

# Table of Contents

The Author	3
List of Abbreviations	11
General Introduction	13
§1. GENERAL BACKGROUND	13
§2. DELIMITATION OF THE SUBJECT MATTER	15
§3. SOURCES OF CIVIL PROCEDURE LAW	16
§4. GENERAL FEATURES OF THE ADMINISTRATION OF JUSTICE IN CIVIL MATTERS	18
Part I. Judicial Organization	23
Chapter 1. The Courts and Their Members	23
§1. COURTS	23
I. Structure of the Court System	23
II. Administration of the Courts	24
III. Bench	24
IV. Appointment of Judges	25
V. The Public Prosecutor ( <i>Staatsanwalt</i> )	26
§2. MEMBERS OF THE JUDICIARY	26
I. Incompatibilities	26
II. End of Function	27
III. Discipline	27
Chapter 2. The Bar	28
§1. EXERCISE OF THE LEGAL PROFESSION	28
I. <i>Conditions of Admission</i>	28
II. <i>Rights and Duties</i>	28
III. <i>Discipline</i>	29

## Table of Contents

§2. (PUBLIC) INSTITUTIONS AND (PRIVATE) ORGANIZATIONS	29
Chapter 3. Other Court Officials	30
§1. EXERCISE OF THE PROFESSION	30
§2. (PUBLIC) INSTITUTIONS AND (PRIVATE) ORGANIZATIONS	30
Part II. Jurisdiction	31
Chapter 1. Domestic Jurisdiction	32
§1. SUBJECT MATTER JURISDICTION	32
I. Factors to Be Taken into Account	32
II. Main Claims and Ancillary Claims	32
III. Overview of the Jurisdiction of the Different Courts	32
§2. VENUE (TERRITORIAL JURISDICTION)	32
I. Factors to Be Taken into Account	32
II. Main Claims and Ancillary Claims	32
III. Overview of the Different Rules	33
A. The Place of General Jurisdiction	33
B. Places of Exclusive Jurisdiction ( <i>Ausschließliche Gerichtsstände</i> )	33
C. Optional Places of Jurisdiction ( <i>Wahlgerichtsstände</i> )	34
§3. RESOLUTION OF JURISDICTION CONFLICTS	35
Chapter 2. International Jurisdiction	36
§1. RULES APPLICABLE IN THE ABSENCE OF A TREATY	36
§2. INTERNATIONAL TREATIES	36
Part III. Actions and Claims	37
Chapter 1. Actions	37
§1. DEFINITION	37
§2. ADMISSIBILITY	38
§3. VEXATIOUS LITIGATION	39
Chapter 2. Claims and Defences	40

## Table of Contents

§1. DEFINITION	40
§2. DISTINCTIONS	40
Chapter 3. Sanctions on Procedural Irregularities	41
§1. FORMAL REQUIREMENTS	41
§2. TIME-LIMITS	41
Part IV. Proceedings	43
Chapter 1. Pre-trial Proceedings	43
Chapter 2. Proceedings in First Instance	44
§1. ADVERSARY PROCEEDINGS	44
I. Ordinary Proceedings	44
A. Overview of the Proceedings in First Instance	44
B. Introduction of the Claim	44
1. Registration by the Court	44
2. Preparatory Measures	45
3. Notice	45
4. Service to the Person himself (Personal Service)	46
5. Service to Another Person (Substituted Service)	46
6. Depositing	46
7. Service by Publication ( <i>Curator Absentis</i> )	46
8. The Statement of Defence ( <i>Klagebeantwortung</i> )	47
9. Additional Written Pleadings	47
C. The Trial	47
1. Pleadings by the Parties	48
2. The Preliminary Hearing ( <i>Vorbereitende Tagsatzung</i> )	48
3. The Taking of the Evidence	48
4. Closing of the Trial	49
D. The End of the Proceeding	49
E. Judgment	49
1. Notice of the Judgment	50
2. Res Judicata (Rechtskraft)	51
3. Constitutive Effect of the Judgment ( <i>Gestaltungswirkung</i> )	51
4. Factual Effect of the Judgment ( <i>Tatbestandswirkung</i> )	51
5. Enforcement of the Judgment ( <i>Vollstreckbarkeit</i> )	52
6. Interpretation and Rectification of Judgments	52
7. Penalty in Case of Non-compliance	52
II. Purely Written Procedure	52
III. Provisional Proceedings	52

