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**Vorlesung**  
**Osteuropäisches Recht III:**  
***Zivilrecht im Ostseeraum***

**SS 2017**

<http://www.eastlaw.uni-kiel.de>

**20.04.2017 Grundstrukturen der Zivilrechtssysteme im Ostseeraum**

**27.04.2017 Allgemeiner Teil des Bürgerlichen Rechts**

**04.05.2017 Schuldrecht Allgemeiner Teil**

**11.05.2017 Kaufrecht**

**18.05.2017 Eigentum und andere dingliche Rechte**

**25.05.2017 *Feiertag***

**01.06.2017 Delikts- und Schadensrecht**

**08.06.2017 *keine Vorlesung***

**15.06.2017 Handels- und Gesellschaftsrecht**

**22.06.2017 Familienrecht**

**29.06.2017 Erbrecht**

**06.07.2017 Zivilprozessrecht und Schiedsgerichtsbarkeit**

**13.07.2017 Insolvenzrecht**

**20.07.2017 Internationales Privatrecht**

# Zivilgesetzbücher im Ostseeraum

- Deutschland: BGB v 1896, HGB v 1897
- Estland: G über AllgT des ZivR 2002, SchuldRG 2001, **SachenRG 1993**, ErbRG 2008. FamGB 2009. IPRG 2002. HandelsG 1995.
- Lettland: BGB 1937, HandelsG 2000
- Litauen: ZGB 2000
- Polen: ZGB 1964, HandelsgesG 2000
- Russland: ZGB T1-4 1994-2006 (ff)
- Skandinavien: nord. VertragsG 1915, nord. KaufG 1905 etc.

# Begriff des Sachenrechts

- Recht des Eigentums und anderer Herrschaftsrechte an Sachen
- SachenR = zivilrechtliche Materie, aber mit starkem öffentlichen Einschlag
- Bezug des SachenR zur verfassungsrechtlichen Eigentumsgarantie
- EU-Bezüge des SachenR
- Abgrenzung SachenR von SchuldR

# Inhalte des Sachenrechts

- **Gegenstände des SachenR zT definiert im AT des Zivilrechts**
- **Besitz**
- **Eigentum**
- **beschränkte dingliche Rechte, z.T. Diff nach Mobilien und Immobilien.**
- *Sonstige Aspekte s. PL, Lettland, Russland?*
- ***Systematik:***
  - Trennung ziv-r und öff-r Regelungen, aber öffr/priv-r Mischung z.B. in Bergrecht und Luftrecht
  - Z.T. Differenzierung Mobiliar- und ImmobiliarsachenR
  - Starker Bezug zum VerfahrensR, z.B. bei Grundbuch

# Rechtsquellen des Sachenrechts im Ostseeraum

## Gibt es in den Rechtsordnungen des Ostseeraums Gesamtregelungen zum SachenR? Gibt es Sondergesetze?

- Deutschland: ja, im BGB, ferner WEG, ErbbauRVO, GBO u.a.
- Nordeuropäische Rechtsordnungen: keine Kodifikation), aber wichtige Einzelregelungen, häufig diff. zwischen Mobilien und Immobilien, z.B. schwed. BodenG, schwed. G über Gutgläubenserwerb bewegl. Sachen, Unternehmenshypothekengesetze bzw. ungeschrieben.
- Baltikum: Estland ja (SachenRG), Litauen ja (ZGB), Lettland ja (BGB)
- Polen: ja (ZGB, G über Grundbücher und Hypothek, G über Registerpfand und Pfandregister)
- Russland: ja (ZGB, BodenGB, HypothekenG etc.)
- **Sonderthemen?** Z.B. WEG, Unternehmenspfandrechte

# Rechtsquellen des Sachenrechts in Schweden

- **Übergreifend:**
- Eigentumsgarantie in schwed. Verfassung
- Gesetz über gemeinsames Eigentum v. 1904 (sowohl Mobilien als auch Immobilien)
- **Mobilien:**
- Gesetz über den Gutgläubenserwerb beweglicher Sachen v. 1986
- Handelsgesetz (handelsbalk), 10.Kap.: Faustpfandrecht
- Unternehmenshypothekengesetz vom 14.6.1984
- **Immobilien:**
- Grundstücksgesetz (Jordabalk) v. 1970
- Grundstücksnutzungsgesetz (fastighetsbildningslag) v. 1970
- Gesetz über Genehmigungen beim Grundstückserwerb v. 1992 (Ausländererwerb)

◀ **PUBLIKATIONER****ÖVRIGT / MISCELLANEOUS  
PUBLICATIONS**

Övriga publikationer /  
Miscellaneous Publications

Böcker / Books

Remissvar SOU m.m. / Official  
Reviews of Government  
Reports, etc.

