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GERMANY

Responses submitted by:
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1. Would your jurisdiction be described as a common law or civil code jurisdiction?

Germany is a civil law jurisdiction with a codified system of law.

The legal concept of precedent is unknown to German law. Therefore, previous decisions of higher courts do not have a general binding effect on lower courts. Judgments will bind only the parties to the respective proceedings. Nonetheless, case law plays an important role in the German legal system, since lower courts generally do follow case law developed in higher courts.

2. What method of adjudication is used (adversarial, inquisitorial, other or hybrid)?

In civil law proceedings an adversarial approach is used, whereas in criminal law proceedings the method of adjudication is inquisitorial, and in administrative law proceedings hybrid.

3. What are the qualifications of the adjudicator (judge – elected, appointed; jury; other)?

Judges follow a distinct career path. At the end of their legal education at university, all law students must pass a first state examination before they can continue on to an apprenticeship that provides them with broad practical training in the legal profession over two years; during the apprenticeship such lawyers work with a judge in civil law, a judge in criminal law and/or a public prosecutor, with public administration, and a law firm. They then must pass a second state examination which is also the bar exam. At that point, the individual can choose either to be an attorney, become a state employee, or to enter the judiciary. Judicial candidates start working as judges immediately, however they are subjected to a probationary period of up to five years before being appointed as judges for lifetime.

There are no jury trials. However, parties can choose to have their commercial dispute to be decided by a Chamber for Commercial Matters (*Kammer für Handelssachen*); there the bench consists of three judges of whom only one is a professional judge; the two other judges are lay judges who usually are seasoned local business persons. These lay judges may serve at one or two hearings a month.

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4. Are there any procedures available for specialized courts (i.e. commercial court, employment, environmental)?

Germany has both "ordinary" courts, which hear civil and criminal cases, and different branches of "specialized" courts for employment, social security, administrative law, patent, and tax matters. The procedures used for specialized courts differ to a varying degree from the procedures used for ordinary courts. In commercial matters, parties in the dispute can choose that their dispute in first instance is decided by a Chamber for Commercial Matters (see no. 3 above), but appeals are decided by the regular court of appeals in civil matters.

5. Is arbitration an option and when? If so, what rules are typically used?

Arbitration is widely used in all kinds of commercial disputes. The rules of the German Institution of Arbitration (DIS) or of ICC are often used. Generally, there is no arbitration proceeding in employment or consumer law; arbitration is only prohibited in very limited circumstances, for example in disputes over rental agreements for apartments, in family matters, etc.

6. Will the courts enforce an arbitration agreement to preclude other forms of litigation?

Yes.

7. For court proceedings, is mediation mandatory, either before or after filing of a claim or complaint?

Mediation is not mandatory for court proceedings.

But by the German Code of Civil Procedure (ZPO) (section 278), a court is to explore in any stage of the proceeding whether the dispute can be resolved by settling the case. Therefore, the proceeding will start with an effort by the court to learn whether the dispute can be settled; the judge will open the trial by telling the parties how based on the briefs he understands the facts of the dispute, and then he will give the parties, subject to other facts presented or proven during the trial, the judge's preliminary assessment telling each party what its weak points are. There are judges who are very successful in settling about 50 per cent or more of their cases.

The court may suggest that the parties pursue mediation or other alternative conflict resolution procedures; but this happens not very often. Should the parties decide to pursue mediation or other alternative conflict resolution procedures, the court shall order the proceedings stayed.

8. What is the process for pre-hearing fact discovery (if any)?

The German Code of Civil Procedure (ZPO) does not provide for any pre-hearing fact discovery.

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(a) Are there provisions for mandatory document disclosures?

No.

(b) Is there provision for oral examinations of the parties or others?

No.

(c) Are there limits on the length of oral examinations?

N.A.

(d) Are witness statements or summaries to be provided before the hearing?

No.

