THE NEW CONFLICT OF LAWS CODE PROVISIONS OF THE FEDERAL REPUBLIC OF GERMANY: INTRODUCTORY COMMENT AND TRANSLATION

*Rainer Gildeggen**
*Jochen Langkeit***

I. INTRODUCTION

On September 1, 1986 the new conflict of laws statute entered into force in the Federal Republic of Germany. The statute is the first comprehensive revision of the German conflict of laws rules since the enactment of the German Civil Code in 1900. The revision was necessitated by the increased involvement of the Federal Republic of Germany in international affairs, especially in its commitments to the European Economic Community, the unconstitutionality of large parts of the previous conflicts rules due to their discriminatory effect on women, and the criticism generated by extensive scholarly research.

The new conflict of laws rules are contained in articles 3 through 38 of the Introductory Code to the Civil Code (*Einfuehrungsgesetz zum Buergerlichen Gesetzbuche*, EGBGB). The rules are divided into five sections: References (articles 3 through 6); Law of Natural Persons and Legal Transactions (articles 7 through 12); Family Law (articles 13 through 24); Law of Succession (articles 25 and 26); and Law of Obligations (articles 27 through 38).

These rules, however, do not constitute a complete codification of German conflict of laws rules. Although plans are being formulated to enact provisions concerning the conflict of laws rules of restitution, agency without a contract, torts, and the law of property, as of yet there are no plans to enact provisions regulating matters such as the conflict of laws rules of agency, companies, securities, and insurance.[1]

The purpose of this introductory comment is to highlight a number of the new rules that are particularly noteworthy. A translation of the new Code follows the introductory comment.

---

* LL.M., University of Georgia; Law Studies, Ruprecht Karl Universitate, Germany.

** LL.M., University of Georgia; Law Studies, University of Munster, Germany.

[1] *See* Basedow, *Die Neuregelung des Internationalen Privat-und Prozessrechts*, 39 *Neue Juristische Wochenschrift* (NJW), 2971, 2972 (1986).

A. Common Principles of Conflict of Laws

The reform leaves large areas of the so-called common principles of conflict of laws such as characterization, preliminary question, and adaption unregulated. Those issues remain open to new currents and developments of the practice. There are, however, some provisions of the new law[2] which deal with aspects of general principles of conflicts law. For the most part these provisions do not change preexisting law, but rather confirm prior court practice or decide certain debated issues under the old law.

Article 4, paragraph I, sentence 1 of the EGBGB generally acknowledges the principle of renvoi, under which German conflicts law recognizes a reference of foreign law back to German law (*Rueckverweisung*) or to the law of a third country (*Weiterverweisung*). The old law, by its terms,[3] allowed a renvoi only in certain areas such as marriage and divorce. The courts, however, have extended this rule far beyond those areas,[4] making the renvoi principle an overall rule of German conflicts law. Article 4, paragraph 1, sentence 1 confirms this practice. The most important exceptions to the renvoi principle are laid down in article 35, paragraph I (law of obligations), and article 4, paragraph II (choice of law by the parties).

The previous code did not address the problem of countries having more than one legal system. How to resolve this problem was debated.[5] The majority opinion favored allowing the foreign interregional conflicts rules to decide which of its particular legal orders should be applicable.[6] The new law, however, adopts a minority position proposed under the old law:[7] if the German conflict rule uses a certain place as point of contact,[8] the law of the particular legal order of that place must be applied, irrespective of the foreign interregional conflict laws. If, however, reference is made to the citizenship of a person, the foreign law determines which of its particular legal orders is applicable. Where the foreign law does not contain rules concerning

---

[2] Articles 3 through 7 of the EGBGB.

[3] Article 27 of the old EGBGB.

[4] *See, e.g., Bundesgerichtshof* (BGH), judgment of Feb. 14, 1958, 11 NJW 750, 751 (1958).

[5] *See* 1 L. RAAPE & F. STURM, INTERNATIONALES PRIVATRECHT: ALLGEMEINE LEHREN 380 (6th ed. 1977).

[6] *Id.*

[7] *See, e.g.*, G. KEGEL, INTERNATIONALES PRIVATRECHT 236-41 (5th ed. 1985).

[8] Such as the habitual residence of a person or the place of performance of an act.

interlocal conflict law, German law will apply, and the law of the particular legal order with which the situation is most closely connected will be controlling.[9]

Another interesting provision of the new law relates to persons with more than one citizenship.[10] Article 5, paragraph 1 provides that in cases of more than one citizenship, the law of the country with which a person is most closely connected shall apply. The most significant factor in determining this connection is the habitual residence.[11] Article 5, paragraph 1 reflects the rule that was applied under the previous code.[12] Pursuant to article 5, paragraph 1, sentence 2, however, the German citizenship of a person with more than one nationality shall prevail even in cases where the person is more closely connected with a foreign country. This provision conflicts with the modern view under the old law which applied the principle of "effective citizenship" to persons who had, among others, German citizenship.[13] The one-sided and rigid solution of the new law in favor of German citizenship may be regretable. Its main justification, however, is that it provides for certainty and clarity in a number of cases involving multiple nationality.

B. Law Regarding the Legal Status of Natural Persons

The most significant change in this area concerns the law applicable to the change of a person's name as a result of marriage. The old code did not contain explicit regulations concerning the name of a person. There was, however, a consensus among authorities that a person's name was a question of his personal status, and thus governed by the law of the country of his citizenship.[14] No such consensus existed, however, in determining which law should apply to the name of a person as a result of marriage (in particular to the name of the wife). In a landmark decision on this issue, the *Bundesgerichtshof*,[15]

---

[9] Article 4, paragraph III, sentence 2 of the new EGBGB.

[10] Article 5, paragraph I.

[11] Article 5, paragraph I, sentence 1 of the new EGBGB.

[12] Under the previous code this rule was called the principle of the "effective citizenship". *See* BGH, judgment of June 20, 1979, 75 *Entscheidungen des Bundesgerichtshofs in Zivilsachen* (BGH Z) 32, 39; G. KEGEL, *supra* note 7, at 264-65; PALAND & HELDRICH, BUERGERLICHES GESETZBUCH, note 7, before Article 7 (45th ed. 1986) (dealing with the old law) [hereinafter PALANDT].

[13] *See, e.g.*, 75 BGH Z at 41.

[14] *See Reichsgericht* (RG), Judgment of Dec. 12, 1918, 95 *Entscheidungen des Reichsgerichts in Zivilsachen* (RGZ) 268, 272; PALANDT, *supra* note 12, note 2(a) after Article 7; G. KEGEL, *supra* note 7, at 352.

