

The obligation to surrender, or to refund the value is barred in so far as the recipient is no longer benefited.

From the time when the action is brought, the recipient is liable according to the general provisions.

knowledge of the Recipient to Want of Right. Unwar- ranteable Ac- ceptance.

819. If the recipient knows of the want of the legal ground at the time of acceptance, or if he learns of it later, he is from the time of the acceptance, or of the in- formation, obliged to surrender, as if the claim for sur- render had at that time become enforceable in law.

If the recipient by accepting the performance offends against a legal prohibition or against good morals he in- curs the same obligation from the time of such acceptance.

Uncertainty of the Intended result.

820. If, by the performance, a result was intended, which according to the nature of the transaction was re- garded as uncertain, the recipient, in case the result does not happen, is obliged to surrender as if the claim for sur- render had become enforceable in law at the time of the acceptance. The same is the case, if the performance has been rendered upon a legal ground, the inapplicability of which was according to the nature of the transaction re- garded as possible, and which becomes inapplicable.

The recipient is liable to pay interest only from the time when he learns that the result has not occurred or that the legal ground has become inapplicable; he is not bound to surrender profits in so far as he is at the time no longer benefited (enriched).

Bar to the Claim for Re- lease from Obligation.

821. One who without legal reason enters into an obli- gation may refuse fulfillment also when the claim for release from the obligation is barred by limitation.

822. If the recipient gives that, which he acquired to a third party gratuitously, the latter is bound, in so far as the obligation of the recipient to surrender the acquisition is thereby barred, to surrender the same as if he had received the benefit from the creditor without legal reason.

§ 819. Windsch. § 425, 426, note 16. Al. Lt. i. 16. § 189, 193, 194. Austr. 1437. Sax. 1499, 1528. Profr. B. 915-918, 920; D. 222, 986. C. N. 1378. Sw. Fed. 73, 74.

§ 820. Comp. Art. 291, 292.

§ 821. Comp. Art. 222, par. 2; 853. v. Windsch. § 412a. Sax. 1399. Comm. C. 294. Profr. B. 91; D. 925.

BGB

TWENTY-FIFTH TITLE.

TORTS: UNLAWFUL ACTS (UNERLAUBTE HANDLUNGEN).

v. Sch. § 284-296.

823. One, who designedly or negligently injures life, body, health, freedom, the property or any right of another is bound to indemnify the other for the injury arising there- from.

The same obligation rests upon one who violates a law, the purpose of which is to afford protection to another. If under the law, a violation of the law is also possible with- out fault, the obligation to render indemnity is applicable only in case of fault.

824. One, who contrary to truth asserts or circulates as a fact, that which is injurious to the credit of another, or which causes him disadvantage as to his earning or ad- vancement, must indemnify the other for the injury aris- ing therefrom, even though he does not know the untruth, but was bound to know it.

By a communication, the untruth of which is not known to the party communicating it, he is not liable for in- demnity, if he or the recipient of the communication has a rightful interest in it.

825. One, who induces a woman by fraud, threats, or by abuse of a relation of dependency, to consent to non- conjugal cohabitation is bound to indemnify her for the in- jury arising therefrom.

826. One, who designedly injures another in a man- ner violating good morals is bound to indemnify the other for the injury.

§ 823. Al. Lt. i. 6, § 132-136. Austr. 1320. Sax. 1497, 1498. Profr. H. 666-668; B. 941-943, 945; D. 1011, 1012. C. N. 1392. Port. 2361. Holl. 1401. Ital. 1151. Sw. Fed. 50. Jap. 799-724. Sch. § 287. 1458, 2; 1462, 1463-1465, 1470, 1477-1480. Spain—Dig. Bk. 39, Tit. 2. Inst., Bk. 4, Tit. 5, par. 1. Part. 3, Tit. 32, Ls. 10, 11; 7. Tit. 15, Ls. 5, 6, 21-23, 25, 56. Penal C., Art. 18, 121, 599, 3. Profr. 1851, Art. 1904. C. 1889, 1902-1910. The liability for Tort in the German law being limited to indemnifi- cation, there is no liability to pay punitive or exemplary damages as in the English law.

§ 824. Sch. § 288.

§ 825. Sch. § 289.

§ 826. Sch. § 287.

Comp. Art. 1715.

Seduction of a Woman.

Disloyal Acts.

Unconscious-
ness and De-
rangement of
Mind.

827. One, who in a state of unconsciousness or in a state of impairment of the mental faculties excluding the free will, injures another, is not answerable for the injury. If he, by spirituous liquors or by similar means, has placed himself in a transient condition of this kind, he is answerable for an injury, which he unlawfully inflicts in this condition, as if he were charged with negligence; but this responsibility does not result, if he came into that condition without his fault.

