

BOOK REVIEWS

PALANDT, BÜRGERLICHES GESETZBUCH. COMMENTARIES ON THE GERMAN CIVIL CODE. 36TH REV. ED. By P. Bassenge, B. Danckelmann, U. Diederichsen, H. Heinrichs, A. Heidrich, T. Keidel, H. Putzo, H. Thomas. Munich: Verlag C. H. Beck, 1977. Pp. xlvii, 2483. DM 132.

These commentaries on the German Civil Code are standard equipment for all branches of the legal profession in the Federal Republic of Germany—attorneys, the judiciary, legislative bodies, and administrative agencies alike. The 36th revised edition of 1977 remains faithful to those characteristics, which secured for preceding editions the leading position in a highly competitive market. Due to the inclusion and assessment of even the most recent amendments to the Code, the commentaries continue, as well, to serve as an up-to-date inventory of the evolution which has marked the statutory codification since its entry into force at the beginning of the century. As a comprehensive coverage of national civil law generally, the Code, and therefore the volume under review, deals in the first place with the subjects to which the five “books” of the Code were originally, and still are, devoted—general principles, contracts, property, domestic relations, and estates. However, developments in allied domains which have evolved from the Code or are under its sway, such as labor law, social security, and commercial law, are also noted and discussed. Accordingly, legislation, judicial holdings, treatises, and administrative practice relating to the vast area of law thus indicated are registered and analyzed in the order of the statutory provisions to which they relate. Such section-by-section appraisal need not, and indeed does not, deny the systematic approach of identifying the general and specific principles of application to which individual rules of the Code and allied statutes relate. It emphasizes, however, that the commentaries are primarily a tool for the legal assessment of cases, rather than problems; therefore, the major method in this masterly rendition of the Code is a description of judicial rule-making.

Its editions appear annually; thus, every revised version is likely to take account of the modifications enacted by the German Parliament and rule-making executive agencies in the preceding year. The volume provides the most up-to-date information on the state of the Civil Code available at any given time, the publisher having succeeded in limiting the interval between adoption of a rule and its inclusion and assessment in these commentaries. The last twelve months have been particularly fertile with respect to amendments and supplements, which are of unusual weight. The 36th revised edition confirms the need for the commentaries to provide an initial, yet thorough and comprehensive, discussion of the new enact-

ments, together with the solid exposition of the Code provisions which, though unaltered, are analyzed in the light of both traditional and recent opinion and practice. Both features of the commentaries, the treatment of the traditional body of law and the recent addenda, merit a closer look.

The addenda, which include the recent amendments and modifications, deal mainly with reform of matrimonial relations and family law generally, changes in the law of adoption, and the statutory endorsement of established judicial practice regarding general conditions of sale and adhesion contracts (*Allgemeine Geschäftsbedingungen*). That endorsement, enacted by the Federal Parliament (*Bundestag*) in November 1976, confirms judge-made rules designed to secure protection for the captive consumer, particularly in the area of installment payments. It also provides the entirely new recourse to chambers of commerce and consumer associations as agencies of redress, by conferring on them the right to institute proceedings for an injunction by the district court. The statutory codification of judicial practice calls for tighter substantive and procedural control of pertinent arrangements by the courts, which is likely to entail a consequential reappraisal of model clauses by enterprises advocating or enforcing their use. In order to increase the efficiency of that surveillance, an action for default against recourse to such unfair arrangements is made available to the consumer. The commentaries on the substantive and procedural aspects of the new consumer legislation are persuasive, both in their exposition of the statutory rules and in the presentation of the constitutional bases from which consumer power ensues.

A second highlight of the 36th revised edition is an assessment of matrimonial law and domestic relations reform enacted in 1976. This reform has brought about novel changes. For example, husband and wife are now free to choose as their future married name that of either spouse, so that prevalence of the husband's designation is done away with as a matter of law. This legislative measure entailed consequential changes in the status of dependents, notably children, including those born out of wedlock, and adopted persons, as well as modifications in public recording procedures. Basically, these amendments were designed to bring the statutory provisions in line with the constitutional command of equality and do away with the remnants of sexual discrimination which survived the progressive implementation of the federal constitution (*Grundgesetz*). There is little doubt that the exposition of the reform under revised sections 1616, 1618, and 1757 of the Code, provides convincing and surprisingly manageable guidance for the application of changes which are considerable in law, yet even more consequential as factors of societal evolution.

The new statute on divorce and the ensuing alimony and maintenance arrangements which entered into force on July 1, 1977, is perhaps the most important highlight of the volume under review, particularly in its extralegal—notably economic—aspects. Dissolution of a marriage by legal process no longer requires a showing of specific grounds on which it may be

granted. Rather, a divorce decree must be rendered once it is established that the parties have been separated for a statutory period, whereupon an irrefutable presumption determines the marital relationship to have been frustrated and therefore null and void. Divorce thus obtained entails a compensatory maintenance settlement in favor of the spouse who has been prevented, during the life of the marriage, from accumulating social security benefits and old age pension rights, by entitling that party to an equal share in the pertinent entitlement of the other party, in all likelihood the former husband. The measure demonstrates the firm resolution of the German legislature to prevent the beginning of another lawful union until the economic consequences of the earlier one are duly met. Settlement of the substantive issues dealt with by the reform of divorce is combined with an incisive procedural innovation, a unique "family court," forming part of the district tribunal (*Amtsgericht*), to adjudicate whatever controversy may arise in the context, be it the divorce, the ancillary issues regarding the support and custody of the children, or other matters. In the past, ancillary issues were considered by different departments and on different levels of the judiciary. Satisfactory as the general inclination of the legislature may be to secure handling of this *ensemble* by one judge in order to obtain a coordinated and comprehensive result, it is questionable, whether such a "family court" may be in a position to settle all the issues involved in a reasonable span of time. At any rate, the volume under review will be a much-needed adviser to the *Familienrichter* inaugurated by the new statute.

The new adoption law also brings about changes concerning matters of principle rather than particulars. Adoption is no longer to serve the purpose of safeguarding the continuity of a name and an estate, though that need not be excluded. The main purpose of adoption, however, as specified in the statute, is to provide a home and family to a child who was previously devoid of such an attachment. In pursuit of that aim, the child is completely integrated into the family of the adoptive parents, while the legal relationship *vis-à-vis* his genuine parents and their next-of-kin lapses. Furthermore, adoption is no longer accomplished by agreement, but rather is established by judicial *fiat*, the acknowledgment by the court replacing the former contractual basis of adoption. On both counts, the volume under review offers a comprehensive discussion, stressing both the plenary nature of the adoption, which voids the legal relationship to the natural parents, and the authority of the *Familienrichter* to unilaterally decide the case without their consent.

Finally, the comprehensiveness of these commentaries dealing with the traditional elements of the German Civil Code should also be stressed. They satisfy, no less than the discussion of recent statutory and regulatory measures, the curiosity of the reader seeking additional information. To facilitate access to the volume, especially by foreign users, the widespread

recourse to abbreviations might be reduced. The quality of presentation and the comprehensiveness of the the rendition, however, should remain the same in forthcoming editions.

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