

**German Civil Code (1900 – 2001):
Book II, Law on Obligations**

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Based on the English translation by Chung Hui Wang (1907)

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Division 1. Contents of obligations

Title 1. Duty of performance

< Primary effects of obligations: Natural fulfillment >

§ 241 **[Principle of natural fulfillment]**

By virtue of an obligation the creditor is *entitled to claim performance* from the debtor. The performance may consist in a forbearance.

§ 242 **[Primary duty of performance]**

The debtor is *bound to effect the performance* according to the requirements of good faith, ordinary usage being taken into consideration.

< Scope of damages >

§ 249 **[Scope of damages]**

A person who is bound to make compensation shall bring about the condition which would exist if the circumstance making him liable to compensate had not occurred. If compensation required to be made for injury to a person or damage to a thing, the creditor may demand, instead of restitution in kind, the sum of money necessary to effect such restitution.

§ 254 **[Contributory negligence]**

(1) If any fault of the injured party has contributed in causing the injury, the obligation to compensate the injured party and the extent of the compensation to be made depends upon the circumstances, especially upon how far the injury has been caused chiefly by the one or the other party.

(2) This applies also even if the fault of the injured party consisted only in an omission to call the attention of the debtor to the danger of an unusually serious injury which the debtor neither knew nor ought to have known, or in an omission to avert or mitigate the injury. The provision of 278 applies mutatis mutandis.

< Time of performance >

§ 271 **[Time of performance]**

(1) If a time for performance is neither fixed nor to be inferred from the circumstances the creditor *may demand the performance forthwith*, and the debtor *may perform his part forthwith*.

(2) If a time is fixed it is to be presumed, in case of doubt, that the creditor may not demand the performance before that time; the debtor, however, may perform earlier.

< Impossibility of performance >

§ 275 **[Impossibility of performance]**

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

(2) If the debtor, after the creation of the obligation, becomes unable to perform, it is equivalent to a circumstance rendering the performance impossible.

§ 276 **[Responsibility of debtor]**

(1) *The debtor is responsible*, unless it is otherwise provided, *for intentional default and negligence*. A person who does not exercise ordinary care act negligently. The provision of 827 [incapacity for responsibility in a mental disturbance], 828 [incapacity of small children for responsibility] apply.

(2) A debtor may not be released beforehand from responsibility for intentional default.

§ 278**[Vicarious liability]**

A debtor is responsible for the fault of his statutory agent, and of persons whom he employs in fulfilling his obligation, to the same extent as for his own fault. The provision of 276, par.2, does not apply.

§ 279**[Obligation specified by species]**

If the object owed is specified only by species, and so long as delivery of an object of the specified species is possible, the debtor is responsible for his inability to deliver, even though no fault is imputable to him.

§ 280**[Compensation for damage]**

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

(2) In case 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 interest in the partial performance. The provision of 346 to 356 applicable to the contractual right of rescission apply mutatis mutandis.

§ 282**[Burden of proof]**

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 is upon the debtor.

< Debtor's default >**§ 284****[Warning and default]**

(1) If the debtor does not perform after warning given by the creditor after maturity, he is in default through the warning. Bringing an action for the performance and the service of an order for payment in hortatory process are equivalent to warning.

(2) If a time by the calendar is fixed 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 without responsibility]**

The debtor is not in default so long as the performance is not effected in consequence of a circumstance for which he is not responsible.

§ 286**[Damage due to default]**

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

(2) If the creditor has no interest in the performance in consequence of the default, he may, by refusing the performance, demand compensation for non-performance. The provision of 346 to 356 applicable to the contractual right of rescission apply mutatis mutandis.

§ 287**[Higher liability]**

A debtor is responsible for all negligence during his default. He is also responsible for impossibility of performance arising accidentally during the default, unless the injury would have arisen even if he had performed in due time.

< Delinquency charge >**§ 288****[Statutory interest rate]**

(1) A money debt bears interest during default at 4 percent per annum. If the creditor can demand higher interest on any other legitimate ground, this shall continue to be paid.

(2) Proof of further damage is admissible.

§ 289 **[Prohibition of interest upon interest]**
Interest for default shall not be paid upon interest. The right of the creditor to compensation for any damage arising from the default remains unaffected.

