INTERNATIONAL INHERITANCE FORUM

REPORT ON GERMANY

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0. **Introduction**

In this introduction I will give a short overview of the set of rules on German inheritance law, before dealing with the main inheritance issues: General rules, Intestacy, Will, and Administration.

0.1 The German rules on inheritance law are mainly found in the fifth (and last) Book of the German Civil Code (*Burgerliches Gesetzbuch* - BGB), section 1922 to 2385. With more than 460 sections, quite a lot if you compare this, for instance, with the sections on inheritance law in the Italian Civil Code (around 315). Of course, it is not only a matter of number of sections, but also the depth of regulation and the number of available instruments for the testator and the practitioner to manage and direct the inheritance evolution.

There is for instance

- the possibility for the testator to appoint a subsequent heir (*Nacherbe*), a person who only became heir after another heir *(Vorerbe)* had first been heir,
- the possibility to make a contract of inheritance. You can find a testator who, deceased in 1974, made in 1972 a quite complex will, appointing two prior heirs and five subsequent heirs. The last prior heir died in 2009, the probate count needed nine years to issue the inheritance certificate in 2018 in favour of the subsequent heirs, also due to the fact that some had already died, and some were resident abroad (USA and Italy);
- the possibility to appoint a will executor with the task of managing the assets for a period up to thirty years, with great limitation of the heir's rights to the assets.
- The possibility to validly agree before opening the succession with spouse/relatives that they renounce their reserved rights.

German law therefore allows the testator to influence in a very intrusive manner the destination and the destiny of his own assets for many years after his death and for more than one generation.

The German Civil Code has a 120-year history and the structure of the inheritance rules has been handed down largely unchanged. The guiding principle of the drafters of the Civil code was the reasonable, self-responsible citizen who is capable of exercising his or her own judgement, and best able to safeguard his or her own interests and who should therefore be subject to as few legal constraints as possible. This results in the principle of freedom to make a will. This freedom had to be combined with the rights of close relatives and spouse (or partner of registered partnership) to receive parts of the deceased assets' value, following the old Germanic principle that the assets follow the blood.

This point has been examined in great detail in a Decision of the German Constitutional Court in 2005, where the right to inherit and to reserved share was confirmed to be of constitutional relevance (*Art. 14 (1)- Property and the right of inheritance shall be guaranteed. Their content and limits shall be defined by the laws.).*
Based on such judgement the appeal court of Cologne (OLG Köln, Decision of 22.04.2021, Reference of proceeding: 24 U 77/20) has recently stated that English law is not applicable, because it granted no reserved inheritance rights to the son. The case regarded an English citizen who had moved to Germany many decades ago, with last habitual residence in Germany. In his will he opted for English law and excluded his son, also resident in Germany. The Federal German Supreme Court (BGH) or even the Constitutional Court might still have the last word on this case.

When the rights of a spouse are mentioned, it will refer also to the partner of same sex registered partnership. Since October 2017, a same sex marriage is admitted in Germany.

0.2 Turning to the procedural rules, mention shall also made to the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction (*FamFG*), which governs also the proceedings in front of the Probate court in inheritance matters.

The role of the Probate court is very important in inheritance matters:

- for instance, the court receives the wills, opens them after the death, issues and revokes the certificate of inheritance (*Erbschein*) and the European Succession Certificate, as well as the will executor certificate, it orders court administration of the estate etc. Such Inheritance certificates, issued on application normally by the heir– are based on documents and sworn declaration of the applicant, are a central pilar of German understanding of inheritance administration and regulation and generally necessary, unless a clear notary testament or appropriate post *mortem* power of attorney were submitted.

0.3 Furthermore, I want at least to mention for cross-border inheritances, that in Germany the directly applicable European Succession Regulation number 650 from 2012 is supported by the internal law on International Inheritance proceedings (*IntErbRVG - Internationales Erbrechtsverfahrensgesetz*).

0.4 Finally, if I may be allowed a brief excursus into tax law, the Inheritance and Donations tax law is quite important for estate planning and estate regulation, and features a tax rate up to 50% in the absence of family relationship with the heir.

Here are some numbers and principles: there is no general estate tax on the whole inheritance, but the tax of every heir is calculated based on his own acquisition (*Erwerb*), applying a tax rate and a tax-free exemption that depends on the spouse or relative relationships with the deceased person. The spouse will have a free amount of €500, 000; each child or child of a deceased child €400, 000, grandchild €200,000, parents €100,000; everybody else €20,000, with some assets exemption (family home and – in some cases - business entities).