[15] BGH, judgment of May 12, 1971, 56 BGH Z 193.

the highest German Court in civil matters, came to the conclusion that the change of name as a consequence of marriage falls both under the conflicts norm concerning the status of a person and the rules regulating the effects of marriage in general.[16] The Court held that in principle the law governing the personal status applied, and the wife was entitled to bear at her choice the name accorded to her by the law governing the effects of her marriage in general.[17]

The new article 10 no longer provides for this particular sort of choice. It does, however, acknowledge that in principle the law governing the personal status is applicable to the name of a person.[18] With respect to a person's name after marriage, article 10 grants a number of options to spouses to choose the law governing their marriage name.[19] The new law thus takes into account a variety of potential interests of the spouses regarding their name, such as the interest to jointly bear their names in accordance with the law of the country of which either spouse is a citizen,[20] or the interest to adopt their name to the German law, if there are certain contacts to Germany.[21]

C. *Family law*

It can be fairly stated that one of the main thrusts of the new law centers around German private international family law. The crucial flaw of the old law in this area was that a number of its family law provisions referred to the law of the country of which the husband or father was a citizen,[22] and thus were discriminatory against women. Following a famous decision of the Federal Constitional Court in 1971,[23] it became an established rule that private international law provisions had to be consonant with the Basic Rights of the Basic

---

[16] 56 BGH Z at 199. The Court reached this result by what it called a "double characterization" of the name of a married person. *Id.*

[17] 56 BGH Z at 204. In case of different citizenships between spouses the law governing the effects of marriage in general would have been the law of the joint habitual residence. *See* 56 BGH Z at 203-04.

[18] Article 10, paragraph I of the new EGBGB.

[19] *See* article 10, paragrahps II through IV of the new EGBGB.

[20] *See* article 10, paragraph II, No. 1 and article 10, paragraph III.

[21] *See* article 10, paragraph IV.

[22] *See, e.g.*, article 15, paragraph 1 of the old code (matrimonial regime is to be governed by the law of the country of which the husband is a citizen) or Article 17, paragraph 1 of the old EGBGB (divorce is to be governed by the law of the country of which the husband is a citizen).

[23] *Bundesverfassungsgericht* (BVerfG), judgment of May 4, 1971, 31 *Entscheidungen des Bundesverfassungsgerichts* (BVerfGE) 58.

Law (*Grundrechte*) of the Federal Republic of Germany.[24]

Hence, a number of the family law provisions of the previous code were considered to be in violation of article 3, paragraph 2 of the Basic Law, which contains the principle of equal treatment of both sexes.[25] It took more than a decade, however, before the Federal Constitutional Court formally declared void article 15, paragraph 1 of the old EGBGB, which determined the law applicable to the matrimonial regime of the spouses,[26] and article 17, paragraph 1, of the old EGBGB, which dealt with the law governing divorce.[27] By the time the new law entered into force and substantially harmonized German conflicts law with the Basic Law, courts [28] and commentators already had drawn the proper conclusion from the unconstitutionality of some of the old provisions. Under the old law, courts and commentators had developed a new system of points of contacts with regard to the particularly critical issues of matrimonial regime and divorce. This system was devised to avoid violations of the equal treatment clause of the Basic Law. At the same time, courts and legal writers were cautious to retain as many of the structural elements of the old law as possible to avoid a substantial departure from the intent of the legislator of the old EGBGB.[29] The new EGBGB, however, differs in various respects from this system. The main reason for the changes was that the legislature writing the new Code was not bound, as courts and commentators had been, to maintain a maximum of the old law's structure.

The differences may be illustrated by the examples of the matrimonial regime and divorce. As to the matrimonial regime, the majority opinion under the old law suggested replacing its unconstitutional article 15 with the following "ladder of points of contacts:"[30] primarily the law of the country of which both spouses are citizens at

---

[24] 31 BVerfGE at 72-73.

[25] *See, e.g.*, RAAPE & STURM, *supra* note 5, at 105.

[26] BVerfG, judgment of Feb. 22, 1983, 63 BVerfGE 181, 194.

[27] BVerfG, judgment of Jan. 8, 1985, 68 BVerfGE 384, 390.

[28] *See, e.g.*, article 6, sentence 2, of the new EGBGB, which underscores the significance of the Basic Rights as a component of the German public order and article 13, paragraph II, No. 3, of the new EGBGB, which prescribes the exceptional application of German law in order to realize the freedom to enter into a marriage as guaranteed by article 6, paragraph 1 of the Basic Law.

[29] *See, e.g.*, BGH, judgment of Dec. 8, 1982, 86 BGH Z 57, 66; BGH, judgment of June 8, 1983, 87 BGH Z 362; BGH, judgment of Jan. 11, 1984, 89 BGH Z 326, 333; G. KEGEL, *supra* note 7, at 491.

[30] G. KEGEL, *supra* note 7, at 478; 86 BGH Z at 65.

the time of the conclusion of marriage[31] should be governing. In the absence of such a common citizenship, the law to be applied was the law of that place in which both spouses had their habitual residence at the time of the conclusion of the marriage. In the event neither common citizenship nor common habitual residence existed, the majority opinion under the old code was to apply the law with which the spouses were in any other way most closely connected at the time of the conclusion of the marriage.[32]

The new code[33] adopts this "ladder approach", but requires that in the case of a common citizenship or common residence at the time of the conclusion of the marriage, at least one of the spouses retains this citizenship or residence. In addition, the new article 15, paragraph 2 enables the spouses to choose the applicable law to their matrimonial regime. Article 15, paragraph 2 extends the old state of the law in at least two respects. First, the possibility of choosing the law applicable to the matrimonial regime is completely new. Second, this paragraph makes the matrimonial regime changeable, whereas it was an established principle under the old law that this regime is unchangeably cemented to the law governing it at the time of the conclusion of the marriage.[34]

As to divorce, the *Bundesgerichtshof* had developed a points of contacts test that distinguished between marriages in which one spouse was a German citizen,[35] and marriages between foreign spouses.[36] In a marriage where one spouse was a German citizen, the courts proposed to treat either spouse's application for divorce according to the law of which he or she was a citizen.[37] The consequences of the divorce, especially the equalization of future pensions, was governed by German law.[38] Concerning the divorce of a marriage between two

---

[31] PALANDT, *supra* note 12, Article 15, note 2)b)aa); G. KEGEL, *supra* note 7, at 491.

