

E) Civil Status and Civil Law

1. Civil Status Act (Personenstandsgesetz - PStG)

of 3 November 1937 (Reich Law Gazette [RGBl.] Part I p. 1146), in the version of the proclamation of 8 August 1957 (Federal Law Gazette [BGBl] Part I p. 1125), last amended by Act of 9 April 2002 (BGBl Part I p. 1239)

Part II: Marriage, Marriage Book and Family Book

Section 5 [Preconditions for Registration of Marriage]

(1) The fiancées shall when registering the conclusion of marriage submit to the registrar their descent documents, certified copies of the family book or excerpts there from.

(...)

(3) If the fiancées are unable to obtain the necessary documents or only with considerable difficulty or at an unreasonably high cost, the registrar may be satisfied with the submission of church or other certifications with evidentiary force. (...)

(...)

Section 11 [Entries in the Marriage Register]

(1) The following shall be entered in the marriage register

1. the first and last names of the parties concluding marriage, their professions and residence, their place and date of birth, as well as if they agree their legal affiliation or their non-affiliation to a church, religious society or ideological community,

(...)

Section 12 [Creation of Entry; Entries]

(...)

(2) The following shall be entered in the Family Book

1. the first and last names of the spouses, their professions, their place and date of birth and conclusion of marriage, as well as if they agree their legal affiliation or non-affiliation to a church, religious society or ideological community, (...)

(...)

Section 14 [Further Entries]

(1) The registrar keeping the Family Book shall enter therein

(...)

7. the change in the legal affiliation or non-affiliation to a church, religious society or ideological community,

(...)

Section 15 b [Basis for Entries in the Family Book]

(1) Unless otherwise stipulated by law, the entries in the Family Book, apart from the information relating to profession, legal affiliation or non-affiliation to a church, religious society or ideological community and the residence or last residence, shall be effected on the basis of entries in other civil status registers or because of public certificates. Section 5 subsection (3) shall apply mutatis mutandis.

(...)

Part III: Register of Births and Deaths

Section 21 [Entries in the Register of Births]

(1) The following shall be entered in the Register of Births

1. the first and last names of the parents, their professions and place of residence, as well as their nationalities if they are not German and their foreign nationality is proven, as well as if they agree their legal affiliation or non-affiliation to a church, religious society or ideological community,

(...)

Section 37 [Entries in the Register of Deaths]

(1) The following shall be entered in the Register of Deaths

1. the first and last names of the deceased, his/her profession and place of residence, place and date of birth as well as if the person reporting agrees their legal affiliation or non-affiliation to a church, religious society or ideological community,

(...)

Part VI: Court Procedure

Section 46 a [Correction of a Completed Entry]

(1) The registrar may correct obvious typographical errors in a completed entry. He/she may also correct the following on the basis of public certificates or of his/her own investigations

1. references to entries in other civil status registers, as well as information relating to legal affiliation or non-affiliation to a church, religious or ideological community,

(...)

(2) The registrar may make other corrections in the Register of Marriages, Births and Deaths once the entry has been completed if the correct or complete circumstances have been determined by domestic civil status certificates.

Part VIII: Evidentiary Force of the Civil Status Registers and Certificates

Section 62 [Birth and Descent Certificate]

(1) The following shall be included in the birth certificate and in the origin certificate

(...)

3. the first and last names of the child's parents, their place of residence and their legal affiliation or non-affiliation to a church, religious society or ideological community if the legal affiliation or non-affiliation has been entered in the register of births.

(...)

Section 63 [Marriage Certificate]

The following shall be included in the marriage certificate

1. the first names of the spouses and the family names kept by them prior to conclusion of marriage, their place of residence, the place and date of their birth, as well as their legal affiliation or their non-affiliation to a church, religious society or ideological community if the legal affiliation or non-affiliation has been entered in the register of marriages,

(...)

Section 64 [Death Certificate]

The following shall be included in the death certificate

1. the first and last names of the deceased, his/her place of residence, place and date of birth as well legal affiliation or non-affiliation to a church, religious society or ideological community if the legal affiliation or non-affiliation has been entered in the register of deaths,

(...)