There are further tax-free exemptions for wife and children up to 27 years of age, if they are not entitled to tax-free pension payments upon the death of the deceased person.

The tax rates for children / spouse are based on seven different value limits, from 7% to 30%; for other relatives from 15 % to 43 %, for everybody else from 30 % to 50 %. Thus the higher rates are applicable for taxable acquisition over €26 million, for no relatives over €13 million.

Value of the taxable acquisition (§ 10 ErbStG)	**Tax Class I**	**Tax Class II**	**Tax Class III**
Up €75,000	7%	15%	30%
€75,000–€300,000	11%	20%	30%
€300,000–€600,000	15%	25%	30%
€600,000–€6,000,000	19%	30%	30%
€6,000,000–€13,000,000	23%	35%	50%
€13,000,000–€26,000,000	27%	40%	50%
More than €26,000,000	30%	43%	50 %

1 GENERAL RULES

1.1 Origin and nature of property

Does your law distinguish between the origin or nature of property (real v personal; movable v immovable)? Are there different rules applicable to classes of property?

German law distinguishes between real and personal rights, as well as between movable and immovable property, whereas these categories only indirectly influence the inheritance. For instance, a legacy in a will does not result in the legatee acquiring the property automatically, but he acquires a personal right toward the heir to have the property transferred to him.

The formalities for the transfer of immovable property have to be observed also for transfer by way of inheritance: the heir is registered as owner through an application at the Immovable Register (*Grundbuch*) based on an Inheritance certificate, an ECS (European Certificate of Succession), a Notary testament, or an Inheritance contract.

1.2 Simultaneous death

Which rules apply in the case of simultaneous death? How is the death of two or more heirs or testators determined? Are there presumptions?

German has no special provision on simultaneous death, there is no presumption. Therefore, in the case of simultaneous death of a married couple without children, the relatives of the man will inherit his assets and the relatives of the woman will inherit her assets, and no presumption will help to suppose one of them has survived the other and has therefore inherited part of his assets.

1.3 Capacity to inherit

Who is capable of inheriting? For example, can minors, unborn children and absentees inherit? Are there restrictions based on nationality or domicile?

Person who are alive or have been conceived at the time of the devolution of an inheritance have the capacity to inherit. There are no restrictions based on nationality or domicile. In cases where foreign law is applicable, the German Court may consider contrary to German *ordre public* if there is a difference based on difference of religion, genre etc.

1.4 Ownership and vesting of property

Who has the ownership or the legal possession (seisin) of estate property on death? Are the legal or testamentary heirs automatically (by operation of law) vested with the deceased's property rights on death, or are there required judicial or administrative procedures before vesting takes place?

The heirs automatically acquire the rights of the deceased person upon his death: his property, his inheritance, passes as a whole the heirs, irrespective of the right to disclaim it (devolution of the inheritance).

In case of a testamentary legacy, the person charged, normally the heir or the heirs, is than obliged to transfer the property and deliver the bequeathed object.

1.5 Unworthiness

Are certain persons presumed or deemed unworthy to inherit by operation of law?

There are basically four groups of cases that cause unworthiness to inherit, in which the law supposes the hypothetical will of the deceased to disinherit. I would summarise these as follows:

- Intentional killing or attempt to kill the deceased
- Restriction or violation of the freedom to testate of the deceased
- In respect of disposition mortis causa: *production of a counterfeit document, falsification of a genuine document, or use of a counterfeit or falsified document,* destruction, damage or suppression of a document.

Unworthiness does not occur automatically, either by initiative of the court or of the public prosecutor. It has to be claimed in a civil action for avoidance, by anyone who benefits from the avoidance. For the action there is a deadline of one year, starting from knowledge of the avoidance reasons, in any case within 30 years. Until the civil decision that declares the unworthiness of that person is definitive, he or she remains heir.

1.6 Acceptance

How does an heir accept? Can acceptance be tacit, or must it be express? Is the heir presumed or deemed to have accepted in certain circumstances?

The inheritance passes to the entitled heir irrespective of the right to disclaim it (devolution of the inheritance). The heir becomes upon death therefore provisional heir, until he accepts or until the deadline for disclaim has expired. The heir expresses his will to be definitive heir. The declaration of acceptance can be expressed or tacit, it is not bound to any form, nor does it have to be directed to any specific person or authority.