[32] *See* PALANDT, *supra* note 12, Article 15, note 2)b)cc. There was, however, some debate about the applicable law in the absence of actual or former common citizenship or habitual residence, G. KEGEL, *supra* note 7, at 491, proposed to apply the law of a common simple residence of the spouses.

[33] *See* article 15, paragraph I of the new EGBGB, referring to article 14 of the new Code.

[34] *See*, G. KEGEL, *supra* note 7, at 491. PALANDT, *supra* note 12, article 15, note b.

[35] *See* 87 BGH Z at 362 *et seq.*

[36] *See* 86 BGH Z at 69; 89 BGH Z at 334.

[37] *See* 87 BGH Z at 364 *et seq.*

[38] *See* 87 BGH Z at 366; BGH, judgment of Dec. 12, 1984, 38 NJW 1283, 1283.

foreign spouses, the *Bundesgerichtshof* established a ladder of points of contacts: the law of the country of which both spouses were citizens was to be applied first. If one of the spouses had lost this citizenship but the other spouse still retained it, the law of the country of which both spouses had been citizens would be the applicable law.[39] In the absence of actual or former common citizenship, the courts held the law of the common habitual residence of the spouses to be controlling.[40]

The new article 17 departs from this system by refusing to make a distinction between marriages in which either spouse is a German citizen and marriages between two foreign spouses. Both groups of cases are now governed by the law that is applicable according to the same ladder of points of contacts which governs the matrimonial regime (and also the effects of marriage in general).[41] If the applicable law does not provide for a divorce, a German spouse may still obtain a divorce pursuant to German law.[42]

The old code allowed a German citizen to get a divorce irrespective of the citizenship of the other spouse.[43] It reflected the endeavor of the German conflicts law to accord a special protection to German citizens in divorce cases by enabling them to dissolve their marriages. With respect to the equalization of future pensions, however, the new law does not protect German citizens to the extent the old law protected them. According to the old code and to the system of the *Bundesgerichtshof*,[44] a German citizen could always obtain an equalization of future pensions, even if the divorce in general was governed by a law that did not contain an equalization of future pensions. Pursuant to article 17, paragraph 3, this is no longer the case. The accomplishments of an equalization of future pensions presupposes that the law which governs the divorce pursuant to article 17, paragraph 1, sentence 1 (the above mentioned ladder of points of contacts), provides for it as well. If this law does not contain an equalization of future pensions, it can be carried out in accordance with German law only if the special requirements of article 17,

---

[39] *See* 86 BGH Z at 69.

[40] *See* 89 BGH Z at 334.

[41] *See* article 17, paragraph I, sentence 1 of the new EGBGB, referring to article 14 of the new EGBGB.

[42] *See* article 17, paragraph I, sentence 2 of the new EGBGB.

[43] *See* article 17, paragraphs 1 and 3 of the old EGBGB.

[44] *See* 87 BGH Z at 366; BGH, 38 NJW at 1283.

paragraph 3 are fulfilled. The German citizenship of either spouse alone is, therefore, no longer sufficient.

D. Law of Succession

Article 25, paragraph 1 provides that all questions of inheritance shall be governed by the law of the country of the deceased person's citizenship at the time of his death. This was the rule under the old law. Article 25, paragrpah 2, however, contains something new. A foreigner may choose German law to be applicable to his succession. Such a choice of law applicable to succession had been unknown to the old code.

Article 26, paragraphs 1 through 3, deal with the formal validity of testamentary dispositons. This paragraph contains the provisions of the Hague Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions of October 5, 1961, which was directly applicable before September 1, 1986.[45] It should be noted, however, that article 26, paragraph 4, goes beyond the scope of the Hague Convention in extending its provisions to other forms of dispositions *mortis causae*, such as contracts of inheritance.

E. Law of Obligations

The law of contractual obligations previously was not codified. The new provisions are based on the European Convention on the Law Applicable to Contractual Obligations.[46] The German legislature formulated the rules of the European Convention as part of the EGBG with minor adaptations to incorporate most of the conflict of laws rules into one code and to promote clarity and certainty of the law.[47] Article 36 expressley provides for a uniform interpretation and application of the conflict of laws rules for contractual obligations within the countries which have ratified the Convention.

In the absence of a choice of law, article 28, paragraph 2, sentence 1 refers to the law of the party that must effect the performance characteristic of the contract. This is particularly noteworthy for one reason: whereas a number of legal scholars advocated this solution under the old law,[48] the *Bundesgerichtshof* consistently rejected it.[49] Instead, the

---

[45] PALANDT, BUERGERLICHES GESETZBUCH (46th ed. 1987); *see also* note I to Article 26 EGBGB.

[46] Opened for signature in Rome on June 19, 1980, Official Journal of the European Communities No. L 266/1 (hereinafter European Convention).

[47] PALANDT, *supra* note 45.

[48] *See, e.g.*, G. KEGEL, *supra* note 7, at 384.

[49] *See, e.g.*, BGH, judgment of June 9, 1960, 13 NJW 1720, 1721.

Court often applied the laws of the respective places of performance,[50] which led to a complicated and unfavorable application of two different laws to a contract. Article 28, paragraph 2, sentence 1, therefore, must be praised as a modern and equitable solution to this problem.

CONCLUSION

As a whole, the new EGBGB is an important improvement of the German conflicts law.[51] The new law accomplishes the long-due harmonization of German conflict rules with Basic Rights of the Basic Law, especially with the equal treatment of the sexes clause. It also incorporates various European Conventions, and therefore, contributes to some extent to the goal of unification of European laws. Moreover, the new Code settles various disputes and resolves open questions that existed under the old law, thus promoting certainty and predictability of the law. A major point of criticism, however, is the incompleteness of the new Code with regard to non-contractual obligations and property law. One can only hope that the legislature will proceed to fill those remaining gaps in the near future.

II. TRANSLATIONS:[52]

PRIVATE INTERNATIONAL LAW (*Internationales Privatrecht*)[53]
First Section: References (*Verweisungen*)
Article 3: General Rules of Reference[54]

(I)

---

[50] *Id.*

[51] Together with the EGBGB, some procedural provisions have been revised. The revision of procedural rules concerns primarily questions of jurisdiction in family and succession matters. The recognition of foreign judgments, which is regulated in section 328 of the Code of Civil Procedure, was revised only insofar as "reciprocity" of recognition is no longer required. International arbitral awards need not be signed by three arbitrators to be enforceable in the Federal Republic of Germany. Section 1039 of the Code of Civil Procedure requires the signature of only two arbitrators. Section 1045 of the Code of Civil Procedure determines more clearly which courts have jurisdiction for the recognition and enforcement of international arbitral awards.