Part IX: Final Provisions

Section 67 [Church Marriage Prior to Conclusion of Marriage]³²

Whoever administers a church marriage or the religious festivities of the conclusion of marriage without firstly the fiancées having declared at a registrar's office their intention to enter into marriage with one another shall be deemed to have committed an administrative offence unless one of the fiancées is mortally ill and a delay is not possible or a severe moral emergency applies that cannot be otherwise remedied, the existence of which is confirmed by the competent agency of the religious corporation under public law.

Section 67a [Administrative Offence in the Event of a Failure to Inform]³³

Whoever administers a church marriage or the religious festivities of the conclusion of marriage without firstly the fiancées having declared at a registrar's office their intention to

³² Note: This is an administrative offence where no sanction is applied.

³³ Note: This is an administrative offence where no sanction is applied.

enter into marriage with one another shall be deemed to have committed an administrative offence if he/she does not inform the registrar's office in writing on this without delay.

Section 69a [Change of Religion]

(1) A change in legal affiliation or non-affiliation to a church, religious society or ideological community, by persons who previously belonged to a church, religious society or ideological community cannot be entered until it has been proven that they have resigned from the church, religious society or ideological community. Equally, affiliation to a church, religious society or ideological community may only be entered after affiliation has been proven.

(2) Entries regarding a person's legal affiliation or non-affiliation to a church, religious society or ideological community in a civil status register may only be evaluated for the purposes of demographic statistics. Counting cards shall be completed by the registrars and in cases falling under sections 18, 19 and 34 by the agencies named therein, in which

1. when certifying birth, information on legal affiliation or non-affiliation to a church, religious society or ideological community of the child's parents,
2. when certifying death, information on legal affiliation or non-affiliation to a church, religious society or ideological community of the deceased,
3. when certifying conclusion of marriage, information on legal affiliation or non-affiliation to a church, religious society or ideological community of the persons marrying.

Where these data do not emerge from the entries in the civil status registries, the persons reporting or those concluding marriage shall be under an obligation to provide information. The registrar shall keep on the information contained in the counting cards lists of names to be kept as the civil status registers. Information on the legal affiliation or non-affiliation of individuals to a church, religious society or ideological community may only be given to the churches, religious societies or ideological communities to which these persons belong.

2. Civil Code (*Bürgerliches Gesetzbuch*)

of 18 August 1896 (Reich Law Gazette [RGBl.] p. 195), last amended by Act of 9 April 2002 (Federal Law Gazette [BGBl.] Part I p. 1239)

Book 1: General Part

Part 1: Persons

Section 31 Liability of the Association for Bodies

The association shall be liable for the damage caused by an act committed by the board, a member of the board or another constitutionally-appointed representative³⁴ in exercising the activities vested in him/her constituting an obligation to provide compensation.

³⁴ Note: The constitutional representative of a Church parish is the pastor.

Section 89 Liability for Organs — Insolvency

(1) The provision contained in section 31 shall apply mutatis mutandis to the fiscal authorities, as well as to corporations, foundations and institutes under public law³⁵.

(...)

Book 2: Law on Debts

Part 4: Ceding of the Receivable

Section 411 Ceding of Salary

If a military person, a civil servant, a cleric or a teacher at a public instruction institution assigns the assignable part of his/her service income, of the special waiting allowance or of the retirement pension, the paying cash office shall be informed of the ceding by handing over a certificate issued by the previous creditor that shall be publicly or officially certified. (...)

Part 8: Individual Debts

*Section 618 Duty to Take Protective Measures*³⁶

(...)

(2) If the obligee is included in the domestic community, the party entitled to performance with regard to residential and sleeping premises, board and work and leisure time shall take the measures and orders that are required with regard to the health, morals and religion of the obligee.

Section 839 Liability for Breaches of Official Duty

(1) If a civil servant intentionally or negligently breaches an official duty incumbent on him/her towards a third party, he/she shall compensate for the damage incurred by the third party as a result thereof. If the civil servant is only negligent, recourse may only be to him/her if the injured party is unable to obtain compensation in another manner.

(...)

³⁵ Note: Corporations under public law are inter alia religious communities meeting the preconditions of article 140 of the Basic Law in conjunction with article 137 para 5 of the Weimar Constitution (cf. First Part, item A).