828. One, who has not reached his seventh year is not responsible for the damages which he causes another.

One, who has reached the seventh but not the eighth year is not responsible for the damages, which he causes another, if at the time of the act causing the damage, he has not the discretion necessary to recognize his responsibility. The same rule applies to deaf-mutes.

Obligation of
Persons Re-
ferred to in §§
827, 828 to
Render Indem-
nity.

829. One, who, in one of the cases indicated in §§ 823 to 826 is not answerable under §§ 827, 828 for an injury caused by him, shall nevertheless, in so far, as the indemnity for the injury cannot be obtained from a third party, who has the duty of control, render indemnity for the injury to such extent, as fairness, according to the facts and especially the circumstances of those concerned, requires indemnity, provided that he be not deprived of the means of which he is in need for his maintenance according to his status, as well as for the fulfillment of the legal obligations for the maintenance of others.

830. If several jointly, by an unlawful act, cause an injury, each is answerable therefor. The same is the case, if it cannot be ascertained, who of several participants has caused the injury by his act.

Instigators and assistants are regarded as participants.

§ 827. Windsch. § 101, No. 5; No. 13, § 54. Al. Lt. i, 6, § 39-41. Austr. 1307, 1308. Sax. 81, 119, 120. Prof. H. 209; B. 56; D. 213, 214. Sw. Fed. 50, 57. Jap. 712, 713.

§ 828. Windsch. § 101, No. 12; 54, 71. Al. Lt. i, 6, § 41; i, IV, § 20. Austr. 21, 1308. Sax. 47, 81, 119. Prof. B. 3, 1; 56, 1; D. 23, 213. Sw. Fed. 50, 58, 59. Sw. 16.

§ 829. v. Art. 1360, 1579, 1601, 1703, 1708. Sw. 16.
§ 830. Sch. § 295. Windsch. § 455, No. 6, note 26; 208, note 15.

831. One who employs another to do an act, is bound to render indemnity for the injury which the employee in the performance of the act causes to a third person. The obligation for indemnity does not occur, if the employer in the selection of the employed person, and so far as he has to provide contrivances or utensils or has to direct the performance of the act, observes, in the providing or directing, the care required in trade or if the injury would also have occurred if such care had been observed.

The same responsibility is borne by one who, by contract, assumes for the employer the charge of one of the transactions designated in paragraph 1, sentence 2.

832. One who, by authority of law, is bound to exercise control over a person, who on account of minority or of mental or physical condition requires to be guarded, is bound to render indemnity for the injury which that person unlawfully causes to a third person. The obligation for indemnity does not occur, if he complies with his duty of exercising control, or if the injury would also have happened with proper control.

The same responsibility attaches to one who assumes control by contract.

833. If a human being is killed, or if the body or health of a human being is injured or a thing damaged by an animal, its keeper is bound to indemnify the party injured for the damage arising therefrom.

834. One who, for the person keeping an animal, assumes by agreement the caretaking of the animal, is answerable for the injury which the animal causes to a

Answering for
Others.

Duty of Con-
trol Over
Minors, Etc.

Responsibility
for Animals.

Al. Lt. i, 6, § 29-32. Lt. Bad. 1382. Austr. 301, 302. Sax. 777, 778, 1495. Prof. H. 214; B. 69; D. 218. Belgian Prof. No. 40, p. 630. Port. 2372. Ital. 1156. Sw. Fed. 60. Chili 2317. Uru. 423. Mex. 1474. Jap. 719.

§ 831. C. N. 1384. Spain, 1903, 1910. Port. 2377. Ital. 1153. Holl. 1403. Chili, 2320-2322. Mex. 1481. Jap. 715.

§ 832. Windsch. § 455, note 12. Al. Lt. i, 6, § 57. Austr. 1308, 1309. Sax. 779. Prof. H. 211, 212; B. 627; D. 216. C. N. 1384. Sw. Fed. 61. Jap. 714.

§ 833. C. N. 1385. Spain, 1905. Port. 2394. Ital. 1154. Holl. 1404. Chili, 3236. Mex. 1480. Jap. 718.

§ 834. Jap. 718, 2.

third person in the manner mentioned in § 833. The responsibility does not apply if he, in the caretaking, observes the attention required in trade, or if the injury would also have occurred in using such care.

**Damages
Caused by
Game.**

835. If black-game, red-deer, elk, buck-deer or does or pheasants damage a piece of ground, as to which the owner has no right to take game, the one having the right is bound to indemnify the injured party for the damage. The obligation of indemnity extends to the damage, which the animals cause to the severed but not yet harvested products of land.