[52] Law for the Rearangement of Private International Law from July 25, 1986, BGBl. 1986 I, 1142. The headings of the provisions of the new law are part of the official text.

[53] The conflicts of laws provisions are embodied in the second chapter of the first part of the Introductory Code to the Civil Code, articles 3 through 38.

[54] Cite as: EGBGB Article 3.

In situations that have a bearing on the law of a foreign country, the provisions that follow determine which law is applicable (Private International Law). References to substantive rules relate to those provisions of the applicable legal system which are not provisions of its private international law.

(II)
Regulations in international agreements prevail over the provisions of this law, if these agreements have become directly applicable domestic law. Regulations emanating from legal acts of the European Communites remain unaffected.

(III)
To the extent that references in the third and fourth section declare that the law of a particular country govern the assets of a person, the references do not apply to objects which are not located in that country which are subject to special regulations of the law of the country in which they are located.

Article 4: Renvoi (*Rueck-und Weiterverweisung*); Countries with more than one Legal Order (*Rechtsspaltung*)

(I)
If reference is made to the law of a foreign country, the conflict of laws rules of that country shall be applied, unless this application contravenes the purpose of the reference. If the law of that foreign country refers back to German law, German substantive rules are applicable.

(II)
To the extent that the parties are entitled to make a choice of the applicable law, they can only choose the substantive rules of a country.

(III)
If reference is made to the law of a country with more than one legal system, the law of that country determines which legal order is applicable, unless the reference itself determines that. If the law of the foreign country does not determine the applicable legal order, the legal system with which the situation is most closely connected shall be applied.

Article 5: Personal Statute

(I)
If reference is made to the law of a country of which a person is a citizen, and if this person has more than one citizenship, the law of that country with which the person is most closely connected shall be applied. This connection is evidenced especially by his habitual residence (*gewoehnlicher Aufenthalt*) or by the course of his life. If the person also has the German citizenship, this citizenship prevails.

(II)
If a person is stateless, or if the citizenship of a person cannot be ascertained, the law of the country of his habitual residence is applicable, or, if the person has no habitual residence, the law of his residence is applicable.

(III)
If reference is made to the law of the country of a person's residence or habitual residence and if a person who is not legally competent changes his residence without the assent of his legal representative, this change, without more, does not lead to the application of a different law.

Article 6: Public Order

A provision in the law of a foreign country shall not be applied if its application leads to a result which is manifestly incompatible with essential principles of German law. In particular, a provision in the law of a foreign country shall not be applied if its aplication is incompatible with the Basic Rights of the Basic Law (*Grundrechte*).[55]

Second Section: Law of Natural Persons and Legal Transactions
Article 7: Legal Capacity and Legal Competence

(I)
A person's legal capacity and his legal competence are governed by the law of the country of which the person is a citizen. The same applies if the legal competence has been enhanced by marriage.

(II)
A duly acquired legal capacity or legal competence remains unaffected by acquisition or loss of legal status as a German citizen.

---

[55] The Basic Rights are to be found primarily in the Basic Law (*Grundgesetz*) of the Federal Republic of Germany, but also in the constitutions of the *Laender* of

Article 8: Placing Under Guardianship

A citizen of a foreign country may be placed under guardianship according to German law if he has a habitual residence within the country, or, in the absence of a habitual residence, if he has a residence within the country.

Article 9: Declaration of Death

The judicial declaration of death, the determination of the time of death, as well as presumptions of life and death are governed by the law of that country of which the missing person was a citizen at the time at which he was still alive according to existing information. If the missing person was at that time a citizen of a foreign country, he may be declared dead pursuant to German law if a legitimate interest exists therefor.

Article 10: Name

(I)
The name of a person is governed by the law of the country of which the person is a citizen.

(II)
At the conclusion of marriage within the country, spouses may choose the name to be borne by them after the conclusion of the marriage by a declaration to the registrar (*Standesbeamter*):

1. pursuant to the law of the country of which one of the spouses is a citizen, notwithstanding Article 5, paragraph I; or
2. pursuant to German law, if one of the spouses has a habitual residence within the country.

(III)
If the marriage between a German and a foreign spouse has not be concluded within the country, and if the spouses, at the conclusion of the marriage, have not made a declaration as to the name to be borne by them during marriage, the German spouse may declare that he[56] wishes to bear his family name pursuant to the country of which the other spouse is a citizen. The declaration must be made as soon as the registration of the family name in a German register of births,

---

the Federal Republic and in Human Rights Conventions. *See* PALANDT, *supra* note 12; EGBGB LArt. 6 note 2)d.

[56] The provision applies to both sexes: the "German spouse" is specified as male in the German grammar.

deaths and marriages (*Personenstandsbuch*) becomes necessary. Such a change, however, must be made no later than one year after returning to this country. Section 13a, paragraph 3 of the Marriage Law (*Ehegesetz*) and section 1617, paragraph 2, sentences 2 and 3 of the Civil Code (*Buergerliches Gesetzbuch*) apply *mutatis mutandis*. If the German spouse does not make a declaration, he bears the family name during marriage, which he bore at the time of the conclusion of the marriage.

(IV)
If spouses who have not concluded the marriage within the country and of whom at least one is not a German citizen, do not bear a joint family name, they can make a declaration concerning the marriage name according to section 1355, paragraph 2, sentence 1 of the Civil Code:

1. if one of the spouses has his habitual residence within the country; or
2. if German law governs the effects of marriage in general.

Subsection 3, paragraph 2, applies *mutatis mutandis*.

(V)
If neither parent has German citizenship, the legal representative of a common legitimate child may determine, before the registrar prior to the registration of the birth, that the child shall obtain the family name:

1. pursuant to the law of the country of which either parent is a citizen, notwithstanding article 5, paragraph I; or
2. pursuant to German law if either parent has his habitual residence within the country.

(VI)
An illegitimate child can obtain his name pursuant to the law of the country of which either parent is a citizen, or pursuant to the law of the country of which a person conferring his name on the child is a citizen.

Article 11: Form of Legal Transaction

(I)
A legal transaction is formally valid if it fulfills the formal requirements of the law which is applicable to the legal relationship forming the subject matter of the legal transaction, or, if it fulfills the formal

requirements of the law of the country in which the legal transaction is carried out.

