the point of time from which a period begins to run, then this day is counted in computing the period. The same rule applies to the day of birth in the computing of age.

§ 188. [End of period]

(1) A period determined by days ends with the expiration of the (last) day of the period.

(2) A period determined by weeks, by months, or by a period of time covering several months-year, half-year, quarter-ends, in the case provided for by § 187(1), on the expiration of that day of the last week or of the last month which corresponds in name or number to the day in which the event or the point of time occurs; in the case provided for by § 187(2), on the expiration of that day of the last week or of the last month which precedes the day which corresponds in name or number to the initial day of the period.

(3) If, in the case of a period determined by months, the day on which it is due to expire is lacking in the last month, the period ends with the expiration of the last day of the month.

§ 189. (Half-year, quarter, half-month)

(1) By a half-year is understood a period of six months, by a quarter, a period of three months, and by a half-month, a period of fifteen days.

(2) If a period is fixed at one or several entire months and a half-month, the fifteen days shall be counted last.

§ 190. (Extension of time) In case of the extension of a period the new period is computed from the expiration of the previous period.

§ 191. [Computation of periods of time] If a period of time is described by months or by years in such a manner that they need not run consecutively, a month is computed as thirty days and a year as three hundred and sixty-five days.

§ 192. [Beginning, middle and end of a month] By the beginning of a month is understood the first, by the middle of a month, the fifteenth and by the end of a month, the last day of the month.

§ 193. [Sundays and holidays; Saturdays] If, on a given day or within a given period, a declaration of intention is required to be made or any act of performance to be done, and if the given day or the last day of the given period falls upon a Sunday, a day officially recognized in the place of declaration or performance as a public holiday, or a Saturday, then the next business day takes the place of such a day.

## FIFTH SECTION PRESCRIPTION

§ 194. (Scope of prescription)

(1) The right to demand an act or an omission from another (a claim) is subject to prescription.

(2) A claim arising from a relationship under the family law is not subject to prescription, so far as it is meant to establish for the future of the situation appropriate to the relationship.

FIRST SECTION  
CONTENT OF OBLIGATIONS  
FIRST TITLE

Obligation to Perform

§ 241. [Content of obligation] The effect of an obligation is that the creditor is entitled to claim performance from the debtor. The performance may consist of refraining from acting.

§ 242. [Performance according to good faith] The debtor is bound to effect performance according to the requirements of good faith, giving consideration to common usage.

§ 243. [Debt described by class]

(1) If a person owes a thing described only by class, he shall deliver a thing of average kind and value.

(2) If the debtor has done whatever is necessary on his part for the delivery of such a thing, his obligation is limited to that thing.

§ 244. [Money debt]

(1) If a money debt expressed in a foreign currency is payable within the country, payment may be made in the currency of the country, unless payment in the foreign currency is expressly stipulated.

(2) The conversion is made at the currency rate of exchange in the place of payment.

§ 245. [Debt of specific kind of money] If a money debt is payable in a specific kind of money which is no longer current at the time of payment, the payment shall be made as if the kind of money were not specified.

§ 246. [Legal interest rate] If by law or legal transaction a debt bears interest, four per cent per annum shall be paid, unless some other rate is specified.

§ 247. (Right of notice in case of a high interest rate)

(1) If a higher rate of interest than six per cent per annum is agreed upon, the debtor may, after the expiration of six months, give notice of payment of the principal, six months' notice being required. The right to terminate may not be excluded or limited by contract.

(2) These provisions do not apply to bonds payable to bearer and to order. In the case of loans, which are or should be by law created to guarantee bearer bonds,

BOOK 2: § 275-281

§ 275. (Impossibility for which one is not responsible)

(1) The debtor is relieved from his obligation to perform if the performance becomes impossible because of a circumstance, for which he is not responsible, occurring after the creation of the obligation.

(2) The inability of the debtor to perform after the creation of the obligation is equivalent to subsequent impossibility of performance.

§ 276. (Responsibility for one's own conduct)

(1) A debtor is responsible, unless it is otherwise provided, for wilful conduct and negligence. A person who does not exercise ordinary care acts negligently. The provisions of §§ 827, 828 apply.

(2) A debtor may not be released beforehand from responsibility for wilful conduct.

§ 277. [Care exercised in one's own affairs] Whoever is obliged to exercise only such care as he is accustomed to exercise in his own affairs is not relieved from responsibility for gross negligence.