³⁶ Note: A corresponding provision is also contained in section 62 subsection (2) of the Commercial Code (Handelsgesetzbuch) of 10.5.1897 (Reich Law Gazette [RGBl.] p. 219), last amended on 10.12.2001 (Federal Law Gazette [BGBl.] Part 1 p. 3422) relating to the duty of care of the employer towards commercial employees.

Book 4: Family Law

Part 1: Civil Marriage

Section 1309 Certificate of No Impediment to Marry for Foreigners

(1) Whoever is subject to foreign law as to the preconditions for the conclusion of marriage, subject to article 13 para 2 of the Introductory Act to the Civil Code (Einführungsgesetz zum Bürgerlichen Gesetzbuch) should not enter into marriage before submitting a certificate from the domestic affairs authority of his/her home country to the effect that there is no impediment to the conclusion of marriage in accordance with the law of that state. (...)

(2) The President of the Higher Regional Court in whose district the registrar is seated with whom the conclusion of marriage has been registered may issue an exemption from the requirement in accordance with subsection (1) first sentence. The exemption should only be granted to stateless individuals with habitual residence abroad and nationals of states whose authorities do not issue certificates of no impediment within the meaning of subsection 1. In special cases, it may also be granted to nationals of other states.³⁷ (...)

Section 1588 Unaffectedness of Church Duties

Church duties regarding marriage shall remain unaffected by the provisions of this section^{38, 39}

Part 2: Relatives

Section 1626 Parental Care, Principles

(1) The parents shall have the duty and the right to care for the minor child (parental care). Parental care shall encompass personal care of the child (personal custody)⁴⁰ and the assets of the child.

(2) With care and upbringing, the parents shall take account of the increasing ability and the growing need of the child for independent, responsible action. They shall discuss questions of parental care with the child where this is suitable in terms of his/her state of development, and shall attempt to reach agreement.

Part 3: Guardianship, Legal Care, Curatorship

Section 1776 Parents' Right of Nomination

(1) The person shall be nominated as a guardian who is nominated by the parents of the ward.

³⁷ Note: Accordingly, an exemption may be granted inter alia if a religiously-motivated prohibition of marriage pertains in accordance with foreign law which violates the German ordre public or article 13 para 2 of the Introductory Act to the Civil Code. The wording of the latter provision is contained in the second part at item E No. 3.

³⁸ Note: This part is concerned with civil marriage and governs, in addition to betrothal, entering into, annulment and dissolution of marriage, re-marriage in the event of a declaration of death, the general impact of marriage and the marital property regime.

³⁹ Note: The church duties of Church members are determined by intra-church laws and codes.

⁴⁰ Note: Religious instruction is also an element of personal care.

(2) If the father and mother have nominated different persons, the nomination by the parent last deceased shall apply.

Section 1779 Selection by a Guardianship Court

(1) If the guardianship is not to be assigned to a person nominated in accordance with section 1776, the Guardianship Court shall select the guardian after hearing the youth welfare office of the ward.

(2) The Guardianship Court should select a person who by their personal circumstances and assets and by the other circumstances is suitable to operate the guardianship. In selecting from among several suitable persons, the probable wish of the parents, the personal relations of the ward, the degree of relation with or affinity to the ward and the religious confession of the ward shall be taken into consideration.

(...)

Section 1784 A Civil Servant or Religious Servant as Guardian

(1) A civil servant or religious servant who in accordance with the Land statutes requires special permission to assume guardianship, should not be appointed as a guardian without the prescribed permission.⁴¹

(2) This permission may only be refused if an important service reason pertains.

Section 1801 Religious Instruction

(1) Care for the religious instruction of the ward may be removed from the individual guardian by the Guardianship Court if the guardian does not belong to the confession in which the ward is to be brought up.⁴²

(2) If the youth welfare office or an association is to decide as the guardian on accommodation of the ward, account shall be taken here of the religious confession or the ideology of the ward and his/her family.

Section 1888 Dismissal of Civil Servants or Religious Servants

If a civil servant or a religious servant has been appointed as a guardian, the Guardianship Court shall dismiss him/her if the permission required in accordance with the Land statutes to assume or to continue guardianship assumed prior to entry into the office or service relationship is refused or withdrawn, or if in accordance with the Land statutes permissible prohibition of continuation of the guardianship is effected.