(II)
If a contract is concluded between persons who are in different countries, this contract is formally valid if it fulfills the formal requirements of the law which is applicable to the legal relationship forming the subject matter of the contract, or, if it fulfills the formal requirements of one of those countries.

(III)
If the contract is concluded by an agent, the country in which the agent acts is the relevant country for the purposes of paragraphs I and II.

(IV)
Contracts, the subject matter of which is a right in real property or a right to use real property, are governed by the mandatory formal rules of the law of the country where the real property is located if by that law those rules must be applied irrespective of the place of conclusion of the contract and irrespective of the law governing the contract.

(V)
A legal transaction by which a right to a thing is established or by which such a right is disposed of (*verfuegt*) is formally valid only if it fulfills the formal requirements of the law which is applicable to the legal relationship forming the subject matter of the legal transaction.

Article 12: Protection of the other contracting Party

If a contract is concluded between persons who are in the same country, a natural person who would be legally capable, competent, and able to act pursuant to the law of this country [Germany], can invoke his legal incapacity, incompetence, or inability to act, as provided in the substantive rules of another law, only if the other contracting party at the time of the conclusion of the contract either knew, or should have known of this legal incapacity, incompetency, or inability to act. This does not apply to legal transactions subject to family law or the law of succession. Further, it does not apply to the disposition of real property which is located in a foreign country.

Third Section: Family Law
Article 13: Conclusion of Marriage

(I)
For each engaged person the requirements for the conclusion of marriages are governed by the law of the country of which the person is a citizen.

(II)
If under this law a requirement is not fulfilled, German law is applicable if:

1. either engaged person has his habitual residence within the country or is a German citizen;
2. the engaged persons have taken reasonable steps to fulfill those requirements; and
3. it is incompatible with freedom of marriage to refuse the conclusion of marriage; in particular, a marriage shall not be prevented by a previous marriage of either engaged person, if the validity of the previous marriage has been set aside by a decision made or recognized within the country, or, if the spouse of either engaged person has been declared dead.

(III)
A marriage may be concluded within the country only if the germane formal requirements are fulfilled. A marriage between engaged persons, neither of whom is a German citizen, may be concluded pursuant to the formal requirements of the country of which either of the engaged person is a citizen, if the marriage is concluded before a person properly authorized by the government of that country. A certified copy (*beglaubigte Abschrift*) of the registration of that marriage with the register of marriages (*Standesregister*), which is kept by the properly authorized person, is uncontestable proof of the marriage.

Article 14: Effects of Marriage in General

(I)
The effects of marriage in general are governed by:

1. the law of the country of which both spouses are citizens or of which both spouses were last common citizens during the marriage, if one of them still retains that citizenship; or otherwise
2. the law of the country in which both spouses have their habitual residence or in which both spouses had last their habitual residence

during the marriage, if either spouse still has his habitual residence in that country; or subsidiarily

3. by the law of the country with which the spouses in another way are most closely connected.

(II)
If either spouse has more than one citizenship, the spouses may choose the law of the country of one of those citizenships notwithstanding article 5, paragraph I if the other spouse is also a citizen of that country.

(III)
Spouses may choose as governing the law of the country of which either spouse is a citizen, if the requirments of subsection I are not fulfilled, and:

1. if neither spouse is a citizen of the country in which both spouses have their habitual residence; or

2. if the spouses do not have their habitual residence in the same country.

The effects of the choice of the governing law end when the spouses acquire a common citizenship.

(IV)
The choice of the applicable law must be notarized (*notariell beurkundet*). If the choice is not made within the country it is sufficient if the formal requirements for a marriage contract are fulfilled pursuant to the chosen law or the law of the place where the choice is made.

Article 15: Matrimonial Regime

(I)
The law of the matrimonial regime is governed by the law which governs the effects of marriage in general.

(II)
Spouses may choose as governing their matrimonial regime:

1. the law of the country of which either spouse is a citizen;

2. the law of the country in which either spouse has his habitual residence; or

3. for immovables, the law of the country in which they are located.

(III)
Article 14, paragraph IV, applies *mutatis mutandis.*

(IV)
The provisions of the Law of Matrimonial Regime of Expelled Persons and Refugees (*Gesetz ueber den ehelichen Gueterstand von Vertriebenen und Fluechtlingen*) remains unaffected.

Article 16: Protection of Third Parties

(I)
If the matrimonial regime is governed by the law of a foreign country, and if either spouse has his habitual residence within the country or is carrying on a trade within the country, section 1412 of the Civil Code is applicable *mutatis mutandis.* A foreign matrimonial regime imposed by law is deemed to be stipulated by agreement.

(II)
Section 1357 of the Civil Code applies to legal transactions carried out within the country; as to immovables located within the country section 1356 applies. Sections 1431 and 1456 of the Civil Code are applicable *mutatis mutandis* to any gainful occupation carried on within the country by a third party acting in good faith if those provisions are more favorable then provisions of foreign law.

Article 17: Divorce

(I)
Divorce is governed by the law which governs the effects of marriage in general on the date when the petition for divorce is served. If the marriage cannot be dissolved under that law, the divorce is governed by German law if the petitioning spouse is a German citizen at that time or was a German citizen when the marriage was concluded.

(II)
Within the country a marriage can be dissolved only by a court.

(III)
The equalization of future pensions of husand and wife (*Versorgungsausgleich*) is governed by the law applicable pursuant to paragraph I, sentence 1; an equalization of future pensions must only be carried out if an equalization of future pensions is provided for by the law of the country of which either spouse is a citizen at the date when petition for divorce is served. If there is no such equalization of future pensions according to such law, an equalization of

future pensions must be carried out pursuant to German law on application of either spouse if:

> 1. the other spouse has acquired a domestic future pension right (*Versorungsanwartschaft*) during the marriage; or
> 2. the effects of marriage in general have been governed during the term of the marriage by a law which provides for the equalization of future pensions, to the extent that the equalization is not inequitable in view of the economic circumstances of both spouses even with respect to time not spent within the country.

Article 18: Maintenance[57]

(I)
The obligation to furnish maintenance is governed by the substantive rules of the law of that country in which the dependent has his habitual residence. If the dependent is unable to obtain maintenance from the person obligated to provide it in accordance with that law, the substantive rules of the country of which they are common citizens are applicable.

(II)
If the dependent is unable to obtain maintenance in accordance with the law applicable pursuant to paragraph I, sentence 1 or 2, German law is applicable.