## Table of Contents

§2. DEFAULT PROCEEDINGS	52
§3. SUMMARY JUDGMENT	53
§4. EX PARTE PROCEEDINGS	53
I. The Order for Payment Procedure ( <i>Mahnverfahren</i> )	53
II. The Wechsel- und Scheckmandatsverfahren	55
Chapter 3. Review Proceedings	56
§1. IN GENERAL	56
§2. THE APPEAL ( <i>BERUFUNG</i> )	57
§3. THE <i>REVISION</i>	58
§4. THE <i>REKURS</i>	60
§5. EXTRAORDINARY REMEDIES	61
I. The Action for Declaration of Nullity ( <i>Nichtigkeitsklage</i> )	61
II. The Action for a Reopening of the Trial ( <i>Wiederaufnahmeklage</i> )	62
Part V. Incidents	65
Chapter 1. Preliminary Injunctions	65
Chapter 2. Withdrawal and Discontinuance of Action	66
Chapter 3. Challenge of Judges	67
Part VI. Legal Aid and Legal Costs	69
Chapter 1. Legal Aid	69
Chapter 2. Legal Costs	70
§1. LEGAL COSTS IN GENERAL	70
§2. APPORTIONMENT OF COSTS	70
I. Provisional Apportionment of Costs	70
II. Final Apportionment of Costs	70
Part VII. Evidence	73

## Table of Contents

Chapter 1. In General	73
Chapter 2. The Free Evaluation of the Evidence	74
Chapter 3. Burden of Proof	75
Chapter 4. Admissibility of Evidence	76
Chapter 5. Administration of Evidence	77
§1. TYPES OF EVIDENCE	77
§2. THE COURSE OF THE TAKING OF THE EVIDENCE	77
§3. THE DIFFERENT MEANS OF GATHERING EVIDENCE	78
I. Production of Documents	78
II. Examination of Witnesses	79
III. Expert Evidence	80
IV. Inspection by the Judge	80
V. Examination of the Parties Themselves	80
VI. Affidavit	81
Part VIII. Particular Proceedings	83
Chapter 1. Labour and Social Cases	84
Chapter 2. Family Law Cases	85
Chapter 3. Tenancy Cases ( <i>Bestandverfahren</i> )	86
Chapter 4. Public Liability ( <i>Amtshaftungsverfahren</i> )	87
Part IX. Preliminary Seizure and Enforcement of Judgments	89
Chapter 1. Preliminary Seizure for Security ( <i>Exekution zur Sicherstellung</i> )	90
§1. PROCEEDINGS	90
§2. JUDICIAL REVIEW	91
Chapter 2. Enforcement of Judgments	92

## Table of Contents

§1. ENFORCEMENT OF DOMESTIC JUDGMENTS	92
I. Motion for Declaratory Relief and Annulment of the Execution ( <i>Oppositionsklage</i> )	93
II. Motion for the Cancellation of a Declaration of Enforcement ( <i>Impugnationsklage</i> )	93
III. Objection of a Third Person ( <i>Exszindierungsklage</i> )	94
§2. RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS	94
I. Declaration of Enforceability ( <i>Vollstreckbarkeitserklärung</i> )	94
II. Rules Applicable in the Absence of a Treaty	95
III. International Treaties	95
Part X. Arbitration	97
Chapter 1. Introduction	97
Chapter 2. Arbitration Proceedings	99
Part XI. Mediation	101
Chapter 1. Legislation/Definitions	101
Chapter 2. Rights That Can Be Subject to Mediation	102
Chapter 3. Mediation Agreement	103
Chapter 4. Persons/Institutions That Can Act as Mediator	104
Chapter 5. Mediation Procedure	105
Chapter 6. Settlement Agreement	106
Chapter 7. Setting Aside a Settlement Agreement	107
Chapter 8. International Mediation	108
Selected Bibliography	109
Index	111