If the use of the right to take game has been by law withdrawn from the owner, he, who by law has that right, has to render indemnity for the damage. If the owner of a piece of land upon which, on account of its situation, the right to take game can only be exercised jointly with that right of chase upon another piece of land, has let the right to take game to the owner of that piece of land, the latter is answerable for the damage.

If the owners of land of a district for the purpose of joint exercise of the right to take game have joined in an association, which as such is not responsible, they are answerable for indemnity in proportion to the size of their pieces of land.

836. If, by the fall of a building or of another structure, connected with a lot of land, or by the severing of parts of the building or of the structure a human being is killed, the body or the health of a human being is injured, or a thing is damaged, the possessor of the lot of land, in so far as the fall or the severing is the consequence of faulty arrangement or insufficient maintenance, is bound to indemnify the person injured for the damage. The obligation does not occur if the owner for the purpose of averting the danger has observed the care required in trade.

§ 835. v. Intr. L. 69-72. Spain, 1906.

§ 836. Al. Lt. i, 8, § 36, 37, 6; Id. i, 6, § 19, 26. Austr. 343. Sax. Projt. H. 672; B. 950; D. 1028. C. N. 1386. Sw. Fed. 67, 68. Spain, 1907, 1908. Port. 2395. Ital. 1155. Holl. 1405. Chili, 2323. Mex. 1476-1479. Jap. 717.

A former possessor of the piece of land is answerable for the damage, if the fall or the severing occurs within a year after the end of his ownership, unless he has, during his ownership, observed the care required in trade or unless a later owner, by observing such care, could have averted the danger.

Possessor, in the sense of these provisions, is the one who has the possession as owner. (Eigebesitzer.)

837. If one, in the exercise of a right, owns a building or another structure upon the land of another, he bears, in place of the owner of the land, the responsibility set forth in § 836.

838. One, who assumes for the owner, the keeping of a building or of a structure, connected with a piece of land or should maintain the building or structure by reason of a right of use belonging to him, is responsible in the same manner as the owner for the damage caused by the fall or the severing of parts.

839. If an official designedly or negligently violates an official duty, due from him to a third party, he shall indemnify the third party for the damage arising therefrom. If the official is only chargeable with negligence, the claim can be enforced against him only if the injured party cannot obtain indemnity in another way.

If an official violates his official duty regarding the judgment in an action, he is answerable for the injury arising therefrom only if the violation of duty is subject in course of judicial penal procedure to a public penalty. This provision shall not apply to refusal or delay, contrary to duty, of the exercise of the official act.

This obligation is barred if the injured party has designedly or negligently omitted to avert the injury by the use of a legal remedy.

840. If several persons are liable for the injury aris-

Liability of Several Persons,
Injury to Body
or Health.

§ 838. v. Art. 1021, 1022, 1041, 1090. Projt. B. 950.

§ 839. Sch. § 290. v. Sax. 1506. Projt. H. 684, 2; B. 953, 3; D. 1029. Sw. 429.

§ 840. v. Art. 421. Sch. § 295. Port. 2372. Ital. 1156. Sw. Fed. 60. Chili, 2317. Ur. 423. Jap. 719.

ing from an unlawful act, they are answerable as joint debtors, subject to the provision of § 835, paragraph 3.

If beside the one, who under §§ 831, 832 is bound to indemnify for the injury caused by another, the other is also answerable for the injury, the other is, in their mutual relation, alone responsible, and in the case of § 829 the one who is bound to exercise control is alone responsible.

If beside the one who under §§ 833 to 838 is bound to indemnify for the injury, a third party is answerable for the injury, in their mutual relation, the third party alone is liable.

841. If an official, who by reason of his official duty has to charge another with a transaction for a third party, or has to supervise such a transaction, or has by approval of legal acts to co-operate in the same, is answerable beside the other for violation of these duties, the other is alone liable in their mutual relation for the injury caused by the latter.

842. The obligation for indemnity on account of an unlawful act directed against the person includes the detriments suffered in the earning or the advancement of the injured person, which result from the act.

843. If by reason of an injury to body or health the capacity of earning is taken away or diminished, or if his wants are increased, the injured person is to be indemnified by payment of a money rent.

The provisions of § 760 are applicable to the rent. Whether the party, who is liable for indemnity shall give security, in what manner and in what amount, is governed according to the circumstances.

In place of rent the injured party, there being an important reason therefor, can demand satisfaction by way of a principal sum.

§ 842. Al. Lt. i, 6, § 115, 117, 119-122. Lt. Bad. iv, 16, § 6, No. 4. Austr. 1325. Sax. 1489. Proft. H. 664, 1; B. 946, 1; D. 1009. Sw. Fed. 53.