(III)
Concerning the obligation to funish maintenance between persons related collaterally or by affinity, the person obligated to furnish maintenance may assert against the claim of the dependent that there is no such obligation according to the substantive rules of the country of which both are citizens, or, in the absence of a common citizenship, that there is no such obligation to according the law of the country in which the obligated person has his habitual residence.

(IV)
If a divorce was granted or recognized within the country, the maintenance of divorced spouses and the revision of a maintenance decision

---

[57] Articles 4 through 10 of the Convention of the Law Applicable to Maintenance Obligations, Concluded October 2, 1973, *reprinted in* Hague Conference on Private International Law, Collection of Conventions (1951-1980), 218 *et seq.*, have been consulted in connection with the translation of EGBGB Article 26, paragraphs I to III.

is governed by the law applicable to the divorce. The same applies to a legal separation and to the case in which a marriage is declared void or annulled.

(V)
German law applies if the dependent as well as the person obligated to furnish maintenance are German citizens and if the latter has his habitual residence within the country.

(VI)
The law applicable to maintenance obligations especially governs:

1. whether, from whom, and to what extent the dependent may claim maintenance;
2. who has the right to institute a maintenance proceeding and the time limits for its institution;
3. the extent of obligation of a person who is obligated to furnish maintenance, where an institution discarging public duties seeks, according to the law governing it, reimbursement of benefits provided for a dependent.

(VII)
In determining the amount of maintenance, the need of the dependent and the economic circumstances of the person obligated to furnish maintenance shall be taken into account, even if the applicable law provides otherwise.

Article 19: Legitimacy of a Child

(I)
The legitimate descent of a child is governed by the law which according to article 14, paragraph I, governs the effects of the marriage of the mother in general at the time of the birth of the child. If at that time the spouses are citizens of different countries, the child is also a legitimate descendant, if the law of one of those countries provides therefor. If the marriage was dissolved prior to the birth of the child the time of the dissolution is decisive. The child may contest his legitimacy according to the law of the country in which he has his habitual residence.

(II)
The legal relationship between the parents and a legitimate child is governed by the law which governs the effects of marriage in general according to article 14, paragraph I. If there is no marriage, the law

of the country in which the child has his habitual residence is applicable.

(III)
If the best interest of the child (*Kindeswohl*) is jeopardized, protective measures may also be taken according to the law of the country in which the child has his habitual residence.

Article 20: Illegitimacy of a Child

(I)
The descent of an illegitimate child is governed by the law of the country of which the mother is a citizen at the time of the child's birth. The same law governs the obligations of the father towards the mother on the basis of her pregnancy. Paternity may also be determined according to the law of the country of which the father is a citizen at the time of the birth of the child, or in which the child has his habitual residence.

(II)
The legal relationship between the parents and the illegitimate child is governed by the law of the country in which the child has his habitual residence.

Article 21: Legitimation

(I)
Legitimation by subsequent marriage is governed by the law which governs the effects of marriage in general at the time of the conclusion of marriage in accordance with article 14, paragraph I. If the spouses are citizens of different countries, the child is legitimated if he is legitimated according to the law of one of those countries.

(II)
Legitimation, other than by subsequent marriage, is governed by the law of the country of which that parent whose legitimate child the child shall be declared is a citizen at the time of legitimation. If the parent died before that time, the laws of the country of which he was last a citizen control.

Article 22: Adoption of a Child

The adoption of a child is governed by the law of the country of which the adopter is a citizen at the time of the adoption. The adoption by either or both spouses is governed by the law which

governs the effects of marriage in general according to article 14, paragraph I.

Article 23: Consent

The law of the country of which the child is a citizen governs: the necessity for, and granting of a child's consent; the consent of the person with whom the child has a relationship under family law; the declaration of descent (Abstammungserklaerung); the conferring of a name on a child; legitimation; and adoption. If necessary, and if in the best interest of the child, German law is applicable instead.

Article 24: Guardianship and Curatorship (*Vormundschaft und Pflegschaft*)

(I)
The creation, alteration, and the termination of a guardianship curatorship, as well as the substance of statutory guardianship curatorship are governed by the law of the country of which the minor or the person under curatorship are citizens. A person may be placed under guardianship pursuant to article 8 (guardianship as ordered under German law), or alternatively, guardianship may be ordered pursuant to section 1910 of the Civil Code.

(II)
If a curatorship is necessary because it is not certain who is concerned in a matter or because a concerned person is within another country, the law which governs the matter is applicable.

(III)
Provisional measures, as well as the substance of guardianship or curatorship orders are governed by the law of the ordering country.

Fourth Section: Law of Succession
Article 25: Succession

(I)
Succession is governed by the law of the country of which the deceased was a citizen at the time of his death.

(II)
With respect to immovables located within the country, the deceased may choose in accordance with the formal requirements of a disposition *mortis causae* (*Verfuegung von Todes wegen*) that German law be applicable.

Article 26: Dispositions *mortis causae*[58]

(I)
The form of testamentary disposition, even if made by two or more persons in one document, shall be valid if it complies with:

1. the law of the country of which the testator was a citizen, notwithstanding article 5, subsection I, either at the time when he made the dispostion, or at the time of his death;
2. the law of the place where the testator made it;
3. the law of the place, in which the testator had his domicile or his habitual residence, either at the time when he made his disposition or the time of his death;
4. the law of the place where immovables are located, insofar as immovables are concerned; or
5. the law which governs the succession or would govern the succession at the time when the disposition is made.

The determination of whether or not the testator had his domicile in a particular place shall be goverened by the law of that place.

(II)
Paragraph I shall also apply to testamentary dispositions revoking an earlier testamentary disposition. As with the original testimentary disposition, a revocation must comply with any one of the requirements of paragraph I for its form to be valid.

(III)
Provisions which limit the permitted forms of testamentary dispositions by reference to the age, citizenship, or other personal conditions of the testator shall be deemed to pertain to matters of form. The same rule shall apply to the qualifications that witnesses (required for the validity of a testamentary disposition), must possess.

(IV)
Paragraphs I and III shall apply *mutatis mutandis* to other dispositions *mortis causae*.

---

[58] Articles 1, 2, and 5 of the Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions, concluded October 5, 1961, *reprinted in* Hague Conference on Private International Law, Collection of Conventions (1951-1980), 48 *et seq.*, have been consulted in connection with the translation of EGBGB Article 26, paragraphs 1 to 3.

(V)
In other cases, the validity of the creation of a disposition *mortis causae* and its binding effects are governed by the law which would be applicable to a succession at the time when the disposition is made. Duly-acquired testamentary capacity remains unaffected by acquisition or loss of the legal status of a German citizen.