§ 290 **[Interest upon lost values]**
If the debtor is bound to make compensation for the value of an object which has perished during the default, or which cannot be delivered for a reason which has arisen during the default, the creditor may demand interest on the amount to be paid as compensation, from the time which serves as the basis for the estimate of the value. The same rule applies if the debtor is bound to make compensation for the diminution in value of an object which has deteriorated during the default.

< Creditor's default >

§ 293 **[Default of the creditor]**
A creditor is in default if he does not accept the performance tendered to him.

§ 294 **[Actual tender of the performance]**
The performance must be actually tendered to the creditor in the manner in which it is to be effected.

§ 295 **[Verbal tender of the performance]**
A verbal tender by the debtor is sufficient if the creditor has declared to him that he will not accept the performance, or if for effecting the performance an act of the creditor is necessary, e.g., if the creditor has to take away the thing owed. A request to the creditor to do the necessary act is equivalent to tender of performance.

§ 296 **[Fixed time for the act by the creditor]**
If a time according to the calendar is fixed for the act to be done by the creditor, tender is required only if the creditor does the act in due time. The same rule applies if notice is required to precede the act, and the time for the act is fixed in such manner that it may be reckoned by the calendar from the time of notice.

§ 297 **[Debtor's inability to perform]**
A creditor is not in default if the debtor is not in a position to effect the performance at the time of tender, or, in the case provided for by § 296, at the time fixed for the act of the creditor.

§ 298 **[Creditor's counter-performance]**
If the debtor is bound to perform his part only upon counter-performance by the creditor, the creditor is in default if, though prepared to accept the performance tendered, he does not offer the required counter-performance.

§ 299 **[Performance without fixed time or before the fixed time]**
If the time of performance is not fixed, or if the debtor is entitled to perform before the fixed time, the creditor is not in default by reason of the fact that he is temporarily prevented from accepting the tendered performance, unless the debtor has given him notice of his intended performance a reasonable time beforehand.

§ 300 **[Reduced liability of the debtor during the default of the creditor]**
(1) During the default of a creditor his debtor is responsible only for willful default and gross negligence.

(2) If a thing designated only by species is owed, the risk passed to the creditor from the moment at which he is in default by not accepting the thing tendered.

§ 301 **[No interest during creditor's default]**
Upon an interest-bearing money debt the debtor does not have to pay interest during the default of the creditor.

§ 302 **[Benefits]**
If the debtor has to hand over the benefits of an object or to make compensation for them, his liability during the default of the creditor is limited to such benefits as he actually could enjoy.

§ 303 **[Possession of land]**
If the debtor is bound to give up the possession of a piece of land, he may relinquish its possession after the occurrence of the creditor's default. The creditor must be warned of the relinquishment in advance, unless the warning is impracticable.

§ 304 **[Excess of expense]**
The debtor may, in case of the default of the creditor, demand compensation for the excess of expenditure which he had to incur for the unsuccessful tender as well as for the storing and preservation of the object owed.

Division 2. Contractual obligations

Title 1. Formation and contents of contract

< Initial impossibility >

§ 306 **[Nullity of initially impossible contract]**
A contract for an impossible performance is void.

Title 2. Reciprocal contract

< Rescission of contract >

§ 323 **[Impossibility under no responsibility: No counter-performance]**
If the performance due from one party under a reciprocal contract becomes impossible in consequence of a circumstance for which neither he nor the other party is responsible, he loses the claim to counter-performance [...]

§ 324 **[Impossibility under responsibility of the creditor: Counter-performance]**
If the performance due from one party under a reciprocal contract becomes impossible in consequence of a circumstance for which the other party is responsible, he retains his claim to counter-performance. [...]

§ 325 **[Impossibility under responsibility of the debtor: Damages or Rescission]**
If the performance due from one party under a reciprocal contract becomes impossible in consequence of a circumstance for which he is responsible, the other party may demand compensation for non-performance or rescind the contract [...]

§ 326 **[Default of the debtor: Damages or Rescission]**
If, in the case of a reciprocal contract, one party is in default in respect of the performance due from him, the other party may allot him a fixed reasonable period for performance with a declaration that he will decline 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 rescind the contract, if the performance has not been effected in due time; the claim for performance is barred. [...]