**Swedish Land and Cadastral  
Legislation**

[KTH](#) / [ABE](#) / [OM SKOLAN](#) / [ORGANISATION](#) / [INSTITUTIONER](#) / [FASTIGHETER OCH  
BYGGANDE](#) / [PUBLIKATIONER](#) / [ÖVRIGT](#) / [MISCELLANEOUS PUBLICATIONS](#)

## Swedish Land and Cadastral Legislation

Translations into English of the legislation below are available as pdf-files. The enactments, amendments included, have been translated as they were worded in December 2006.

There are also English - Swedish and Swedish - English glossaries. They give a certain standardisation of legal terms, but the word lists will have to be used with care. Some Swedish terms do not even have English equivalents.

The translations are not official and have been made in co-operation between the Royal Institute of Technology (KTH) and the National Land Survey (LMV).

The Acts are also available in printed form. To order the book Swedish Land and Cadastral Legislation (price: 500 SEK), please contact via e-mail: [studentexp.fob@abe.kth.se](mailto:studentexp.fob@abe.kth.se)

PDF för respektive avhandling finns längst ner på sidan/PDF is displayed on the bottom of the page.

- Land Code (SFS 1970:994 jordabalk)
- Real Property Formation Act (SFS 1970:988 fastighetsbildningslag)
- Adjudication and Legalisation Act (SFS 1971:1037 lag om äganderättsutredning och legalisering)
- Utility Easements Act (SFS 1973:1144 ledningsrättslag)
- Joint Facilities Act (SFS 1973:1149 anläggningslag)
- Joint Property Units (Management) Act (SFS 1973:1150 lag om förvaltning av samfälligheter)
- Fishery Conservation Areas Act (SFS 1981:533 lag om fiskevårdsområden)
- Game Conservation Areas Act (SFS 2000:592 lag om viltvårdsområden)
- Real Property Register Act (SFS 2000:224 lag om fastighetsregister)

# **Land Code (SFS 1970:994)**

(with amendments up to and including SFS 2006:928)

## **Part one**

### **Legal relations affecting real property**

#### **Chap. 1. The real property unit and its boundaries**

**Section 1.** Real property is land. This is divided into property units. A property unit is delimited either horizontally or both horizontally and vertically. Special provisions apply concerning property formation.

Unofficial parcelling of land is null and void.

**Section 1 a.** For the purposes of this Code, the following definitions shall apply:

1. three-dimensional property unit: a property unit which in its entirety is delimited both horizontally and vertically;
2. three-dimensional property space: a space included in a property unit other than a three-dimensional property unit and delimited both horizontally and vertically.

The provisions of this Code concerning land also apply to other space included in a property unit or jointly owned by several property units.

**Section 2.** Special conditions apply concerning public water areas and the boundaries of property units with such areas.

**Section 3.** A boundary lawfully determined follows the course marked on the ground in due order. If the marking can no longer be ascertained, the boundary shall follow the course which, in the light of a cadastral plan together with documents, possession and other circumstances, was presumably intended. If the course of the boundary has not been marked on the ground in due order, the boundary shall follow the course shown by plan and documents.

**Section 4.** If a boundary has not been lawfully determined, the metes and bounds or

# Grundprinzipien des Sachenrechts - Überblick

- Einschränkung der Parteiautonomie, insbes. numerus clausus der SachenRe: keine Inhaltsfreiheit, wohl aber Abschlussfreiheit.
- Spezialitätsprinzip
- Bestimmtheitsgrundsatz
- Trennungsprinzip
- Abstraktionsprinzip
- Verkehrsschutz, insbes. durch Publizitätselemente

# Grundprinzipien des Sachenrechts - Perspektive Ostseeraum

- Einschränkung der Parteiautonomie
- Spezialitätsprinzip
- Bestimmtheitsgrundsatz

# Zum Numerus clausus der Sachenrechte: “Trust” im Recht Litauens

## CHAPTER VI: RIGHT OF TRUST

### **Article 4.106 Definition and purpose of right of trust**

1. The right of trust of property is the right of the trustee to possess, use and dispose of property in the order and under conditions defined by the trustor.
2. The right of trust is established for personal purposes, for private or public good.

### **Article 4.107. Subjects of the right of trust**

1. The subjects of the right of trust (trustees) in the Republic of Lithuania shall include state or municipal enterprises, offices and organizations, as well as other legal and natural persons.
2. The trustor or several trustors may appoint one or several trustees, as well as establish the procedure of their appointment and replacement.

### **Article 4.108. Basis for the right of trust**

The right of trust may originate from the law, administrative act, contract, will, or court judgment.

### **Article 4.109. Content of the right of trust**

1. State or municipal enterprises, offices, and organizations possess and use property duly entrusted them by the State or municipality, and dispose of it upon terms and conditions established by their statutes (regulations), as well as legal acts governing the activities of state or municipal enterprises, offices, and organizations, without violating the law and other persons' rights and interests.
2. Other legal and natural persons possess and use the property entrusted them by the trustor and dispose of it to the extent and on terms and conditions established in the legislation on trust, contract, will, court judgment or the law.