9. What is the process for pre-hearing expert disclosure (if any)?

If a party engages its own expert and it wants to use the expert report during trial, it has to file this report with its briefs.

Generally, the court will appoint a neutral expert. The expert report will be sent to the parties prior to the trial. Generally, the expert is heard in trial, and examined by the parties. The parties may bring additionally their own experts who may assist the parties to examine the court appointed expert. If the parties have filed their own expert report to prove their allegations, the expert is obliged to also consider such party expert report.

(a) Are expert reports or written summaries required to be exchanged?

No party is permitted to use its expert report if it has not been filed with the court (with a copy to the other side).

(b) Are the parties entitled to conduct a pre-hearing oral examination of opposing experts?

No.

(c) Are there provisions requiring experts to meet and narrow issues before the hearing?

No.

10. Are there other notable discovery rules?

No.

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11. Is there a prehearing conference (for trial management, settlement or other purposes)? Who conducts it? How long before the hearing?

There is no prehearing conference for trial management. However, in civil cases, the trial shall be preceded by a conciliation hearing unless efforts to come to an agreement have already been made, or unless the conciliation hearing obviously does not hold out any prospects of success, Section 278(2) ZPO.

In the conciliation hearing, the court is to discuss with the parties the circumstances and facts as well as the status of the dispute thus far. The parties appearing are to be heard in person on these aspects.

Usually, this conciliation hearing is being conducted immediately before the actual trial. Parties will then usually argue that the conciliation hearing does not hold out any prospects of success, and the hearing will commence.

12. Can a prehearing motion for judgment be brought? If so, what is the threshold test for judgment?

There is no prehearing motion for judgment.

But certain procedures especially in civil cases do not require a hearing (judgment by default, freezing orders, and documentary proceedings).

- The threshold test for a **judgment by default** is the conclusiveness of the claim, see Sections 330 et seqq. ZPO.

- Applications for **freezing orders** will have to demonstrate to the satisfaction of the court that a) a claim exists and b) that there is the concern that without a writ of pre-judgment seizure being issued, the enforcement of the judgment would be frustrated or be significantly more difficult. Applicants can use any kind of evidence and/or statutory declarations in lieu of an oath, see Sections 916 et seqq. ZPO.

- For certain claims, in particular for claims regarding the payment of a specific amount of money, the ZPO allows proceedings in which plaintiffs rely entirely on documentary evidence (**documentary proceedings**), provided that the entirety of all facts required to justify the claim can be proven by records or documents, see Sections 592 et seqq. ZPO.

13. Is there a process for obtaining pre-hearing rulings with respect to evidence admissibility including admissibility of expert testimony? What is the process and when does it occur?

There is no such process. And there are no strict evidence rules. Generally, all evidence presented by the parties is admissible.

14. What is the standard for admissibility of expert evidence?

Expert evidence presented by the parties to the dispute is generally admissible. It will be regarded as part of the parties'

submissions which evaluation is at the court's discretion and conviction, Section 286(1) ZPO. It has to be filed with the briefs prior to trial.

Generally, expert evidence is ordered by the court following a party's request or at the court's discretion, Sections 402 et seqq. ZPO.

15. Does the court have the power to appoint its own experts? Under what circumstances and what type?

In Germany, civil litigation is managed by the court. The court controls the proceedings and the evidence that is brought before it. One method by which the court does this is to appoint experts to assist the court on relevant factual issues, rather than leaving it to the parties to adduce their own expert evidence.

Experts can be appointed by the court when it lacks expert knowledge to draw conclusions from certain facts which are relevant to the case. There are no limitations as to the type of experts.

16. Does your jurisdiction protect privilege? If so, what privileges are protected from disclosure (attorney client / legal advice; documents prepared in anticipation of litigation; settlement discussions; other)?

Under German law, in a civil law dispute no party has a duty of disclosure; therefore, all communications are privileged whether the communication was among engineers, in-house lawyers, or other non-lawyers or with an attorney. In Anglo-Saxon terms, all information is privileged. [Privilege is an exception to the obligation for disclosure].