The heir may no longer disclaim the inheritance if he has accepted it or if the period laid down for disclaimer has passed. On the expiry of the period, the inheritance is legally deemed to have been accepted.

The period for disclaimer is six weeks from knowledge of the devolution and of the reasons of his entitlement, i.e. notification of the will by the Probate court. The period is extended to six months if the deceased had his last residence only abroad or if the heir is resident abroad at the beginning of the period.

While the acceptance is free of form, the declaration of disclaimer has to be made to the competent Probate court in the presence of and recorded by the Probate court or in notarial certified form (see 1.8).

1.7 Liability for debts

Does acceptance entail liability for the deceased's debts? To what extent are the heirs who accept an estate liable for its debts? If they are liable, can they accept under benefit of inventory? In other words, how do heirs accept without incurring personal liability exceeding their benefits under the law or under the will? Are there circumstances in which the heirs forfeit their rights to request an inventory or to accept subject to an inventory?

General rules of the debt liability **of a single heir**

The general principle is that an heir is fully liable for debts, but can limit his or her liability to the estate assets, unless few exceptional cases occur.

In a time scale following reasons for limitation of liabilities may occur:

- Until the heir has accepted (or the deadline to dismiss in expired – 6 weeks or 6 months if abroad), the (provisional) heir is not liable for debts of the estate.

For three months after acceptance, the heir can oppose to the creditors the "three months defence" of Section 2014 BGB. The law allows the heir three months to clarify the situation and eventually decide for some

measures to limit his liability (apply for estate insolvency or for an order of administration of the estate – *Nachlassverwaltung*).

He can than decide to apply to the Probate court that the creditors of the estate are requested by way of public notice procedure to notify their claim within a deadline set by the court. As long as that proceeding is not concluded, the heir has the defence of "public notice procedure".

As result of the public notice procedure, the heir may refuse the satisfaction of creditors of the estate excluded in the procedure to the extent that the estate is completely exhausted in the satisfaction of not excluded creditors.

The heir can apply to the Probate court for Administration of the Estate (*Nachlassverwaltung*) or to the Insolvency Court for Insolvency of the estate and reach limitation of liability.

The Administration of the Estate has to be ordered if the heir applies for it, it can also be applied for by an estate creditor within two years from the acceptance, if there is reason to assume that the satisfaction of the creditors of the estate is endangered by the conduct or the financial situation of the heir. The administrator has to manage the estate and discharge the obligation of the estate from the estate, the heir loses his authority to manage the estate. The administrator can pay of out the estate to the heir only when he knows obligations of the estate have been discharged. The order of administration is refused if the estate is insufficient to pay its costs.

If the insolvency proceeding or the order of administration are not started or concluded because of lack of sufficient assets to pay their costs, the heir has the defences of exhaustion or insufficiency of assets, with limitation of his liability to the estate assets.

Furthermore, the heir can file an Inventory of the estate with the Probate court, or a creditor can apply to the court that a period is fixed to the heir to file the inventory. The inventory is done by a notary appointed by the Probate court. The inventory does not bring limitation of liability, on the contrary, it can produce unlimited liability if it is incorrect or it is not filed by the due date, or if the heir is requested to make a sworn declaration regarding the disclosure of assets and he refuses. The effect of the inventory is that in the relationship between heir and creditors of the estate it is presumed that at the time of the devolution no further objects belong to the estate apart those listed.

Turning to the situation of **plurality of heirs**, they are liable for the joint obligations of the estate as joint and several debtors. They have limited liability until the estate is divided, after the division each co-heir is liable only for that part of an obligation which corresponds to his share of the inheritance, if the creditor is excluded in public notice procedure or the creditor asserts his claim more than five years later than devolution of inheritance.
It is therefore important that all debts are paid before the division of the estate between the heirs.

Final remedy in case an heir has accepted the inheritance - or has not dismissed it in good time - and he then discovers that the estate is burdened by heavy debt, so that the inheritance is passive, is that he can avoid the acceptance because of error, the declaration of avoidance has to be made to the Probate court within six weeks of acquiring knowledge of the debt.

1.8 Renunciation and disclaimer

When and how may an heir expressly renounce to or disclaim an inheritance? Are there situations in which the law deems that an heir has renounced, for example, concealment of property? What are the effects of renunciation? Is a person who renounces generally or disclaims deemed never to have been an heir?

