

Title 2

Venue

Section 12 **General venue; term**

The court within the jurisdiction of which a person has his general venue is competent for all actions that may be brought against that person, unless an exclusive venue has been established for court actions.

Section 13 **General venue of the place of residence**

The general venue of a person is determined by his place of residence.

Section 14 **(repealed)**

Section 15 **General venue of extraterritorial German citizens**

(1) German citizens entitled to the privilege of extraterritoriality as well as German civil servants working abroad will retain the venue of their last place of residence in Germany. Should they not have had such a place of residence, their venue shall be the local court (Amtsgericht, AG) of Schöneberg in Berlin.

(2) The present rule shall not apply to honorary consuls.

Section 16 **General venue of persons without a place of residence**

The general venue of a person who has no place of residence shall be determined by that person's place of abode in Germany and, where no such place of abode is known, by that person's last place of residence.

Section 17 **General venue of legal persons**

(1) The general venue of the municipalities, corporate bodies, and of those companies, co-operatives or other associations as well as of those foundations, institutions, and available assets that may be sued as such is defined by their registered seat. Unless anything to the contrary is stipulated elsewhere, a legal person's registered seat shall be deemed to be the place at which it has its administrative centre.

(2) Mining companies have their general venue with the court having jurisdiction over the location of the mine; public authorities – provided they can be sued as such – have their general venue with the court of their official seat.

(3) It is admissible to determine a venue, in derogation from what is determined by the stipulations of the present subsection, by statute or by other special provision.

Section 18

General venue of the government treasury

The general venue of the treasury of the government is determined by the official seat of the public authority authorised to represent the government treasury in the legal dispute.

Section 19

Several judicial districts at the official seat of the public authority

Where the location at which a public authority has its official seat is divided up into several judicial districts, the district that is to be deemed the official seat of the authority as defined by sections 17 and 18 shall be determined, for federal authorities, by the Federal Minister of Justice, while the Land department of justice (Landesjustizverwaltung) shall determine said district for all other agencies; in either case, this will be effected by a general order.

Section 19a

General venue of the insolvency administrator

The general venue of an insolvency administrator for actions concerning the insolvency estate is determined by the seat of the insolvency court.

Section 20

Specific jurisdiction of the place of abode

Where persons have their place of abode at a location under circumstances that, by their nature, indicate that their abode will be of a longer term, in particular because such persons are household help, workers, assistants in commercial enterprises, university students, pupils, or apprentices, the court of their place of abode shall have jurisdiction for all actions that may be brought against these persons for claims under property law.

Section 21

Specific jurisdiction of a place of business

(1) Should someone have a place of business serving the operation of a factory, a trade enterprise, or any other commercial establishment, and from which transactions are directly concluded, all actions that relate to the operation of the place of business may be brought against that person at the court of the location at which the place of business is situated.

(2) The jurisdiction of the place of business also applies to actions brought against persons acting as owners, beneficiaries, or lessees in managing a property, on which residential and service buildings have been constructed, to the extent such complaints concern the legal relationships relating to the property's management.

Section 22

Specific jurisdiction of a membership

The court with which municipalities, corporate bodies, societies, co-operatives, or other associations have their general venue shall have jurisdiction for those actions that are brought by them or by the insolvency administrator against the members as such, or that are brought by the members against one other in their capacity as such.

Section 23

Specific jurisdiction of assets and of an object

For complaints under property law brought against a person who has no place of residence in Germany, that court shall be competent in the jurisdiction of which assets belonging to that person are

located, or in the jurisdiction of which the object being laid claim to under the action is located. Where claims are concerned, the debtor's place of residence and, in cases in which an object is liable for the claims as collateral, the place at which the object is located shall be deemed to be the location at which the assets are located.

Section 23a (repealed)

Section 24 Exclusive jurisdiction as to the subject matter (forum rei sitae)

(1) For complaints by which ownership, an encumbrance "in rem", or the freedom from such an encumbrance is being asserted, and for complaints concerning the settlement of boundary disputes, or the partition or possession of immovable property, that court shall have exclusive competence in the jurisdiction of which the object or property is situate.

(2) For complaints concerning an easement, a realty charge, or a right of pre-emption, the location of the servient tenement or encumbered property shall be relevant.

Section 25 Jurisdiction as to the subject matter (forum rei sitae) in light of the matter's connection with the various facts and their overall context

Should the jurisdiction of a court be governed by the subject matter of the dispute, the creditor's complaint for performance (Schuldklage) may be brought together with any complaint concerning a mortgage, charge on land, or annuity charge on land; the complaint for exemption from personal liability may be brought together with the complaint for transfer or cancellation of a mortgage, charge on land, or annuity charge on land; the complaint for overdue performance may be brought together with the complaint for recognition of a realty charge; in all cases, such consolidated actions must be brought against one and the same defendant.

Section 26 Jurisdiction as to the subject matter (forum rei sitae) for complaints brought against a person

Where the jurisdiction of a court is governed by the subject matter of the dispute, complaints brought against a person may be filed against the owner or possessor of an immovable property, as may be complaints for damages caused to real estate, or actions brought concerning compensation for the expropriation of a plot of real estate.