⁴¹ Note: The law of the religious society in question applies to religious servants on the basis of article 140 of the Basic Law, in conjunction with article 137 of the Weimar Constitution (cf. first part item A).

⁴² Note: In case of different confessions, and if there is an important reason, custody in respect of Religious Instruction is removed from the guardian in accordance with sections 1775 and 1901 subsection 1. A change of religion or resignation from the church does not always render the guardian unsuitable.

3. *Introductory Act to the Civil Code (Einführungsgesetz zum Bürgerlichen Gesetzbuch)*
of 18 August 1896 (Reich Law Gazette [RGBl.] Part I p. 604), in the version of the proclamation of 21 September 1994 (Federal Law Gazette [BGBl.] Part I p. 2494, corr. BGBl. 1997 I p. 1061), last amended by Act of 11 December 2001 (BGBl. Part I p. 3513)

1. Part: General Provisions

Chapter 2: International Private Law

Article 13 Conclusion of Marriage

(1) The preconditions for the conclusion of marriage shall be subject for each fiancée to the law of the state of which he/she is a citizen.

(2) If a precondition of this is not met, German law shall apply in this respect if

1. a fiancée has his/her habitual place of residence on domestic territory or is German,
2. the fiancées have taken reasonable steps towards fulfilling the preconditions, and
3. it is incompatible with the freedom to conclude marriage to prohibit the conclusion of marriage; in particular, the previous marriage of a fiancée shall not constitute a hindrance to marriage if its existence has been remedied by a ruling issued or recognised here, or the spouse of the fiancée has been declared dead.⁴³

(3) Marriage may only be concluded in domestic territory in the form prescribed here. Marriage between fiancées neither of whom is German may however be concluded before a person properly empowered by the government of the state of which one of the fiancées is a citizen⁴⁴ in the form prescribed by the law of that state; a certified copy of the entry of the marriage thus concluded in the registry kept by the person properly empowered so to do shall provide full proof of the conclusion of marriage.

3. Part: Relationship between the Civil Code and the Land Statutes

Article 80 [Property Law Claims of Civil Servants – Law on Benefice]

(1) Unless a special provision has been taken in the Civil Code, the Land law provisions regarding property rights and obligations of civil servants, clerics and teachers at public instruction institutes deriving from the official or service relationship including the claims of the surviving dependants shall remain unaffected.

(...)

⁴³ This provision also applies under certain preconditions if the religious law on the conclusion of marriage used by the state to govern the law on marriage requires for marriage that the fiancées belong to the same religion.

⁴⁴ Note: Hence, inter alia clergy personally nominated by the embassy of the home state to the Foreign Office may also be empowered to administer marriage.

Article 132 [Obligation to Construct and Maintain Churches and Schools]

The Land law provisions regarding the obligation to construct and maintain churches and schools shall remain unaffected.⁴⁵

Article 133 [Stalls and Burial Grounds]

The Land law provisions regarding the right to use a place in a building devoted to religious services or in a public cemetery shall remain unaffected.⁴⁶

4. Authentication Act (*Beurkundungsgesetz*)

of 28 August 1969 (Federal Law Gazette [BGBl.] Part I p. 1513), last amended by Act of 13 December 2001 (BGBl. Part I p. 3574)

Section 3 Prohibition of Collaboration as a Notary

(...)

(2) If it is a matter concerning several persons, and if the notary has acted previously in this matter as a legal representative or agent, or if he/she acts as an agent for one of these persons in another matter, he/she should indicate such prior to recording and ask whether he/she should nevertheless effect the recording. He/she should note in the certificate that this has happened.

(3) Subsection (2) shall apply *mutatis mutandis* if it relates to

(...)

3. matters of a religious or philosophical society recognised as a corporation under public law or a sub-organisation of such a society recognised as a corporation under public law to whose body the notary belongs.

(...)