Before the devolution of the inheritance, relatives and the spouse of the testator may renounce their rights of intestate succession and/or their reserved share, in a notarial deed. The effects of the renunciation extend to the descendants.

After the devolution of the inheritance, disclaimer is made by a declaration to the Probate court, recorded by the Probate court or in notarial form. The disclaimer may only be made within six weeks, or six months if the deceased has his last residence only abroad or if the heir is resident abroad at the beginning of the period. An authorised representative must have a notarial certified power of attorney. The power of attorney must be enclosed with the declaration or submitted later within the disclaimer period.

1.9 Marital rights

Are property rights acquired by spouses (howsoever defined) during the course of their marital relationship (howsoever defined) considered for purposes of determining a spouse's entitlement to an intestate share or determining a spouse's entitlement under a testamentary disposition? To what extent, if any, must a spouse elect between his, her or their matrimonial property rights and his, her or their intestate rights or rights under a will? Does a surviving spouse have a prior claim to a family residence or homestead in addition to or as part of any intestate claim or claim under a will?

German law has the peculiarity that the share of the surviving spouse may depend on the patrimonial regime of the spouses.

The spouse is entitled to one-quarter if he/she concurs with relatives of first degree and to one-half with relatives of second degree or with grandparents, to one complete share if she/he concurs with relatives of third degree.

A)

The abovementioned share of the spouse will apply if the spouses were married in patrimonial regime of community of goods (*Gütergemeinschaft*), therefore for instance:
spouse and a child: **spouse** = one-quarter; **child = three-quarters;**
spouse and children: **spouse** = one-quarter**; children = three-quarters in equal share** (each child: three-quarters divided by numbers of children).
The community of goods is not a default patrimonial regime according to German law, it has to be chosen by the spouses by way of a spouse agreement.

B)

By way of contrast, if the spouses were married in the German patrimonial regime of the equalisation of patrimonial gains (*Zugewinngemeinscaft)*, that is the default more common patrimonial regime according to German family law, the inheritance share of the surviving spouse is increased by one quarter, therefore, if the surviving spouse does not dismiss the inheritance, a quarter will be added to his/her inheritance share and the other concurring heirs will receive the rest.
For instance: spouse and a child or more children: **spouse** one-quarter + one-quarter = one-half; **child or children = one-half**. The spouse has the right to dismiss the inheritance and to claim the effective equalisation of patrimonial gains, and in addition the compulsory rights (one-eight – see point 3.6).
If the spouse exercises its right to dismiss, the abovementioned deadlines of six weeks / six months applies. This is a unique situation: the spouse voluntary dismisses the inheritance but still has a claim for the compulsory portion.

C)

If the spouses were married in patrimonial regime of separation of property and the surviving spouse concurs with one or two children, the surviving spouse and each child of the deceased inherit in equal shares. Therefore:

spouse and a child: **spouse** = one-half; **child = one-half**.
spouse and two children: **spouse** = one-third; **each child = one-third**.

spouse and more than two children: **spouse** one-quarter; **children = three-quarters in equal share** (each child: three-quarters divided by numbers of children)

The surviving spouse has further the right to marital household and to the wedding presents, but not to stay in the family home.

2 INTESTACY

2.1 Declarations of inheritance

Who establishes intestate entitlement? Are judicial, notarial or other formal declarations or certificates required to confirm entitlement?

The Probate court issues in a voluntary jurisdiction proceeding an inheritance certificate (*Erbschein*) on application of an heir, or of a creditor with execution title against the deceased person. The applicant must provide evidence of his inheritance rights (documents such as certificate of marriage, of birth, will), and a sworn declaration in front of a German notary, German Consulate/Ambassy or Probate court. The court shall make its own investigation to establish the facts and involve potential heirs by sending them the application and giving them the possibility to respond. In such cases the proceedings may turn to a contentious voluntary proceeding, with taking of evidence, witnesses, expertise. This is generally the case when the application is based on a will and there is a dispute on its validity.

There is a legal presumption of legitimacy of the certificate of inheritance, which means that it is presumed that the person named as heir in the certificate has the right of succession. The certificate of inheritance is the requirement for obtaining information on the assets and on the deceased person, for registering the acquisition of immovable properties in favour of the heir, and for obtaining payment from banks and debtors.