Parties are allowed to withhold facts detrimental to their case if such information does not change the facts presented to the court; but a party may not lie and commit fraud.

Generally, attorneys must refuse to testify on any confidential information received through the client-attorney relationship if a client does not release the attorney from such a duty.

17. If privilege is not protected, are there other protections from disclosure (i.e. privacy) that could prevent disclosure of otherwise privileged information, and what is the basis for those protections?

Since there is no duty of disclosure, there are no other protections from disclosure of privileged information other than as described in 16 above.

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18. Who determines privilege disputes, or disputes with respect to other forms of protection described in 17 above?

N.A.

19. Briefly describe the trial process?

A plaintiff commences legal proceedings in Germany by filing a **complaint** with the court of first instance having personal jurisdiction. In the complaint, the plaintiff has to stipulate and explain all relevant facts, offer evidence for such facts, and apply for a specific remedy. If the action is a claim for payment (e.g., purchase price, damages), the amount has to be specified. Plaintiff must identify the evidence that proves those facts for which plaintiff bears the burden of proof. Copies of documents shall be submitted for the court and each adverse party. The plaintiff has to identify the means of evidence on which he intends to rely, among others provide the full names and addresses of witnesses and the fact of their testimony.

When filing the complaint, the plaintiff has to pay a **court fee** for the first instance proceedings. The amount of the court fee depends on the value of the remedy sought. Once the plaintiff has paid the court fee, the court will serve a copy of the complaint with attachments on the defendant.

When the complaint is served on the defendant, the judge usually sets a deadline for the defendant to submit his **statement of defence**. At this stage, the judge may also schedule a date for an initial court hearing, although he may wait until he has received the statement of defence and possibly another brief by the plaintiff, depending on which procedure he considers to be more efficient. If a defendant fails to serve a defence within the deadline set by the court or if a party does not appear at any scheduled hearing, the other party may apply for a default judgment.

The court then sets a date for the **hearing for oral argument**. In such hearing(s), the court will first summarize the parties' submissions and establish the dispute as such; then it will take evidence. Following the taking of evidence, the court is to once again discuss with the parties the circumstances and facts as well as the status of the dispute thus far and, to the extent possible at this stage, the results obtained in taking evidence.

At the end of the final hearing, the court will set the time for the release of the judgment. The **judgment** is to set out the reasons for the decision of the judges.

(a) Are there opening submissions, in what form and of what length?

The emphasis of German court proceedings is on written statements in which the lawyers are expected to explain all aspects of the case. At the beginning of the hearing, the (presiding/sole) judge will summarize his understanding of the case and of the issues to be decided. He will then ask the parties' attorneys to elaborate on certain aspects since only the critical and controversial facts that the court considers relevant are discussed at hearings.

(b) What is the order of presentation of witnesses?

There is no special order of presentation of witnesses. Generally, the court will start with hearing plaintiff's witnesses.

However, in complex cases, the court may hear all the witnesses expected to address distinguishable factual sequences at once.

(c) Who conducts examination and in what order?

Witnesses are questioned firstly by the judge(s). Subsequently, parties' counsel may question the witnesses.

(d) What is the process for closing submissions?

Closing submissions are not provided for in the ZPO. However, if one of the parties files such a motion a court will set a deadline for filing briefs regarding the examination of evidence and closing submissions.

20. Please identify any other notable trial procedures.

There are no other notable trial procedures in civil cases.

21. Who bears the burden of proof of liability? Causation? Damages? What is the standard of proof for each?

The rules governing the burden of proof are based on the rules governing the presentation of pleadings by disputing parties, i.e. substantive law. The general principle is that all parties must prove the **facts in their favor,** e.g. liability, causation, and damages.

