

German Civil Code (2002 –) : Book II: Law on Obligations

< Effects of obligations: Primary and secondary duties of the debtor >

Section 241

[Duties arising from an obligation]

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

(2) An obligation may also, depending on its contents, oblige each party *to take account of the rights, legal interests and other interests of the other party*.

Section 242

[Performance in good faith]

The debtor has a duty *to perform according to the requirements of good faith*, taking customary practice into consideration.

< Time for performance >

Section 271

[Time for performance]

(1) Where no time for performance has been specified or is evident from the circumstances, the creditor may demand performance immediately, and the debtor may effect it immediately.

(2) Where a time has been specified, then in case of doubt it must be assumed that the creditor may not demand performance, but the debtor may effect it prior to that time.

< Exemption of the debtor from duty of performance >

Section 275

[Exclusion of the duty of performance]

(1) A claim for performance is excluded to the extent that *performance is impossible for the debtor or for any other person*.

(2) The debtor may refuse performance to the extent that performance requires *expense and effort which*, taking into account the subject matter of the obligation and the requirements of good faith, *is grossly disproportionate to the interest in performance of the creditor*. When it is determined what efforts may reasonably be required of the debtor, it must also be taken into account whether he is responsible for the obstacle to performance.

(3) In addition, the debtor may refuse performance if he is to effect the performance in person and, when the obstacle to the performance of the debtor is weighed against the interest of the creditor in performance, *performance cannot be reasonably required of the debtor*.

(4) The rights of the creditor are governed by sections 280, 283 to 285, 311a and 326.

< Responsibility of the debtor >

Section 276

[Intention and negligence]

(1) *The debtor is responsible for intention and negligence*, if a higher or lower degree of liability is neither laid down nor to be inferred from the otherwise provided contents of the obligation, especially in case of the giving of a guarantee or the assumption of a procurement risk. The provisions of sections 827 and 828 apply with the necessary modifications.

(2) A person acts negligently if he fails to exercise the reasonable care which is required in the ordinary interaction.

(3) The debtor may not be released in advance from liability for intention.

Section 277**[Standard of care in ones own affairs]**

A person who owes only the care that he customarily exercises in his own affairs is not released from liability for gross negligence.

Section 278**[Vicarious liability of the debtor]**

The debtor is responsible for fault on the part of his legal representative, and of persons whom he uses to perform his obligation, to the same extent as for fault on his own part. The provision of section 276 (3) does not apply.

< Claim for damages in general >

Section 280**[Damages caused by breach of duty, delay in performance]**

(1) If the debtor breaches a duty arising from the obligation, the creditor may demand compensation for the damage caused thereby. This does not apply if the debtor is not responsible for the breach of duty.

(2) Damages for default in performance may be demanded by the creditor only subject to the additional requirement of section 286.

(3) Damages in lieu of performance may be demanded by the creditor only subject to the additional requirements of sections 281, 282 or 283.

< Claim for damages in lieu of performance (I) >

Section 281**[Refuse of performance or cure]**

(1) To the extent that the debtor does not effect performance in due time or does not effect performance as owed, the creditor may, subject to the requirements of section 280 (1), demand damages in lieu of performance, if he has unsuccessfully set a reasonable period for the debtor for performance or cure. If the debtor has performed only in part, the creditor may demand damages in lieu of complete performance only if he has no interest in the part performance. If the debtor has not effected performance as owed, the creditor may not demand damages in lieu of performance if the breach of duty is immaterial.

(2) Setting a period for performance may be dispensed with if the debtor seriously and definitively refuses performance or if there are special circumstances which, after the interests of both parties are weighed, justify the immediate assertion of a claim for damages.

(3) If the nature of the breach of duty is such that setting a period of time is out of the question, a warning notice is given instead.

(4) The claim for performance is excluded as soon as the creditor has demanded damages in lieu of performance.

(5) If the creditor demands damages in lieu of complete performance, the debtor is entitled to claim the return of his performance under sections 346 to 348.

< Claim for damages in lieu of performance (II) >

Section 282**[Breach of a duty under section 241 (2)]**

If the debtor breaches a duty under section 241 (2), the creditor may, if the requirements of section 280 (1) are satisfied, demand damages in lieu of performance, if he can no longer reasonably be expected to accept performance by the debtor.

<Claim for damages in lieu of performance (III) >

Section 283

[Exclusion of duty of performance under debtor's responsibility]

If, under section 275 (1) to (3), *the debtor is exempted from duty to perform*, the creditor may, if the requirements of section 280 (1) are satisfied, demand damages in lieu of performance. Section 281 (1) sentences 2 and 3 and (5) apply with the necessary modifications.

< Debtor's default in performance >

Section 286

[Default of the debtor]

(1) *If the debtor*, following a warning notice from the creditor that is made after performance is due, *fails to perform*, he is in default as a result of the warning notice. Bringing an action for performance and serving a demand for payment in summary debt proceedings for recovery of debt have the same effect as a warning notice.

(2) There is no need for a warning notice if

1. a period of time according to the calendar has been specified,
2. performance must be preceded by an event and a reasonable period of time for performance has been specified in such a way that it can be calculated, starting from the event, according to the calendar,
3. the debtor seriously and definitively refuses performance,
4. for special reasons, weighing the interests of both parties, the immediate commencement of default is justified.

(3) The debtor of a claim for payment is in default at the latest if *he does not perform within thirty days after the due date* and receipt of an invoice or equivalent statement of payment; this applies to a debtor who is a consumer only if these consequences are specifically referred to in the invoice or statement of payment. If the time at which the invoice or payment statement is received by the debtor is uncertain, a debtor who is not a consumer is in default at the latest thirty days after the due date and receipt of the consideration.

(4) The debtor is not in default for *as long as performance is not made as the result of a circumstance for which he is not responsible*.

Section 287

[Liability during default]

While he is in default, *the debtor is responsible for all negligence*. He is liable for performance in the case of a fortuitous accident as well, unless the damage would have occurred even if performance had been made in good time.

< Contractual and pre-contractual obligations >

Section 311

[Legal transaction, negotiation, initiation]

(1) In order to create an obligation by legal transaction and to alter the contents of an obligation, a contract between the parties is necessary, unless otherwise provided by statute.

(2) *An obligation with duties under section 241 (2)* also comes into existence by

1. the beginning of *contract negotiations*
2. the initiation of a contract where one party, with regard to an already existing contractual relationship, gives the other party the possibility of affecting his rights, legal interests and other interests, or entrusts these to him, or
3. similar business contacts.

(3) An obligation with duties under section 241 (2) may also come into existence in relation to persons who are not themselves intended to be parties to the contract.

< Initial impossibility or other obstacles of performance >

Section 311a

[Obstacle to performance when contract is entered into]

(1) *A contract is not prevented from being effective* by the fact that under section 275 (1) to (3) *the debtor does not need to perform and the obstacle to performance already exists when the contract is entered into.*

(2) The creditor may, at his option, demand damages in lieu of performance or reimbursement of his expenses in the extent specified in section 284. This does not apply if the debtor was not aware of the obstacle to performance when entering into the contract and is also not responsible for his lack of awareness. Section 281 (1) sentences 2 and 3 and (5) apply with the necessary modifications.