An inheritance certificate may not be necessary if a clear notary testament has been opened or a *post mortem* power of attorney was given.

2.2 Relationship

Who is entitled to inherit? Is relationship based solely on blood? Do adopted children inherit their adopting parents' estates? Is the surviving spouse an intestate heir? For purposes of intestacy, who is a spouse?

Heirs of first degree are the descendants of the deceased person, heirs of second degree are the parents of the deceased person and their descendants, heirs of third degree are the grandparents of the deceased person and their descendants, heirs of forth degree are the grand grandparents of the deceased person and their descendants and so on.

The surviving spouse – as well as the surviving partner of same sex registered partnership – is an intestate heir as well.

Regarding the inheritance rights of adoptive children, there was a change of the law for children adopted after 1 January 1977. The actual rules state that if a minor is adopted, he loses his inheritance rights from his natural parents and relatives, and he acquires inheritance right from his adoptive parents and relatives. An adopted major of age maintains the inheritance rights from his natural parents and relatives, and he acquires inheritance right from his adoptive parents and relatives.

If there is no spouse, no relative, the regional Federal state (*Land*) of residence of the deceased person inherits, otherwise case the German government.

2.3 Order of preference

What is the order of preference? Is inheritance based on degrees of relationship?
What are the proportionate interests of descendants, ascendants and collaterals?

A relative is not entitled to inherit if a relative of a proceeding degree is alive.
If a descendant is alive at the time of devolution of the inheritance, he excludes the descendants related with the deceased through him from the succession, otherwise they take his place (succession per stirpes).

Children inherit in equal share. There is a duty to adjust between children certain advancements disposed during the life of the deceased person.

3 WILLS

3.1 Formalities

How many types of wills are there? What are their formal requirements?

Under German law a will can only be made in person (no power of attorney is allowed). German law knows public wills, which are made through a declaration to a notary, or by way of handing to the notary a document with the statement that it contains the own last will; the document can be either sealed or not, it doesn't need to be written by the testator. The presence of witnesses is not necessary, the notary ascertains if the testator is capable to testify, normally by means of an informal chat. A public will is also the only form allowed to a person minor in age (however needs to be at least 16 years-old) to make a will.

Alternatively, the testator can make a will by declaration written and signed by his own hand (holographic will). The date and the place where the will is written shall also be written down in the will. In the absence of place and date of the will, if this causes doubt about its validity, the will is deemed to be valid only if it is possible to ascertain the time in some other manner. The same applies accordingly if the place is missing.

The holographic will can be taken in official custody by the Probate court upon demand by the testator. This is quite common and a not expensive way to be sure that the will is going to be found and published after the death.

There are also so-called emergency wills. A will made by the major or at sea or, in the case of an extraordinary emergency, before three witnesses.: If due to extraordinary circumstances, is not possible to make a will in front of a notary or if the testator is in a mortal danger, he can make a will by oral declaration in front of three witnesses, a written protocol has to be recorded. These emergency wills have a validity of three months. There was large discussion if the Corona Lookdown situation would have justified such emergency wills.

A peculiar will under German law is of course the **joint will**, which can be done only by spouses or persons bound in registered partnership. It can be a public or a holographic will.

In case of a joint holographic will, one of the spouses writes it and signs with date and place in his own hand, the other spouse need only signs it and state the time and the place of signature in his or her own hand. In case of nullity or dissolution of marriage, the joint will becomes ineffective, unless it has to be assumed that the will would also have been made for such case.

Spouses utilise a joint will normally to appoint each other reciprocally as heir. After the death of the survival spouse, his or her estate passes to a third party (normally to the children), who then become heir to the entire

estate. This joint will is called "*Berlin will*". This means that the children do not directly inherit from the parent who dies first, but only from the parent who dies later.

3.2 Revocation and revival

Is it possible to revoke a will, and how may it be revoked? Can a revoked will be revived, and how may it be revived?

The testator may revoke a will and also an individual disposition contained in a will at any time by another will, by destroying the testamentary instrument, by making changes to it, or by requesting the restitution of the will document that had been taken into special official custody by the Probate court.

If the revocation by will of a testamentary disposition is revoked, the testamentary disposition is - in case of doubt – effective, as though it had never been revoked. A later will revokes an earlier will to the extent that the later will is at variance with the former.