5. Act on Copyright and Neighbouring Rights - Copyright Act

(*Gesetz über Urheberrecht und verwandte Schutzrechte - Urheberrechtsgesetz*)

of 9 September 1965 (Federal Law Gazette [BGBl.] Part I p. 1273), last amended by Act of 1 September 2000 (BGBl. Part I pp. 1374 and 1375)

Section 46 Collections for Religious, School or Instructional Use

(1) Reproduction and distribution shall be permissible where limited parts of works, of works of language and of musical works, individual works of fine art or individual photographs are incorporated after their publication in a collection which assembles the works of a considerable

⁴⁵ Cf. on this the corresponding provisions, for instance in article 10 para 2 and article 13 of the Treaty between the Free State of Thuringia and the Protestant Churches in Thuringia (see below in third part No. 5 (a)).

⁴⁶ Note: The law on church seating and burial is part of public law today. Cf. on this as an example of a Land law provision of the cemetery and burials system the Burials Act of Mecklenburg-Western Pomerania (*Bestattungsgesetz von Mecklenburg-Vorpommern*), in the second part at item H No. 1.

number of authors and is intended, by its nature, exclusively for religious, school or instructional use. The purpose for which the collection is to be used shall be clearly stated on the title page or in some other appropriate place.

(...)

(3) Reproduction may begin only if the intention to exercise the rights afforded by subsection (1) has been communicated by registered letter to the author or, if his permanent or temporary residence is unknown, to the holder of an exclusive exploitation right, and two weeks have elapsed since dispatch of the letter. If the permanent or temporary address of the holder of the exclusive right is also unknown, the communication can be made by publication in the Federal Gazette (Bundesanzeiger).

(4) The author shall be paid equitable remuneration for the reproduction and distribution.

(...)

Section 48 Public Speeches

(1) It shall be permissible

(...)

2. to reproduce, distribute and communicate to the public speeches made at public proceedings in state, municipal or religious bodies.

(2) It shall be inadmissible, however, to reproduce and distribute the speeches referred to in subsection (1), No. 2, in the form of a collection containing predominantly speeches by the same author.

Section 49 Newspaper Articles and Broadcast Commentaries

(1) It shall be permissible to reproduce and distribute individual broadcast commentaries and individual articles from newspapers and other information journals devoted solely to issues of the day in other newspapers or journals of like kind and to communicate such commentaries and articles to the public, if they concern political, economic or religious issues of the day and do not contain a statement reserving rights.(...)

(...)

Section 52 Public Communication

(...)

(2) The public communication of a published work shall be permissible at a religious service or a celebration of the churches or religious communities. However, the organiser shall pay the author an equitable emolument.

(...)

Section 62 Prohibition of Alteration

(1) Where the use of a work is permissible under the provisions of this section, no alteration may be made to the work. Section 39 shall apply mutatis mutandis.

(2) Where the purpose of the use may demand, it shall be permissible to make translations and such alterations to the work as amount merely to extracts or to transpositions into another key or pitch.

(3) With respect to works of fine art and photographic works, conversion to a different scale and other alterations of the work shall be permissible to the extent required by the method of reproduction.

(4) In the case of collections for religious, school and instructional use (section 46), such alterations of works of language shall be permissible as are necessary for religious, school or instructional use, in addition to the alterations permitted under subsections (1) to (3). However, such alterations shall require the consent of the author (...). Consent shall be deemed to have been granted if the author or his successor in title does not object within one month after the proposed alteration was communicated to him, and if the notification of the alteration has drawn attention to this legal consequence.

**6. Act on the Representation of Copyright and Neighbouring Rights -
Copyright Representation Act (Gesetz über die Wahrnehmung von Urheberrechten und
verwandten Schutzrechten - Urheberrechtswahrnehmungsgesetz)**

*of 9 September 1965 (Federal Law Gazette [BGBl.] Part I p. 1294), last amended by Act
of 13 December 2001 (BGBl. Part I p. 3678)*

Second Part: Rights and Duties of the Collecting Society

Section 13 Tariffs

(1) The collecting society shall set tariffs regarding the emolument that it claims on the basis of the rights and claims it represents. (...)

(...)

(3) (...) The collecting society should when setting tariffs and when collecting the tariff fees take sufficient account of religious, cultural and social concerns in payment of the emolument, including the concerns of youth welfare.