Fifth Section: Law of Obligations
First Subsection: Contractual Obligation Relationship
Article 27: Free Choice of Law[59]

(I)
A contract shall be governed by the law chosen by the parties. The choice of law must be express, or it must be ascertainable with reasonable certainty from the terms of the contract or from the circumstances of the case. The parties can apply their choice of laws provision to the entire contract, or any part thereof.

(II)
The parties may at any time agree to subject the contract to a law other than that which previously governed it, whether as a result of an earlier choice of law or as a result of other provisions of this subsection. Any variation by the parties of the law to be applied made after the conclusion of the contract shall not prejudice its formal validity under article 11, or the rights of third parties.

(III)
Where a choice of laws provision is made and all other relevant elements of contract are connected with only one country, the fact that the parties have chosen a foreign law, whether or not such is supplemented by the choice of a foreign forum, shall not affect the application of the law of that country which cannot be departed from by contract (mandatory rules).

(IV)
Articles 11, 12, 29, paragraph III, and 31 shall apply to the existence and the validity of the consent of the parties as to the choice of the applicable law.

---

[59] Article 3 of the European Convention has been consulted in connection with the translation of EGBGB Article 27.

Article 28: Applicable Law in the Absence of Choice of Law[60]

(I)

To the extent that the law applicable to a contract has not been chosen pursuant to Article 27, the contract shall be governed by the law of the country with which it is most closely connected. Nevertheless, a severable part of the contract which has a closer connection with another country may, by way of exception, be governed by the law of that other country.

(II)

It shall be presumed that the contract is most closely connected with the country where the party who is to effect performance characteristic of the contract has his habitual residence, or in the case of a company, association, or legal person, the place of its central administration (*Hauptverwaltung*). If the contract is entered into in the course of that party's trade or profession, it shall be presumed that the closest connection exists with that country in which the principal place of business is located. Where, however, under the terms of the contract the performance is to be effected through a place of business other than the principal place of business, the country in which that other place of business is located has the closest connection. This paragraph shall not apply if the performance which is characteristic of the contract cannot be ascertained.

(III)

To the extent that the subject matter of the contract is a right in real property (*Grundstueck*), or a right to use real property it shall be presumed that the contract is most closely connected with the country where the real property is located.

(IV)

It shall be presumed that a contract for the carriage of goods is most closely connected with the country in which the carrier has his principal place of business at the time of the conclusion of the contract, if this is also the country in which the place of loading, or the place of discharge or the principlal place of business of the consignor is situated. In applying this paragraph, single voyage charter-parties and other contracts shall be treated as contracts for the carriage of goods where the main purpose of the contract is the carriage of goods.

(V)

The presumptions of paragraph II, III, and IV shall be disregarded,

[60] Article 4 of the European Convention has been consulted in connection with the translation of EGBGB Article 28.

if it appears from the circumstances as a whole that the contract is more closely connected with another country.

Article 29: Consumer Contracts

(I)

In contracts whose object is the supply of goods or services to a person (the consumer) for a purpose which can be regarded as being outside his trade or profession, or in a contract for the provision of credit for that object, a choice of law made by the parties shall not have the result of depriving the consumer of the protection afforded to him by the mandatory rules of the country in which he has his habitual residence:

1. if the conclusion of the contract was preceded by an express offer or by advertising, and the consumer has taken all the legal steps necessary for the conclusion of the contract in that country;
2. if the other contracting party or his agent received the consumer's order in that country; or
3. if the contract is for the sale of goods and the consumer travelled from that country to another country and there gave his order, provided that the consumer's journey was arranged by the seller for the purpose of inducing the consumer to conclude the contract.

(II)

In the absence of a choice of law provision, consumer contracts which are entered into in the circumstances described in paragraph I, shall be governed by the law of the country in which the consumer has his habitual residence.

(III)

Article 11, paragraphs I through III do not apply to consumer contracts which are entered into in the circumstances described in paragraph I of this article. The formal requirements of these contracts are governed by the law of the country in which the consumer has his habitual residence.

(IV)

The preceding subsections do not apply to:

1. contracts of carriage; or
2. contracts for the supply of services, where the services are to be supplied to the consumer exclusively in a country other than that in which he has his habitual residence.

The preceding paragraphs shall apply, however, to travel contracts

which for an inclusive price provide for a combination of travel and accommodation.

Article 30: Employment Contracts and Employment Relationships of Single Persons[61]

(I)

In a contract of employment or in an employment relationship a choice of law made by the parties shall not deprive the employee of the protection afforded to him by the mandatory rules of the law which would be applicable pursuant to paragraph II.

(II)

In the absence of a choice of laws provision, contracts of employment and employment relationships are governed by the law of the country:

1. in which the employee habitually carries out his work in performance of the contract, even if he is temporarily employed in another coutry; or
2. in which the place of business through which the employee was engaged is situated, if he does not habitually carry out his work in one and the same country,

unless it appears from the circumstances as a whole that the employment contract or the employment relationship is more closely connected with another country; in such case the law of that other country applies.

Article 31: Consent and Material Validity[62]

(I)

The existence and the validity of a contract, or of any one of its terms, shall be determined by the law which would govern it if the contract or term were valid.

(II)

To establish nonconsent, a party may rely upon the law of the country in which he has his habitual residence if it appears from the circumstances that the determination of the effects of his conduct under the law specified in paragraph I would not be justified.[63]

---

[61] Articles 5 and 9, paragraph 5, of the European Convention have been consulted in connection with the translation of EGBGB Article 29.

[62] Article 6 of the European Convention has been consulted in connection with the translation of EGBGB Article 30.

[63] Article 8 of the European Convention has been consulted in connection with the translation of EGBGB Article 31.

Article 32: Scope of the Law Applicable to the Contract[64]

(I)
The law applicable to a contract by virtue of articles 27 through 30 and article 33, paragraphs I and II, shall govern:

1. its interpretation;
2. the performance of the contractual duties;
3. within the limits of the powers conferred on the court by German procedural law, the consequences of nonperformance in whole or in part of contractual duties, including the assessment of damages in so far as it is governed by rules of law;
4. the various ways of extinguishing obligations, and the loss of rights as a consequence of the expiration of a statute of limitations;
5. the consequences of nullity of the contract.

(II)
In relation to the manner of performance and the steps to be taken in the event of defective performance regard shall be had to the law of the country in which performance takes place.

