

§ 4 Subjects and objects of law

I. Legal entities (legal subjects) [Rechtssubjekte]

- persons or entities *with legal capacity* (who can have own rights & obligations, cf. § 4 III.)
- can have full or limited legal capacity

1) Natural persons

- all human beings, from completion of birth (sect. 1 BGB) until death (brain death)
- have always unlimited legal capacity
- besides, a *nasciturus* (unborn child) can enjoy certain rights if later born
 - can inherit (sect. 1923 BGB)
 - can claim damages for being harmed by an act of tort

2) Legal persons [juristische Personen]

- associations of persons or pools of assets recognised by the law as independent entities, enjoying comprehensive legal capacity
- different types regulated exhaustively in the law
 - but there are unregulated sub-types and combined types
- *act through their organs* and are liable for their acting
 - are usually represented by a *board* [Vorstand] or *director* [Geschäftsführer]
 - essential decisions usually taken by a *general meeting* or *shareholder meeting*
- liability limited to the legal person's assets
 - members/shareholders not liable for their association's obligations - the main reason for establishing it
 - but nowadays some recognised exceptions (→ piercing the corporate veil...)
- legal persons under private law *registered* in public registers
 - commercial register, registers of associations, foundations, cooperatives

a) Registered association [Verein] (sect. 21 et seq., 55 et seq. BGB)

- needs at least 7 members for registration (sect. 56 BGB)
- traditionally very popular (sports clubs, social, cultural and political associations etc.)
- has lost influence in the last decades in the polarised German society

b) Foundation [Stiftung] (new version 2024 of sect. 80 et seq. BGB)

- has assets but no members
- needs recognition by Land authority

c) Cooperative [Genossenschaft] (Cooperative Act)

- corporation of an unlimited number of members for promoting its members' business or social or cultural interests through joint business
 - cooperation, not merger: members maintain individual independence
- e.g. agricultural cooperative, retailer cooperative

d) Capital-based corporations [Kapitalgesellschaften]

- companies, in which membership is based purely on monetary participation and not on the personal cooperation of the shareholders
- most important legal persons under private law

aa) Limited liability company [Gesellschaft mit beschränkter Haftung (GmbH)] (Act on Limited Liability Companies)

bb) Stock corporation [Aktiengesellschaft (AG)] (Stock Corporation Act)

- special type: **partnership limited by shares** [Kommanditgesellschaft auf Aktien] (sect. 278 et seq. Stock Corporation Act)

e) **Legal persons under public law**

aa) **Public-law corporation** [öffentlich-rechtliche Körperschaft]

- self-governing organisation for a certain territory or group of persons
- e.g. commune, county, chamber of industry & commerce, university

bb) **Public-law establishment/institution** [öffentlich-rechtliche Anstalt]

- independent organisational unit pooling material and human resources for a specific mission or service
- e.g. research centre, the local public swimming pool or library

cc) **Public-law foundation** [öffentlich-rechtliche Stiftung]

- e.g. cultural institution or university organised as foundation

3) **Partnerships with partial legal capacity** [Personengesellschaften]

- not recognised by the law as legal persons but enjoying a *limited legal capacity*
- act through their partners
- partners personally, jointly and severally liable without limitation (see for an exception 3.b.bb)

a) **Civil-law partnership with legal capacity** [rechtsfähige Gesellschaft des bürgerlichen Rechts] (new version 2024 of sect. 705 et seq. BGB)

b) **Commercial partnerships** [Handelsgesellschaften] (Book 2 Commercial Code)

- partnerships for carrying on a commercial business under a joint business name

aa) **General partnership** [Offene Handelsgesellschaft (OHG)] (sect. 105 et seq. Comm. Code)

- partnership where no partner's liability is limited vis-à-vis creditors

bb) **Partly limited partnership** [Kommanditgesellschaft (KG)] (sect. 161 et seq. Comm. Code)

- partnership where the liability of one or more partners is limited vis-à-vis creditors to the amount of a specific contribution of assets, while the others have unlimited liability
- special type: **GmbH & Co KG** [partly limited partnership with a limited liability company as personally liable partner]

c) **Partnership company of members of an independent profession** [Partnerschaftsgesellschaften] (Act on Partnership Companies)

- only for the operation of an independent profession (e.g. physician, dentist, lawyer)

d) **European Economic Interest Grouping (EEIG)** (EU Regulation 2137/85)

- partnership of partners from different EU member states to promote transnational economic cooperation

II. Legal objects

- the objects to which the law refers

1) **Things** [Sachen] (sect. 90 et seq. BGB)

- only corporeal objects (sect. 90)
 - not energy (heat, electricity) or energy-based online connections (4G, internet)
- *principle of speciality*: even in case of complex transactions, rights and transfers always refer to the individual things, not collectively to aggregates of things
- distinction between *movable things and immovable things*, i.e. *plots of land* (realities) [Grundstücke], to which different rules apply
- distinction between *fungible things* [vertretbare Sachen] and *non-fungible things* (sect. 91)

- *essential parts* of a thing [wesentliche Bestandteile], that cannot be separated without destroying one or the other or changing it in nature, cannot be subject of separate rights (sect. 93)
 - consequently, there is *no ownership of buildings but only of the plots of land where they stand!* (cf. sect. 94)
 - exception: ownership of apartments under the Apartment Ownership Act

2) Animals

- *animal protection* is a *constitutional principle* (cf. art. 20a BL), with legal consequences
 - e.g. criminal offence of killing vertebrates or inflicting significant pain to them without reasonable cause
 - e.g. halal/kosher slaughter only with special license under serious restrictions
- although animals are not considered anymore as things (sect. 90a BGB), the relevant rules apply to them too, unless otherwise provided (what is, however, rarely the case)

3) Intellectual property rights

- property rights (absolute rights) in creations of the human intellect (art, literature, science, inventions, design, know-how, software etc.)
- no ownership in analogy to ownership on things and no codified consistent system but a multitude of heterogeneous i.p. rights under highly specialised legislation:
 - Copyright Act [Urheberrechtsgesetz]
 - Patent Act [Patentgesetz]
 - Trade Mark Act [Markengesetz]
 - Design Act [Designgesetz]
 - Utility Models Act [Gebrauchsmustergesetz]

4) Other rights

- any *claim* [Anspruch] (right to demand another person to do or refrain from an act, sect. 194 BGB)
- *claims under the law of obligations* [Forderungen] may be transferred to others (assignment [Abtretung], sect. 398 et seq. BGB)
- only the individual assets, not the assets as a whole, constitute legal objects

III. Legal capacity and capacity to perform legal acts

- *legal capacity* [Rechtsfähigkeit] is the capacity to have own (subjective) rights and obligations
- *capacity to perform legal acts* or capacity to contract [Geschäftsfähigkeit] (see sect. 104 et seq. BGB) is the capacity to enter valid legal transactions
- it is missing if the person is under 7 years old or mentally disturbed (sect. 104)
- minors between 7 and 18 have *limited capacity to perform legal acts* (sect. 107, 108); contracts concluded by them require prior consent or subsequent approval of their legal representative
 - until the approval the contract is suspensively invalid
 - exception: if the minor receives merely a legal benefit (sect. 107)
 - exception: if the minor performs with means given to him/her for free disposition by the legal representative or a third party with his approval ("pocket money clause", sect. 110)