§ 278. [Responsibility for persons employed in performing obligation] A debtor is responsible for the fault of his legal representative and of persons whom he employs in performing his obligation, to the same extent as for his own fault. The provision of § 276(2) does not apply.

§ 279. [Inability to perform in case of debt described by class] If a debt described by class is owed, and so long as delivery of this class of object is possible, the debtor is responsible for his inability to deliver, even though no fault may be imputed to him.

§ 280. [Liability in case of impossibility for which one is responsible]

(1) Where the performance becomes impossible because of a circumstance for which the debtor is responsible, the debtor shall compensate the creditor for any damage arising from the nonperformance.

(2) In the event of partial impossibility the creditor may, by declining the still possible part of the performance demand compensation for non-performance of the entire obligation, if he has no desire for the partial performance. The provisions of §§ 346 to 356 applicable to the contractual right of rescission apply *mutatis mutandis*.

§ 281. [Delivery of a substitute in case of impossibility]

(1) If, in consequence of the circumstance which makes the performance impossible, the debtor acquires a substitute or a claim for compensation for the object owed, the creditor may demand delivery of the substitute received or assignment of the claim for compensation.

(2) If the creditor has a claim for compensation on the grounds of nonperformance, the compensation to be made to him is diminished, if he exercises the right specified in (1) by the value of the substitute received or of the claim for compensation.

§ 282. [Proof in case of impossibility] If it is disputed whether the impossibility of performance is the result of a circumstance for which the debtor is responsible, the burden of proof falls on the debtor.

§ 283. [Fixing of time after judgment]

(1) If a final judgment has been made against the debtor, the creditor may allot him a reasonable period for performance, with a declaration that he refuses to accept the performance after the expiration of the period. After the expiration of the period the creditor may demand compensation for non-performance, if the performance is not effected in due time; the claim for performance is barred. The liability for compensation does not arise if the performance becomes impossible in consequence of a circumstance for which the debtor is not responsible.

(2) If at the expiration of the period the performance is only partly not performed, the creditor also has the right specified in § 280(2).

§ 284. [Default by debtor]

(1) If after his obligation is due, the debtor does not perform after a warning from the creditor, he is in default because of the warning. Bringing an action for performance and service of a judicial order for payment are equivalent to a warning.

(2) If a time is fixed by the calendar for the performance, the debtor is in default without warning if he does not perform at the fixed time. The same rule applies if a notice is required to precede

the performance, and the time is fixed in such manner that it may be reckoned by the calendar from the time of notice.

§ 285. [No default if no liability] The debtor is not in default so long as the performance does not take place because of a circumstance for which he is not responsible.

§ 286. [Compensation for default]

(1) The debtor shall compensate the creditor for any damage arising from his default.

(2) If the creditor does not desire the performance because of the default, he may, by refusing the performance, demand compensation for non-performance. The provisions of §~ 346 to 356 applicable to the contractual right of rescission apply *mutatis mutandis*.

§ 287. [Extended liability] A debtor is responsible for an, v negligence during his default. He is also responsible for impossibility of performance arising accidentally during the default, unless the damage would have arisen even if he had performed in, due time.

§ 288. [Interest during default]

(1) A money debt bears interest during default at four per cent per annum. If the creditor can demand higher interest on any other lawful ground, this shall continue to be paid.

(2) A claim for further damage is not excluded.

§ 289. [No interest on interest] Interest shall not be paid upon interest in default. The right of the creditor to compensation for any damage arising from the default remains unaffected.

## SECOND SECTION CONTRACTUAL OBLIGATIONS FIRST TITLE

### Creation, Content of Contract

§ 305. [Creation] For the creation of an obligation by legal transaction, and for any modification of the substance of an obligation, a contract between the parties is necessary, unless otherwise provided by law.

§ 306. [Impossible performance] A contract, the performance of which is impossible, is void.

§ 307. [Negative interest]

(1) If a person, in concluding a contract the performance of which is impossible, knew or should have known that it was impossible, he is obliged to make compensation for any damage which the other party has sustained by relying upon the validity of the contract; not, however, beyond the value of the interest which the other party has in the validity of the contract. The duty to make compensation does not arise if the other party knew or should have known of the impossibility.

(2) These provisions apply *mutatis mutandis* if the performance is only partially impossible, and the contract is valid in respect of the possible part, or if only one of several alternative acts of performance promised is impossible.