(III)
The law governing the contract applies to the extent that it raises presumptions of law or determines the burden of proof with regard to contractual obligations. Legal transactions may be proved by any mode of proof provided for by the German law of civil procedure or by any of the laws referred to in articles 11 and 29, paragaph III, provided that the German law of civil procedure does not contain regulations to the contrary.

Article 33: Voluntary Assignment of a Claim; Subrogation[65]

(I)
The mutual obligations of assignor and assignee under a voluntary assignment of a claim shall be governed by the law which applies to the contract between the assignor and assignee.

---

[64] Articles 10 and 14 of the European Convention have been consulted in connection with the translation of EGBGB Article 32.

[65] Articles 12 and 13 of the European Convention have been consulted in connection with the translation of EGBGB Article 33.

(II)
The law governing the claim to which the assignment relates shall determine: its assignability; the relationship between the assignee and the debtor; the conditions under which the assignment can be invoked against the debtor; and the discharging effects upon the debtor's obligation resulting from a performance by the debtor.

(III)
Where a third person has a duty to satisfy the creditor of a claim, the law which governs the third person's duty to satisfy the creditor shall determine whether the third person is entitled to exercise the rights which the creditor had against the debtor under the law governing their relationship and if so, whether he may do so in full or in part. The same rule applies where several persons are subject to the same claim and one of them has satisfied the creditor.

Article 34: Mandatory Rules[66]

This subsection does not affect the application of mandatory rules of the German law which apply to a situation irrespective of the law otherwise applicable to the contract.

Article 35: Renvoi (*Rüeck-und Weiterverweisung*); Countries with more than one Legal System (*Rechtsspaltung*)[67]

(I)
The application of the law of a country specified in this subsection means the application of the substantive rules in force in that country.

(II)
Where a country comprises several territorial units, each of which has its own rules of law in respect of contractual obligations, each territorial unit shall be considered as a country for the purposes of identifying the law applicable pursuant to this subsection.

Article 36: Uniform Interpretation[68]

In the interpretation and application of the preceding rules applicable to contractual obligations, regard shall be had to the desirability of

---

[66] Article 7, paragraph 2, of the European Convention has been consulted in connection with the translation EGBGB Article 34.

[67] Articles 15 and 19, paragraph 1, of the European Convention hae been consulted in connection with the translation of EGBGB Article 35.

[68] Article 18 of the European Convention has been consulted in connection with the translation of EGBGB Article 36.

a uniform interpretation and application of the provisions of the Convention on the Law applicable to Contractual Obligations, on which these rules are based.

Article 37: Exceptions[69]

The provisions of this subsection do not apply to:

1. obligations arising under bills of exchange, cheques, and promissory notes and other negotiable instruments to the extent that the obligations under such other negotiable instruments arise out of their negotiable character;

2. questions concerning the law of companies, associations, and legal persons, such as the: creation; legal capacity and ability to act; internal organization; winding up of companies, associations and legal persons; and the personal statutory liability of members and organs for the obligations of the company, association or legal person;

3. the question of whether an agent, who alleges that he is acting on the credit of a principal, is able to bind the principal; or whether an organ of a company, association, or legal person is able to bind the company, the association, or the legal person;

4. contracts of insurance which cover risks situated in the territories of Member States of the European Economic Community, except contracts of re-insurance. In determining whether a risk is situated in these territories the court shall apply its law.

Second Subsection: Non-Contractual Obligations
Article 38: Torts

No claim arising out of a tort committed abroad can be made against a German citizen which is larger than that provided for by German laws.

Transitional Provision to the Law of July 25, 1986 on the New Regulation of Private International Law

Article 220: Transitional Law

(I)
The previous private international law remains applicable to events that have been completed prior to September 1, 1986.

---

[69] Article 1, paragraphs 2 to 4, of the European Convention has been consulted in connection with the translation of EGBGB Article 37.

(II)
Starting on the day mentioned in paragraph I, the effects of family law relationships shall be governed by the provisions of the second chapter of the first part.

(III)
The effects on the matrimonial regime of marriages that were concluded after March 31, 1953 and before April 9, 1983 are governed until April, 1983 by:

1. the law of the country of which both spouses are citizens at the time of the conclusion of the marriage; otherwise
2. the law to which the spouses have subjected themselves or the law whose application has been assumed by the spouses, especially after they had concluded a marriage contract; or subsidiarily
3. the law of the country of which the husband was a citizen at the time of the conclusion of the marriage.

As of April 8, 1983 article 15 shall be applicable. In this respect the relevant point of time for marriages, to which sentence 1, no. 3, applied previously, is not the time of the conclusion of the marriage, but April 9, 1983. To the extent that claims would arise solely from the change of the applicable law at the end of April 8, 1983 due to the termination of the previous matrimonial regime, those claims are deemed to be deferred. Article 15 shall apply to the matrimonial regime effects of marriages concluded after April, 1983. The matrimonial regime effects of marriages concluded after April 1, 1953, remain unaffected; the spouses may, however, make a choice of law pursuant to article 15, paragraphs II and III.

(IV)
If one spouse is a German citizen and the other is a citizen of a foreign country, and if the name to be borne by the foreign spouse is governed by a law which does not permit a determination of the matrimonial name within the meaning of section 1355, paragraph 2, sentence 1 of the Civil Code, the German spouse who has not made a declaration pursuant to article 10, paragraph 3, may by declaration to the registrar adopt the family name of the other spouse to be his matrimonial name, if as a consequence of this a common family name is brought about. If the marriage is concluded within the country, the declaration must be made at the conclusion of the marriage. If the marriage has been concluded within the country before the day mentioned in paragraph I, or if it has not been

concluded within the country, the declaration must be officially certified (*oeffentliche Beglaubigung*). If the spouse does not make a declaration, he shall bear, during the marriage, the family name which he bore at the time of the conclusion of the marriage.

(V)

If the parents of a legitimate child do not have a common family name, the legal representative of the child may determine which family name the child shall bear. This determination must be made prior to the registration (*Beurkundung*) of the birth of the child with the registrar. If the child has not been born within the country and if his birth was not registered pursuant to section 41 of the Law on the Registration of Births, Deaths, and Marriages (*Personenstandsgesetz*), the determination of the family name may be made subsequently; such registration must be made, however, if the registration (*Eintragung*) of the family name in a German register of births, deaths, and marriages or an official German identification document becomes necessary. Such declaration must be made to the registrar and requires official certification. If the legal representative does not make a determination, the child shall obtain the family name of the father.