Section 27 Specific jurisdiction of an inheritance

(1) Complaints brought in order to have the court determine succession, or to assert claims of the heir against a possessor of an inheritance, claims under testamentary gifts or under other testamentary trusts, claims to the compulsory portion of the inheritance, or complaints brought regarding the distribution of the inheritance may be brought with the court at which the testator had his general venue at the time of his death.

(2) If the testator is a German citizen who had no general venue in Germany at the time of his death, the complaints designated in subsection (1) may be brought with the court in the jurisdiction of which the testator had his last place of residence in Germany; where he did not have such a place of residence, the rule of section 15 (1), second sentence, shall apply mutatis mutandis.

Section 28

Extended jurisdiction of an inheritance

In the jurisdiction where an inheritance is situate, complaints may also be filed for other liabilities of the estate, provided that the estate is still situate, either as a whole or in part, in the court's jurisdiction, or provided that the existing plurality of heirs is liable as joint and several debtors.

Section 29

Specific jurisdiction of the place of performance

(1) For any disputes arising from a contractual relationship and disputes regarding its existence, the court of that location shall have jurisdiction at which the obligation is to be performed that is at issue.

(2) An agreement as to the place of performance shall establish a court as the forum only insofar as the parties to the agreement are merchants, legal persons under public law, or special assets (Sondervermögen) under public law.

Section 29a

Exclusive jurisdiction of spaces governed by a tenancy or lease agreement

(1) For disputes concerning claims under tenancy or lease relationships regarding spaces, or disputes regarding the existence of such relationships, the court in the jurisdiction of which the spaces are situate shall have exclusive competence.

(2) Subsection (1) shall not apply to residential spaces of the type provided for by section 549 (2) numbers 1 to 3 of the Civil Code (Bürgerliches Gesetzbuch, BGB).

Section 29b

(repealed)

Section 29c

Specific jurisdiction for doorstep sales

(1) For complaints regarding off-premises contracts (section 312b of the Civil Code (Bürgerliches Gesetzbuch, BGB)), that court in the jurisdiction of which the consumer has his place of residence at the time he is bringing proceedings shall be competent; where the consumer has no such place of residence, his habitual place of abode shall be relevant. For complaints brought against the consumer, the above court shall have exclusive jurisdiction.

(2) Section 33 (2) shall not apply to any countercharges brought by the respective other party to the agreement.

(3) An agreement will be deemed admissibly made, in derogation from subsection (1), in those cases in which, following the conclusion of the contract, the consumer relocates his place of residence or habitual place of abode to a location outside the territorial scope of this Act, or in which the consumer's place of residence or habitual place of abode is not known at the time proceedings are brought in the courts.

Section 30

Jurisdiction for Carriage

(1) For legal disputes arising from the carriage of goods, also that court shall be competent in the jurisdiction of which the place is situate at which the goods were received for carriage, or at which the goods are intended to be delivered. Any complaint directed against the transport operator performing the carriage or the carrier performing the carriage may also be filed at the venue of the transport operator or carrier. Any complaint directed against the transport operator or the carrier may also be

filed at the venue of the transport operator performing the carriage or of the carrier performing the carriage.

(2) For legal disputes arising from the carriage of passengers and their luggage on ships, also that court in the jurisdiction of which the location is situate that is designated in the contract of carriage as the location at which passengers leave the ship or as the destination shall be competent. Any agreement in derogation from the first sentence shall be invalid if it is made prior to the event that has caused the death or bodily injury of the passenger, or the loss, damage, or delayed re-delivery of the luggage.

Section 30a

Jurisdiction for claims arising from search and rescue operations

For complaints filed regarding claims arising from search and rescue operations for ships or other assets in a body of water against a person who has no venue in Germany, that court shall be competent with whom the plaintiff has his general venue in Germany.

Section 31

Specific jurisdiction for asset management

For complaints brought under an asset management relationship by the principal against the administrator, or by the administrator against the principal, the court in the jurisdiction of which the assets are managed shall have jurisdiction.

Section 32

Specific jurisdiction for tort

For complaints arising from tort, the court in the jurisdiction of which the tortious act was committed shall have jurisdiction.

Section 32a

Exclusive jurisdiction for effects on the environment

For complaints brought against the operator of a facility listed in Annex 1 of the Act on Liability for Environmental Damage (Umwelthaftungsgesetz), by which a claim to compensation is asserted for damages caused by effects on the environment, the court in the jurisdiction of which the facility's effects on the environment originated shall have exclusive competence. This shall not apply where the facility is situate abroad.

Section 32b

Exclusive jurisdiction for false or misleading public capital market disclosures, and exclusive jurisdiction in the event that such disclosures have not been made

(1) For complaints in which:

1. The compensation of damages caused by false or misleading public capital market disclosures, or caused by the failure to make such disclosure, or

2. The compensation of damages caused by the use of false or misleading public capital market disclosures, or caused by the failure to inform the public that such public capital market disclosures are false or misleading, or

3. A claim to performance under a contract based on an offer pursuant to the Securities Purchase and Takeover Act (Wertpapiererwerbs- und Übernahmegesetz)

is being asserted, that court shall have exclusive jurisdiction that is located at the registered seat of the issuer concerned, of the offeror concerned of other capital investments, or of the targeted company, where said registered seat is situate within Germany and the complaint is directed, at least also among others, against the issuer, the offeror, or the targeted company.