Under German law, some **statutory exemptions** exist with respect to liability or causation. Such exemptions take the form of a shifting of the burden of proof from the party on whom the burden of proof lies to the opposing party, or a relaxation of the requirement to provide proof for the party on whom the burden of proof falls.

22. What heads of damage are recoverable (compensatory, pre-judgment interest, punitive damages, other)?

Any kind of compensatory damage is generally recoverable. There are no punitive or treble damages available.

23. If punitive damages are available, what is the threshold for recovery, and range of awards?

Punitive damages are not available under German law.

24. Are there time limits for bringing claims? Responding to claims? Please describe.

A claim will be dismissed, if the defendant successfully raises the defense of the statute of limitations.

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The general time limit is three full calendar years after the claim did arise and claimant has knowledge of the facts and the debtor or failed with gross negligence to learn about the facts and the debtor. If the claim is based on tort law and claimant does not learn of the facts and the debtor, the claim will be finally time barred 30 years after the event took place. Claims which are based on intentional violation of life or health or ownership claims or claims enforcing a judgment will become time barred 30 years after the event.

With respect to rights regarding real estate the statute of limitation is ten years.

25. What are the requirements to establish jurisdiction over a foreign defendant in your court? Can a foreign defendant request that the court decline jurisdiction on the basis that there is a more convenient forum?

Personal jurisdiction in civil cases is regulated by Sections 12 et seqq. ZPO. Personal jurisdiction is **generally** determined by the place where the defendant has the residence. In the case of a legal entity, its registered office is conclusive. If a defendant does not have a residence or registered office in Germany but has some asset in Germany, and if the case refers to a monetary claim then there is a special jurisdiction at the place where such asset is located.

For certain types of claims, the plaintiff has the possibility of choosing a jurisdiction different from the venue of defendant's personal jurisdiction (**special**, but not exclusive jurisdictions).

Example: Place of performance of contractual claims; tort claims (special jurisdiction of the court in whose area the act has been committed).

Where an Act specifically designates a jurisdiction as being **exclusive**, it takes precedence over all other jurisdictions, i.e. the proceedings can (admissibly) only be initiated within the exclusive jurisdiction.

Examples: Proceedings relating to land or to a right equivalent to land (in particular cases sole jurisdiction of the court in whose district the subject matter is located); disputes arising from leases or tenancies (sole jurisdiction of the court in whose district the leased or tenanted premises are located)

The possibility of **jurisdiction agreements** exists in German procedural law. For example, under Section 38(1) ZPO, a first-instance court which is not competent per se can become competent as a result of an express or tacit agreement by the parties. This agreement may, however, only be validly entered into if the parties are merchants or legal entities. Consumers can validly enter into a jurisdiction agreement only after the dispute has arisen. A valid jurisdiction agreement is binding on the courts; whether exclusivity of the jurisdiction is agreed upon depends on the content of the agreement.

The jurisdiction of a first-instance court can also be established by the defendant making oral submissions in the main action **without asserting lack of jurisdiction** (Section 39 ZPO).

German law does not provide for the opportunity to deny jurisdiction based on a *forum non conveniens* doctrine.

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26. Are there procedures for a defendant to bring other potentially responsible parties into the proceeding? Briefly describe.

According to Sections 72 et seqq. ZPO, a defendant can issue a third-party notice to any other person who might be held liable by way of recourse. As a result of such third-party notice, the third party is free to join the lawsuit in support of any party, and any findings of the court against the defendant will be binding against the third party in case of later recourse proceedings initiated by the defendant, provided that the third party could have joined the lawsuit and could have argued against such findings in the main lawsuit.

27. Are legal costs recoverable by either party? If so, under what circumstances, and how is the amount calculated? (i.e. is it a loser pays costs system).

Legal costs (e.g. court fees, statutory lawyer's fees, and necessary expenses) are generally recoverable following a loser pays-system. If each party partly loses and partly wins, costs are to be balanced out or to be shared proportionally, Section 91(3) ZPO.