A joint will may contain reciprocal dispositions regarding appointment of heir, legacy or testamentary burdens or choice of applicable law. Revocation of the reciprocal disposition needs to be done with a declaration to the others spouse and requires notarial recording.

3.3 Recognition, publication and probate

Describe your system's extrajudicial or judicial procedures, if any, for recognition and publication of a will. Which authority (judicial, notarial or other) determines whether a will has been validly executed in compliance with formal requirements?

Wills are made public after the opening of succession by the Probate court, this regards holographic wills as well as notary wills or inheritance contacts. The validity of a will is not prerequisite of publication. The Probate court will determine only on application for an inheritance certificate whether the will has been validly executed and in compliance with the formal requirements. Furthermore, an ordinary court may have to determine the validity of a will in a contention inheritance case.

3.4 Curing formal deficiencies and rectification

Can your courts save, cure or validate testamentary paper that does not comply with formal requirements?

Where a will contains errors, slips or omissions or where a will fails to carry out the testator's instructions, do your courts have a power to rectify the will?

What remedial powers, if any, can your courts exercise in order to secure the testator's true intentions?

Missing formal requirements with regard to date or place in a holographic testament may be remedied by ascertainment in some other manner. Furthermore, in case of doubt, interpretation of the will through the court has to be done for its validity. The parties may decide to agree to a compulsory interpretation of the will in a way that it avoids invalidity or remedies omissions. The courts, however, generally do not feel bound by such agreements of the parties.

A will disposition may be avoided by the court if a claim is raised for mistakes or duress or for omission of a person entitled to a compulsory portion, whose existence was unknown to the testator when he made the testamentary disposition, or who was born or became entitled to a compulsory portion only after the making of the testamentary disposition. For instance, a person who had made a will in favour of a person, and years

later married another person or had children and forget to revoke that old will. The deadline for such avoidance claim is one year.

3.5 Pacts and agreements as to future successions

Does your law permit parties to enter into covenants, pacts or agreements with respect to future successions?

First of all we have to point out that under German law is not allowed to enter into a contract relating to the estate of a third party who is still living. The same applies to contracts related to the compulsory portion or a legacy. Nonetheless, future heirs on intestacy can enter into a notary contract relating to the hereditary share or the compulsory rights of one of them. Further, a contract by which a person agrees to make or not to make, to cancel or not to cancel a disposition *mortis causa* is void.

Apart such limitations, German law allows inheritance contracts in which the deceased may appoint an heir and grant legacies and impose testamentary burdens and choose the applicable law. Both the other party to the contract and third party may be appointed as an heir, called the contractual heir, or as a legatee. The inheritance contract has a double nature, as a contract and as a disposition *mortis causa* it can contain contractual and also unilateral dispositions.

As result of the inheritance contract there is no limitation to dispose of the assets by transactions *inter vivos*, but there is a limitation of the freedom to testate. On the other hand, if the testator has made a gift with the intention of adversely affecting his contractual heir, the contractual heir may, after the inheritance is devolved upon him, demand from the recipient the return of the gift in accordance with the provisions relating to the return of unjust enrichment.

An inheritance contract can be cancelled by inheritance contract and by will.

The inheritance contact may be made only by a notary deed in the simultaneous presence of both parties. Cancellation is possible by inheritance contract, will (only for legacy or testamentary burdens and with agreement of the other contractual party) or joint will.

3.6 Forced, reserved and elective shares and other legal rights

Are there portions of an estate that are reserved for certain individuals (forced heirs)? Who qualify as forced heirs? What portion of an estate is reserved for these heirs (portio legitima) and what portion is freely disposable under a will?

How is the quantum of the forced share calculated? Are lifetime gifts (gifts inter vivos) taken into consideration and, if so, are these lifetime gifts reduced if estate assets are insufficient to satisfy claims of forced heirs?

Are there limits (monetary or otherwise) when calculating the forced shares?

Do the forced shares constitute ownership claims on estate property (real rights or rights in rem), or are they expressed as monetary claims? Can the forced shares be satisfied by a life interest or enjoyment (usufruct), an interest in trust or any other proprietary entitlement less than full ownership?

As between forced heirs, e.g., siblings, are there mechanisms to secure equal treatment?

Some systems have laws entitling certain persons, notably a spouse, to elect to receive a portion of a decedent's assets instead of benefits under a will. If this applies to your system, describe the applicable law.