(2) The Land governments are authorised to assign by statutory instrument the complaints set out in subsection (1) to a regional court (Landgericht, LG) for the jurisdictions of several regional courts, provided this is expedient for promoting the proceedings *ratione materiae* or for accelerating the termination of the proceedings. The Land governments may confer this authorisation upon the Land departments of justice.

Section 33

Specific jurisdiction for countercharges

(1) Countercharges may be brought with the court with which the complaint has been filed if there is a connection between the counterclaim and the claim being asserted in the action, or between the counterclaim and the means of defence raised against the claim.

(2) This shall not apply if, due to a counterclaim having been brought, it is not admissible to agree on the jurisdiction of the court for a complaint pursuant to section 40 (2).

Section 34

Specific jurisdiction of the main proceedings

The court of the main proceedings shall have jurisdiction for complaints brought for fees and expenditures by attorneys of record, persons providing assistance, authorised recipients, and court-appointed enforcement officers.

Section 35

Selection from among several jurisdictions

The plaintiff shall be allowed to select among several jurisdictions.

Section 35a

(repealed)

Section 36

Determination of jurisdiction by a court

(1) The competent court will initially be determined by the court of the next higher level of jurisdiction:

1. Where the court actually competent is prevented by legal or factual reasons, in an individual case, from exercising a judicial function;
2. Where it is uncertain, in light of the boundaries of different judicial districts, which court is competent for the legal dispute;
3. Where several persons having their general venue with different courts are to be sued as joined parties at the general venue, and where no specific jurisdiction common to all parties has been established for the legal dispute;
4. Where the complaint is to be filed in the jurisdiction as to the subject matter (*forum rei sitae*) and the object concerned is situate in jurisdictions of various courts;
5. Where different courts have declared in a legal dispute that they are competent and that their judgments are final and binding;

6. Where different courts, of which one is competent for the legal dispute, have declared in a final and binding judgment that they are not competent.

(2) In the event the next higher court common to all parties is the Federal Court of Justice (Bundesgerichtshof, BGH), the competent court will be determined by that higher regional court (Oberlandesgericht, OLG) in the jurisdiction of which the court initially dealing with the matter is situate.

(3) If, in determining the competent court, the higher regional court (Oberlandesgericht, OLG) wishes to deviate from the decision handed down by another higher regional court or by the Federal Court of Justice (Bundesgerichtshof, BGH) concerning a question of law, it is to submit the matter to the Federal Court of Justice, stating the reasons on which its interpretation of the law is based. In such event, the Federal Court of Justice shall rule on the matter.

Section 37

Procedure by which a court determines the venue

(1) The petition for determination of the competent court shall be set out in an order delivered by the court.

(2) The decision determining the competent court is not contestable.

Title 3

Agreement as to the jurisdiction of the courts

Section 38

Admissible agreement as to the choice of venue

(1) A court of first instance that as such is not competent will become the forum by express or tacit agreement of the parties should the parties to the agreement be merchants, legal persons under public law, or special assets (Sondervermögen) under public law.

(2) The competence of a court of first instance may be agreed, furthermore, wherever at least one of the parties to the agreement has no general venue in Germany. Such agreement must be concluded in writing or, should it have been concluded orally, must be confirmed in writing. If one of the parties has its general venue in Germany, a court may be selected in Germany only if that party has its general venue in that court's jurisdiction, or if a specific jurisdiction is given.

(3) In all other regards, a choice-of-court agreement shall be admissible only where it was concluded, expressly and in writing:

1. After the dispute has arisen, or

2. For the event that, following the conclusion of the agreement, the party to whom claim is to be laid relocated his place of residence or habitual place of abode to a location outside the territorial scope of this Code, or for the event that the party's place of residence or habitual place of abode is not known at the time the proceedings are brought in the courts.

Section 39

Competence of a court as a result of a party having participated in court proceedings without objecting to the court's lack of jurisdiction (rügeöse Verhandlung)

Furthermore, the competence of a court of first instance is established by the fact that the defendant makes an appearance in oral argument on the merits of the case and fails to object to the court's lack of jurisdiction. This shall not apply where the notification stipulated by section 504 was not given.

Section 40

Invalid and inadmissible choice of court agreement

(1) The choice-of-court agreement shall have no legal effect if it does not refer to a certain legal relationship and to the legal disputes arising therefrom.

(2) A choice-of-court agreement shall be inadmissible where:

1. The legal dispute concerns non-pecuniary claims that are assigned to the local courts (Amtsgerichte, AG) without consideration of the value of the subject matter being litigated, or

2. An exclusive jurisdiction has been established for the complaint.

In these cases, the competence of a court will not be established by a party making an appearance in oral argument on the merits of the case without asserting the court's lack of jurisdiction.