It is important to note that the German cost rules do not confer any general discretion upon the court in respect of costs. The court will determine the extent to which each party has succeeded in proving its case, and make its order accordingly.

The quantum of legal costs that a successful party is entitled to recover from an unsuccessful party, and the fees and expenses of the court which are payable, are prescribed by statute. Court fees are prescribed by the German Court Fees Act (*Gerichtskostengesetz,* GKG) and recoverable lawyer's fees are scaled under the German Lawyers' Fees Act (*Rechtsanwaltsvergütungsgesetz,* RVG).

These rules do not seek to provide a successful party with a complete indemnity for his or her legal fees. Instead, they provide for the payment of legal fees and court costs in scales which increase in a degressive, non-linear fashion and with the use of multipliers that vary according to the value of the dispute, the stage at which the case is resolved, and other aspects of the case. Lawyers may agree upon hourly rates, but they are not permitted to charge less than the statutory legal fees.

28. Are contingency fees allowed?

Until recently, agreements for contingency fees were thought to be illegal under German law, and were expressly prohibited.

However, in a recent ruling, the German Constitutional Court decided that the strict prohibition of contingency fees as traditionally provided for in German statutory law was not in line with the German constitution (the Basic Law, or *Grundgesetz*). German law was therefore amended on 1 July 2008 to permit contingency fee agreements to be used, but only in very limited circumstances such as where a potential plaintiff does not qualify for legal aid and is unable to afford the statutory legal fees for a lawyer. However, in case of success, only a reasonable addition to the statutory legal fees may be agreed upon.

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The question of whether a person, who is ineligible for legal aid, is unable to afford a lawyer (and may therefore engage a lawyer on a contingency fee basis) is not entirely clear. A key consideration is whether a person in the client's position would not instruct a lawyer, on the basis of the expense of doing so, unless it were on the basis of a contingency fee.

29. Is third party funding of claims permitted? Under what circumstances?

Third party funding is generally permissible under German law, but it is not widely used. According to a study conducted by the Soldan Institute in 2007[1], third party funding was used in only 0.4% of civil litigation cases.

30. Are class or multi-party actions allowed? Under what circumstances? For what types of claims?

Class actions are not permitted at all.

Multi-party actions are generally not allowed but a few statutory exemptions exist (see also 31 below).

The most prominent exemption is *Capital Markets Model Case Act* (the "KapMuG"), which basically is a test project of model case proceedings. The KapMuG came into effect on November 1, 2005 and applies strictly to: (1) claims for compensation of damages due to false, misleading or omitted public capital markets information; and (2) claims to fulfilment of contract, which are based on an offer under the Securities Acquisition and Takeover Act.

The basic premise of the KapMuG is that a model case is chosen from individual cases, if similar issues will be decided, and the outcome can then be applied to all registered individual cases. The KapMuG contemplates three procedural stages: an application by one of the parties to use the model case procedure; the trial of the model case questions (at the relevant Court of Appeals if there are at least 10 similar cases); and the application of the model case decision to the other individual cases. In any case, the Court of Appeals will select which plaintiff shall handle the model case. All other plaintiffs are permitted to participate as a third party in the trial, but they are not permitted to do anything which is contradicting the model plaintiff behaviour.

31. Can claims be commenced by a consumers association or other representative organization? Under what circumstances?

The German Code of Civil Procedure allows for the joinder of claims. Claimants may also assign their rights to a third party, who then pursues the claim on behalf of all those who have assigned claims.

In particular areas the *Verbandsklage* allows for group complaints to be brought by an association or interest group, such as consumer protection and unfair business practices.

[1] Hommerich and Kilian, *Mandanten und ihre Anwälte: Ergebnisse einer Bevölkerungsumfrage zur Inanspruchnahme und Bewertung von Rechtsdienstleistungen*, Bonn (2007), page 139 fn. 47.

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32. On average, how long does it take to get to trial/final hearing, and what factors can affect that?