§ 843. v. Intr. L., Art. 42. Al. Lt. i, 6, § 122-128. Austr. 1326. Proft. H. 664, 2; B. 946, 947; D. 1010. Sw. Fed. 53, 2.

The claim is not excluded by the fact that another has to provide maintenance for the injured person.

844. In the event of death, the one bound to indemnify has to pay the costs of the interment to the one who has the obligation to bear said costs.

If the party killed stood, at the time of the injury to a third party, in a relation, by reason of which he was under the law bound to maintain him, and if in consequence of the killing, the third person is deprived of the right to maintenance, the one who is bound to indemnify shall, by payment of a money rent, render indemnity to the third party in so far as the person killed, during the probable duration of his life, would have been bound to contribute to the maintenance; the provisions of § 843, paragraphs 2 to 4, correspondingly apply. The obligation for indemnity arises also if the third person at the time of the injury was conceived but not yet born.

845. In case of killing, injury to the body or to the health as well as of deprivation of liberty, and if the one injured was by law bound to render services to a third person in the latter's household or business, the one liable to indemnity has to indemnify the third person by a money rent for the lost services. The provisions of § 843, paragraphs 2 to 4, correspondingly apply.

846. If, in the cases of §§ 844, 845 a fault of the injured party has contributed to the origin of the damages suffered by the third party, the provisions of § 254 apply to the claim of the third party.

847. In case of injury to body or health, as well as in case of deprivation of liberty, the injured party can also on account of the damages, which are not damages to property, demand a fair compensation in money. The claim is

§ 844. Al. Lt. i, 6, § 98-110, 120. Austr. 1327, Sax. 1483, 1491, 1492. Proft. H. 661, 662, 665; B. 941-944; D. 1007, 1008. Sw. Fed. 52-54. v. Art. 1360, 1579, 1601, 1615, 1703, 1708.

§ 845. I. Art. 1356, par. 2; 1617.

§ 846. Jap. 722.

§ 847. Art. 1300. Sax. 1490. Proft. D. 1010. Sw. Fed. 54, 55. Sw. 28.

Injury to Person.

Indemnity for Lost Services.

Contributory Negligence.

Injury Not Affecting Property.

not transferable and does not pass to the heirs, unless it is acknowledged by contract or has been sued upon.

A woman against whom a crime or offense in violation of morality has been committed, or who by cunning, menace or abuse of a relation of dependency has been induced to consent to nonmarital cohabitation, is entitled to a like claim.

Liability for Accident.

848. One, who is bound to return a thing, which he by an unlawful act has taken from another, is also answerable for the accidental loss, an accidental impossibility of the return occurring for other cause, or an accidental deterioration of the thing, unless the loss, the other impossibility of the return, or the deterioration would likewise have occurred without the taking.

Interest.

849. If on account of the taking of a thing, the value, or on account of the damage, the depreciation is to be made good, the injured party can demand interest on the amount of the indemnity from the time at which the value is determined.

Expenditures.

850. If the one, who is bound to return a thing taken, makes expenditures upon the thing, he has as to the injured party the rights, which a possessor has against an owner on account of expenditures.

Indemnity to the Non-Entitled Possessor.

851. If the one bound to indemnify on account of the taking or the damaging of a movable thing, indemnifies the one in whose possession the thing was at the time of the taking or the injury, he is by this performance released, even if a third person was owner of the thing or had some other right to the thing, unless the right of the third person was known to him or was unknown to him owing to gross negligence.

Limitation.

852. The indemnity claim for damage arising from an

§ 848. Comp. Art. 287, 2; 292.

§ 849. Prof. D. 222.

§ 850. Comp. Art. 994. v. Sax. 1499. Prof. D. 222, 2.

§ 851. Comp. Art. 1006.

§ 852. v. Prof. Belgium, No. 45, p. 64r. Windsch. I, § 110, note 4;

unlawful act is barred in three years from the time at which the party injured obtained knowledge of the damage and the person of the one bound to indemnify, and without regard to this knowledge in thirty years from the commission of the act.

If the one bound to indemnify has by the unlawful act obtained something at the expense of the party injured, he is also upon the completion of the limitation, bound to make the return according to the provisions hereof as to the return of an unjustified benefit.

853. If some one by an unlawful act committed by himself obtains a demand against the party injured, the latter may refuse the fulfillment, also when the claim for release from the demand is barred.

ii, § 455; No. 6; 451, No. 2. Al. Lt. I, 6, § 54, 55. Austr. 1489. Penal C. 637. Sw. Fed. 69. Spain, 1968. Mex. 1094, par. 8. Art. 1102. Jap. 724.

§ 853. v. Art. 821.