§ 308. [Temporary impossibility]

(1) The impossibility of performance does not preclude the validity of the contract if the impossibility can be removed, and the contract is meant to be concluded only if the performance becomes possible.

(2) If an impossible performance is promised subject to any other condition precedent or subject to a specified time of beginning, after which it is to become binding the contract is valid if the impossibility is removed before the fulfillment of the condition or the arrival of the time.

§ 309. [Illegal contract] If a contract is contrary to a statutory prohibition, the provisions of §§ 307, 308 apply *mutatis mutandis*.

§ 310. [Contract concerning future property] A contract whereby one party binds himself to assign his future property or a fractional part of his future property or to charge it with a usufruct, is void.

§ 311. [Contract concerning present property] A contract, whereby one party binds himself to assign his present property or a fractional part of his present property or to charge it with a usufruct, requires notarial authentication.

§ 312. [Contract concerning estate of living third party]

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

(2) These provisions do not apply to a contract which will be concluded among future statutory heirs concerning the statutory share or compulsory portion of one of them. Such a contract requires notarial authentication.

§ 313. [Form of contract for alienation of piece of land] A contract whereby one party binds himself to transfer ownership of a plot of land requires notarial authentication. A contract concluded without observance of this form becomes valid in its entirety if transfer and registration in the Land Register have taken place.

§ 314. [Extension to accessories] If a person binds himself to alienate or create a charge upon a thing, the obligation extends, in case of doubt, to the accessories of the thing also.

§ 315. [Determination of the performance by one party]

(1) If the performance is to be determined by one of the contracting parties, it is to be presumed, in case of doubt, that the determination is to be made in an equitable manner.

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

(3) If the determination is to be made in an equitable manner, the determination made is binding upon the other party only if it is equitable. If it is inequitable the determination is made by court decision; the same applies if the determination is delayed.

§ 316. [Determination of the counter-performance] If the extent of the counter-performance promised for an act of performance is not determined, the determination, in case of doubt, is to be made by the party who is entitled to demand the counter-performance.

§ 317. [Determination of the performance by a third party]

(1) If the determination of the performance is left to a third party, it is to be presumed, in case of doubt, that it shall be made in an equitable manner.

(2) If the determination is to be made by several third parties, the agreement of all is necessary, in case of doubt; if a sum is to be specified, and if various sums have been specified, the average is to be taken.

§ 318. [Rescission of determination]

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

(2) Rescission of the determination made, on the ground of error, threats, or fraud may be made at the instance of the contracting parties only; the other party is the opposing party for the rescission. Rescission must be sought without delay after the person entitled to seek it has obtained knowledge of the grounds for rescission. The right is barred if thirty years have elapsed after the determination has been made.

§ 319. [Ineffectiveness of the determination; substitution]

(1) If a third party is to determine the performance in an equitable manner, the determination made is not binding upon the contracting parties if it is evidently inequitable. The determination in this case is made by court decision; the same applies if the third party cannot or will not make the determination, or if he delays it.

(2) If the third party is to make the determination at his discretion, the contract is not binding if the third party cannot or will not make the determination, or if he delays it.

## SECOND TITLE

### Mutual Contract

§ 320. [Plea of unperformed contract]

(1) Whoever is bound by a mutual contract may refuse to perform his part until the other party has performed his part, unless the former party is bound to perform his part first. If the performance is to be made to several persons, the part due to one of them can be refused until the entire counter-performance has been effected. The provision of § 273(3) does not apply.

(2) If one side has performed in part, the counter-performance may not be refused to the extent that the refusal would be, in the circumstances, contrary to good faith, especially in view of the disproportionate triviality of the remaining part.

§ 321. [Deterioration of property] If a person is obliged by a mutual contract to perform his part first, he may, if after the conclusion of the contract a significant deterioration in the financial position of the other party occurs whereby the claim for the counter-performance is endangered, refuse to perform his part until the counter-performance is made or security is given for it.

§ 322. [Court order for contemporaneous performance]

(1) If one party brings an action for the performance due to him under a mutual contract, the enforcement of the other party's right to refuse performance until counter-performance has been made, has the effect only that a court may order the other party to make his performance contemporaneously.

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

(3) The provision of § 274(2) applies to compulsory execution.