In first instance, the great majority of civil cases are concluded within a year of commencement. A study conducted between 2002-2004[2] indicated that the average length of cases (that is, from the time the complaint was filed to the time the case resolved whether by judgment or settlement) in the Local Courts (*Amtsgericht*) was 4.4 months, and in the Regional Courts (*Landgericht*) the average duration was 7.2 months. Generally, most law suits will be decided within 1 year.

The length of cases can be greatly affected by the way the court administers the case as well as the complexity of the case or applications filed by the parties. Especially in cases where experts have to provide evidence or where the case is not well administered by the court, the completion of a case can take several years.

33. Is an appeal process available (distinguish between final and interlocutory/procedural orders as needed)? Who hears the appeal? How are they appointed? What are their qualifications?

The ZPO recognizes different types of "appeal", namely a first appeal, a second-tier further appeal on questions of law, and an objection against a default judgment. Furthermore, an "appeal" is possible against preliminary injunctions and attachment orders:

A party has an absolute right to a **first appeal** if the first instance judgment deviates from the party's original application by more than EUR 600.00. The general position is that the appeal court will base its decision on the facts found by the respective lower court and reflected in its judgment, unless the factual basis of the lower court's decision is obviously wrong. As a result, a first appeal can now generally only be brought where the lower court made an error of law or an obvious error of fact.

A **second-tier appeal** to the Federal Supreme Court on questions of law is possible if permission is given by the court that heard the original appeal. The second-tier appeal must raise questions of law only: the facts ascertained by the lower court are generally binding.

The court will issue a **default judgment** against a party who does not appear. The party in default may file an objection against a default judgment with the court that issued the judgment. The objection does not have to state any specific reasons, but the objecting party should file further submissions of fact along with the objection.

The appeal courts usually are courts of the next instance (i.e., if the Regional Court (*Landgericht*) had jurisdiction over the case as court of first instance, the Higher Regional Court (*Oberlandesgericht*) has appellate jurisdiction).

[2] Hommerich et al, *Rechtstatsächliche Untersuchung zu den Auswirkungen der Reform des Zivilprozessrechts auf die gerichtliche Praxis – Evaluation ZPO Reform* (2006).

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34. Are hearing rooms available for electronic trials or appeals (i.e. where documents and transcripts are presented on computer monitors; witnesses can testify by video conference)?

Rooms or devices for electronic trials are generally not available. Witnesses have to testify in person, and documents have to be printed.

35. What is the practice regarding the use of graphics, computer animation, power point and the like, in trials? In appeals?

See 34 above.

36. Will the lawyer at trial be the same as the one responsible for pre-trial procedures? Is there a solicitor / barrister distinction?

There is no pre-trial procedure. In Germany, there is no distinction between barristers and solicitors.

37. What are the contributory negligence laws in your jurisdiction? Is there a comparative fault assessment, joint and several or proportionate liability among tortfeasors? Does a plaintiff's negligence reduce or eliminate liability of defendants named in the litigation?

a. **Contributory negligence** is regulated by Section 254[3] of the German Civil Code (BGB). Section 254 BGB contains **three rules of mitigation**: an amount of damages may be reduced on account of the plaintiff's contributory fault, on account of the loss being unusually high or because the plaintiff failed to minimise the loss.

- **First**, in cases where the loss is partly caused by the plaintiff's fault, the defendant's obligation to make compensation and the extent of such compensation will depend on the circumstances, especially on how far the loss has been caused predominantly by the one or the other party. This principle is laid down in Section 254(1) BGB.

[3] **Section 254 BGB** (**Contributory negligence**) states: "*(1) Where fault on the part of the injured person contributes to the occurrence of the damage, liability in damages as well as the extent of compensation to be paid depend on the circumstances, in particular to what extent the damage is caused mainly by one or the other party. (2) This also applies if the fault of the injured person is limited to failing to draw the attention of the obligor to the danger of unusually extensive damage, where the obligor neither was nor ought to have been aware of the danger, or to failing to avert or reduce the damage. The provision of section 278 applies with the necessary modifications*."