First, the compulsory share under German law is a monetary claim toward the heir(s) in respect to the net value of the estate. It is not an ownership claim on estate property.

German law grants such compulsory share to descendants, spouse or registered partnership partner and, if there are no descendants entitled to compulsory share, to the parents of the deceased. The compulsory share is one half of the value of the share of the inheritance on intestacy. The disponible share is therefore one half.

Additional compulsory share is due if a person entitled to compulsory share is left a share of inheritance that is less than one half of his inheritance on intestacy.

Where a legacy has been bequeathed, the person entitled to a compulsory share can disclaim the legacy and claim the compulsory share, if he does not disclaim the legacy, he is not entitled to a compulsory share up to the value of the legacy.

As the compulsory share is a monetary claim against the heir(s) in respect to the net value of the estate, we need to know the consistency of the estate and its value. The heir is obliged to provide an inventory (if requested notarial inventory and he can be obliged to swear its correctness and completeness) of the assets and their value.

A person entitled to compulsory share must deduct gift received by the testator.

On the other hand, he can claim an augmentation in the event of gift of the testator to the heirs or to third persons. It is remarkable that the gift is fully considered within the first year prior to devolution of the inheritance, and then one tenth less each further year. After 10 years it will not therefore be considered anymore.

3.7 Disinheritance

Does your system permit disinheritance (disherison, exheredation)? On what grounds can forced heirs be disinherited?

Deprivation of compulsory share is possible by testamentary disposition, if the person entitled to a compulsory share:

- makes an attempt on the life of the testator, spouse, descendants, or other close persons, or is guilty of a serious offence against them,
- wilfully violates the statutory obligations to maintain the testator
- is finally sentenced to at least one year imprisonment without probation for intentional criminal offence

The reason for deprivation of compulsory share must be stated in the testamentary disposition.

3.8 Dependants' relief or maintenance

If your system provides for dependants' relief or maintenance, who is entitled to claim?

Does your system provide a mechanism for dependants, who are not forced heirs, to make an alimentary or maintenance claim? If so, on what grounds can they make a claim? Are there limits to these maintenance claims? Can forced heirs submit a maintenance claim, in addition to their forced share, against the disposable portion of the estate?

If your system does not have forced, reserved or elective shares, can a claim be made against the estate by dependants and, if so, who may make such a claim and on what grounds?

In general, describe who may make a claim for maintenance where a will has not made adequate provision. Must a maintenance claim be made within a certain time?

For a period of thirty days the heir is obliged to grant maintenance to family members of the deceased, if they belong to his household, and permit them to use the home and household objects.

Further, the obligation of maintenance of the divorced spouse – but not of the children - of the deceased is transferred to the heirs but is limited to the value of the compulsory share that would have been granted to the spouse if marriage had not been divorced.

Finally, the surviving spouse has the duty to grant to the unilateral descendent of the deceased person, if needed, the means for a reasonable education from the quarter of the inheritance received for the property regime of the communion of gains.

3.9 Restraints on freedom of testation

Are there restraints on freedom of testation, other than the issues outlined under 3.5 and 3.67?

The general rule is the unlimited testamentary freedom.

4 ADMINISTRATION

4.1 Intestate administration

Who administers an intestate estate? Is there a requirement to appoint an administrator? Do the heirs agree on the administrator and on the terms of administration, or does a court or other authority appoint an administrator?
Describe the administration of intestate estates.

The intestate heir(s) administer(s) the intestate estate, which becomes joint property. The heirs are jointly entitled to the management of the estate and are obliged to cooperate. They can dispose of the objects of the estate only jointly.

4.2 Testamentary administration

Who administers a testamentary estate? If an executor or administrator has been named under the will, is there a requirement for the appointment to be confirmed by a court or other authority?
Describe the administration of testate estates.

The testamentary heir(s) administer(s) the estate.

If a will executor is named under the will, he must accept the charge toward the Probate court, that has to issue, on his demand, a certificate of will executor.

4.3 Management and control

To what extent, if any, is the management and control of an intestate or testate estate, by the heirs, by a court-appointed administrator or by the executor under a will, supervised by a court or subject to judicial oversight?
For example, are administration fees subject to court review? Must administrators publicly file accounts?
The management of the estate by the heirs is not supervised by the court. The management by a Curator of the estate is regularly supervised by the court. The management of the will executor is checked by the heirs, but the court controls violation of his duties if an heir requests his removal due to violation of such duties.