§ 323. [Development of impossibility for which neither party is responsible]

(1) If the performance due from one party under a mutual contract becomes impossible because of a circumstance for which neither he nor the other party is responsible, he loses the claim to counter-performance; in case of partial impossibility the counter-performance is diminished in accordance with §§ 472, 473.

(2) If the other party demands delivery under § 281 of the substitute received for the object owed, or assignment of the claim for compensation, he remains obliged to make the counter-

performance; this is diminished, however, in accordance with §§ 472, 473 insofar as the value of the substitute or of the claim for compensation is less than the value of the performance due.

(3) If counter-performance has been made which according to these provisions was not due, insofar as the performance is made, it may be demanded back under the provisions relating to the return of unjust enrichment.

§ 324. [Development of impossibility for which creditor is responsible]

(1) If the performance due from one party under a mutual contract becomes impossible because of a circumstance for which the other party is responsible, the first party retains his claim for counter-performance. He must, however, deduct what he saves in consequence of release from the performance, or what he acquires or wilfully omits to acquire by a different use of his labor.

(2) The same rule applies if the performance due from one party becomes impossible, because of a circumstance for which he is not responsible, at a time when the other party is in default of acceptance.

§ 325. [Development of impossibility for which debtor is responsible]

(1) If the performance due from one party under a mutual contract becomes impossible because of a circumstance for which he is responsible, the other party may demand compensation for non-performance, or withdraw from the contract. In case of partial impossibility, if he does not desire the partial performance of the contract, he is entitled, subject to the conditions specified in § 280(12) to demand compensation for non-performance of the entire obligation, or to withdraw from the entire contract. Instead of the claim for compensation and of the right of rescission he may demand the rights specified in the situation provided for by § 323.

(2) The same applies in the situation provided for by § 283, if the performance is not made before the expiration of the period, or if at that time it is in part not made.

§ 326. [Default; fixing of period with warning of refusal]

(1) If, in the case of a mutual contract, one party is in default in performing, the other party may give him a reasonable period within which to perform his part with a declaration that he will refuse to accept the performance after the expiration of the period. After the expiration of the period he is entitled to demand compensation for non-performance, or to withdraw from the contract, if the performance has not been made in due time; the claim for performance is barred. If the performance is only partly made before the expiration of the period, the provision of § 325(1), sent. 2, applies *mutatis mutandis*.

(2) If, in consequence of the default, the performance of the contract is of no use to the other party, such other party has the rights specified in (1) without giving any period.

§ 327. [Rules of statutory right of rescission] The provisions of §§ 346 to 346~6 applicable to the contractual right of rescission apply *mutatis mutandis* to the right of rescission described in §§ 325, 326. If the rescission occurs because of a circumstance for which the other party is not responsible, such other party is liable only under the provisions relating to the return of unjust enrichment.

BOOK 2: § 348-357

§ 348. [Contemporaneous fulfilment] The obligations of the parties resulting from rescission shall be fulfilled contemporaneously. The provisions of §§ 320, 322, apply *mutatis mutandis*.

§ 349. [Declaration of rescission] Rescission is effected by declaration to the other party.

§ 350. [Accidental destruction] The right of rescission is not barred by the fact that the object which the party entitled to rescind has received has been accidentally destroyed.

§ 351. [Destruction caused by fault] The right of rescission is barred if the party entitled is to blame for any significant deterioration, destruction, or impossibility of delivery for other reasons of the object received. The destruction of a considerable part is equivalent to the significant deterioration of the object; the fault of another person for whom, according to § 278, the party entitled is responsible, is equivalent to the party's own fault.

§ 352. [Processing or remodelling] The right of rescission is barred if the party entitled has altered the form of the object received by processing or remodelling it into a thing of another kind.

§ 353. [Alienation or charge]

(1) If the party entitled has disposed of the object received or a considerable part of it, or has burdened it with a right in favor of a third party, the right of rescission is barred if the conditions of § 351 or of § 352 have arisen in the case of the party who has acquired the object because of the disposition.

(2) A disposition which is effected by means of compulsory execution or distraint, or by a trustee in bankruptcy is equivalent to a disposition by the party entitled.

§ 354. [Default; fixing of period to return object] If a party entitled is in default in returning the object received or a considerable part of it, the other party may give him a reasonable period, with a declaration that he will refuse to accept after the expiration of the period. The rescission becomes ineffective if the return is not made before the expiration of the period.