- **Secondly**, if the fault of the plaintiff consisted only of an omission to warn the defendant of the danger of unusually high damage of which the defendant neither knew nor ought to have known, the award will be reduced accordingly, Section 254(2)BGB.
- The **third** rule is also contained in Section 254 II 1 BGB. It is of far greater importance in actual practice. If the plaintiff has omitted to avert or mitigate the loss, the award of damages is also reduced accordingly.

b. Joint and several liability is regulated by Sections 421[4] and 426[5] BGB for contractual duties and by Section 840[6] BGB for tort.

In the case where several persons are liable for the same debt (so called *Gesamtschuld*, Sections 421 et seqq. BGB), the creditor has an option: he may demand the performance from any one of the debtors, in whole or in part. Until the whole performance has been effected, all the debtors remain bound. As between themselves, joint debtors are liable in equal shares, unless it is otherwise provided. If one joint debtor satisfies the creditor, he can demand that the other debtors make up the difference.

38. Is service of a complaint issued outside your country permitted in your country by "informal" means, or must the Hague Convention be followed?

If the complaint was filed in a non EU-country, the Hague Convention must be followed.

39. Do your laws prohibit export of relevant documents from your jurisdiction for the purposes of litigation outside your jurisdiction? (Consider privacy rules)

There is no provision that generally prohibits the export of documents from Germany for the purpose of litigation outside of Germany. However, data privacy laws regulate whether information governed by data privacy laws can be exported. Generally, data privacy rules prohibit the transfer and use of the protected information if the importing country has less rigid protection rules than EU law. Penalties range from fines to imprisonment. The main national data protection laws are

[4] **Section 421 BGB** (**Joint and several debtors**) states: "*If more than one person owes performance in such a way that each is obliged to effect the entire performance, but the obligee is only entitled to demand the performance once (joint and several debtors), the obligee may at his discretion demand full or part performance from each of the obligors. Until the entire performance has been effected all obligors remain obliged.*"

[5] **Section 426 BGB** (**Duty to adjust advancements, passing of claim**) states: "*(1) The joint and several debtors are obliged in equal proportions in relation to one another unless otherwise determined. If the contribution attributable to a joint and several debtor cannot be obtained from him, the shortfall is to be borne by the other obligors obliged to adjust advancements. (2)To the extent that a joint and several debtor satisfies the obligee and may demand adjustment of advancements from the other obligors, the claim of the obligee against the other obligors passes to him. The passing of ownership may not be asserted to the disadvantage of the creditor.*"

[6] **Section 840 BGB** (**Liability of more than one person**) states: "*(1) If more than one person is responsible for damage arising from a tort, then they are jointly and severally liable. (2) If besides the person who is obliged to make compensation for damage caused by another person under sections 831 and 832 the other person is also responsible for the damage, then in their internal relationship the other is obliged alone, and in the case specified in section 829 the person with a duty of supervision is obliged alone. (3) If besides the person who is obliged to make compensation for damage under sections 833 to 838 a third party is responsible, then the third party is solely obliged in their internal relationship.*"

the following:

- Sections 42a, 43(2) and 44 German Federal Data Protection Act (*Bundesdatenschutzgesetz*, BDSG);
- Section 15a Telemedia Act (*Telemediengesetz*, TMG); and
- Sections 93(3) and 109a(1) Telecommunication Act (*Telekommunikationsgesetz*, TKG).

40. Please point out any litigation Best Practices employed by courts in your jurisdiction but not yet referenced in the survey.

N.A.

41. Are there any significant areas in which you believe the playing field between plaintiff and defendant is not level that you think need to be addressed?

No.

42. Are there legislative efforts under way that address any of the litigation practices in your country?

No efforts of which the authors are aware.