§ 355. [Expiration of right to rescind after fixing period] If a period for the exercise of the right of rescission has not been agreed upon, a reasonable period for its exercise may be given to the party entitled to it by the other party. The right of rescission expires if rescission is not declared before the expiration of the period. § 356. [Non-severability of right to rescind] If in a contract there are several persons on one or other side, the right of rescission may be exercised only by all and against all. If the right of rescission expires in respect of one of the persons entitled, it expires also in respect of the others.

§ 357. [Rescission on the grounds of non-performance] If one party has reserved the right of rescission in the event the other party does not perform his obligation, the rescission is ineffective if the other party could have relieved himself from the obligation by set-off, and if he makes a declaration of set-off without delay after the rescission.

§ 358. [Burden of proof in case of rescission on grounds of non-performance] If one party has reserved the right of rescission in the event the other party does not perform his obligation, and the latter contests the admissibility of the declared rescission on the ground that he has performed, he shall prove performance unless the obligation due from him was to refrain from an action.

§ 359. [Rescission on payment of a forfeit] If rescission may be made only on payment of a forfeit, the rescission is ineffective if the forfeit is not paid before or at the time of the declaration of rescission, and the other party without delay rejects the declaration for this reason. The declaration is, however, effective if the forfeit is paid without delay after the rejection.

§ 360. [Clause as to forfeiture grants to rescind] If a contract provides that the debtor shall forfeit his rights under the contract if he does not perform his obligation, the creditor is entitled, on the occurrence of this event, to rescind the contract.

§ 361. [Rescission in event of exactly specified transaction] If it is agreed in a mutual contract that the performance due from one of the parties is to be made exactly at a fixed time or within a fixed period, it is to be inferred, in case of doubt, that the other party shall be entitled to rescind if the performance is not made at the fixed time or within the fixed period.

THIRD SECTION  
EXTINCTION OF OBLIGATIONS  
FIRST TITLE

Fulfilment

§ 362. [Extinction by performance]

- (1) An obligation is extinguished if the performance owed is made to the creditor.
- (2) If performance is made to a third party for the purpose of fulfilment, the provisions of § ~85 apply.

§ 363. [Burden of proof in case of acceptance of performance as fulfilment] If the creditor has accepted as fulfilment an act of performance offered as fulfilment, the burden of proof is upon him if he does not admit the performance to be valid as fulfilment on the ground that it is other than the performance due, or that it was incomplete.

§ 364. [Acceptance in lieu of fulfilment]

- (1) An obligation is extinguished if the creditor accepts in lieu of fulfilment another performance than the one due.
- (2) If the debtor, for the purpose of satisfying the creditor, assumes a new obligation towards him, it is not to be presumed, in case of doubt, that he assumes the obligation in lieu of fulfilment.

§ 365. [Warranty in case of giving performance in lieu of fulfilment] If a thing, a claim against a third party, or any other right is given in lieu of fulfilment, the debtor shall grant warranty, in the same manner as a seller, against a defect in title and against a defect in the thing.

§ 366. [Partial performance in event of several obligations]

- (1) If a debtor is bound to do for the creditor similar acts of performance by virtue of several obligations, and if the performance effected by him is insufficient for the discharge of all debts, then the debt which he specifies on effecting the performance is discharged.
- (2) If the debtor makes no specification, among several debts due the one which affords the creditor least security is first discharged; among several equally secure debts the one most burdensome to the debtor; among several equally burdensome debts the oldest debt; and where several are equally old, each debt proportionately.

§ 367. [Interest and costs in event of partial performance]

- (1) If the debtor has to pay interest and costs besides the principal performance, the value of an act of performance insufficient to discharge the whole debt is applied first to the costs, then to the interest, and lastly to the principal performance.
- (2) If the debtor specifies any other application, the creditor may refuse to accept performance.

§ 368. [Receipt] On receipt of the performance the creditor shall on demand give a written acknowledgment of receipt ( receipt). If the debtor has a legal interest in the making of the receipt in any other form he may require it to be made in such other form.

§ 369 [Costs of receipt]

(1) The debtor shall bear and advance the cost of the receipt, unless a contrary intention appears from the legal relationship existing between him and the creditor.

(2) If, in consequence of a transfer of the claim or by way of inheritance, several creditors take the place of the original creditor, the excess costs shall be borne by the creditors.

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