### **Article 4.110. Protection of the right of trust**

The subject of the right of trust in protecting the property in possession, shall enjoy the rights established by

# Allgemeiner Teil des Sachenrechts?

## Litauen ZGB 2000

### BOOK FOUR: MATERIAL LAW

#### PART I: THINGS

##### CHAPTER I: GENERAL PROVISIONS

###### Article 4.1 Definition of things

Things are objects of the material world obtained from nature or manufactured.

##### CHAPTER III: GENERAL PROVISIONS

###### Article 4.20. Definition of real rights

Real right is an absolute right that manifests itself by the right of the owner to implement the right of possessing, using, disposing or by some of these rights.

###### Article 4.21. Legal regime of real rights

A legal regime established for immovable things shall be applied to real rights regarding immovable things, and legal regime established for movable things shall be applied to real rights to movable things, unless otherwise stipulated by law.

#### CHAPTER IV: POSSESSION

## Estland SachenrechtsG 1993

### Part 1 GENERAL : Chapter 1 GENERAL PROVISIONS

#### § 1. Purpose of Act

The Law of Property Act provides for real rights, their content, creation and extinguishment and is the basis for other laws regulating real rights.

#### § 2. – § 4. [Repealed]

#### § 5. Real rights

(1) Real rights are ownership (right of ownership) and restricted real rights: servitudes, real encumbrances, right of superficies, right of pre-emption and right of security.

(2) The law may provide for other real rights in addition to those specified in subsection (1) of this section.

#### § 6. Owner

(1) [Repealed]

(2) All owners have equal rights unless otherwise provided by law. The property of a legal person or a legal person shall not belong to other persons.

# Grundprinzipien des Sachenrechts - Perspektive Ostseeraum (2)

- Trennungsprinzip
- Abstraktionsprinzip
- Verkehrsschutz, insbes. durch  
Publizitätselemente

# Themen aus dem SachenR zum Vergleich

- **Thema 1: Erwerb und Verlust des Eigentums**
- **Thema 2: Sonderstellung Staatseigentum?**
- **Thema 3: Gutgläubiger Erwerb (z.B. Eigentum)**
- **Thema 4: Dingl. Sicherheiten, insbes. Mobiliarsicherheiten**

# Struktur des SachenR in Zivilgesetzbüchern

## Deutschland: BGB (1896 ff)

### Buch 3 Sachenrecht (§§ [854](#) - [1296](#))

- Abschnitt 1 Besitz (§§ [854](#) - [872](#))
- Abschnitt 2 Allgemeine Vorschriften über Rechte an Grundstücken (§§ [873](#) - [902](#))
- Abschnitt 3 Eigentum (§§ [903](#) - [1011](#))
- Abschnitt 4 Dienstbarkeiten (§§ [1018](#) - [1093](#))
- Abschnitt 5 Vorkaufsrecht (§§ [1094](#) - [1104](#))
- Abschnitt 6 Reallasten (§§ [1105](#) - [1112](#))
- Abschnitt 7 Hypothek, Grundschuld, Rentenschuld (§§ [1113](#) - [1203](#))
- Abschnitt 8 Pfandrecht an beweglichen Sachen und an Rechten (§§ [1204](#) - [1296](#))

## Litauen: ZGB 2000

- *BOOK ONE; GENERAL PROVISIONS*
- *BOOK TWO: PERSONS*
- *BOOK THREE: FAMILY*
- *BOOK FOUR: MATERIAL LAW*
- *PART I: THINGS*
- *CHAPTER I: GENERAL PROVISIONS ...*
- *PART TWO: REAL RIGHTS*
- *CHAPTER III: GENERAL PROVISIONS*
- *CHAPTER IV: POSSESSION*
- *CHAPTER V: RIGHT OF OWNERSHIP*
- *SECTION ONE: GENERAL PROVISIONS*
- *SECTION TWO: PROVISIONS REGARDING ACQUISITION AND LOSS OF OWNERSHIP RIGHT*
- *SECTION THREE: ACQUISITIVE PRESCRIPTION*
- *SECTION FOUR: CO-OWNERSHIP RIGHT*
- *SECTION FIVE: PROTECTION AND DEFENCE OF OWNER'S RIGHTS*
- *CHAPTER VI: RIGHT OF TRUST*
- *CHAPTER VII: SERVITUDE*
- *CHAPTER VIII: USUFRUCT*
- *CHAPTER IX: RIGHT OF SUPERFICIES*
- *CHAPTER X: EMPHYTEUSIS*
- *CHAPTER XI: MORTGAGE*
- *CHAPTER XII: PLEDGE*
- **CHAPTER XIV: ADMINISTRATION OF THE PROPERTY OF OTHERS**
- **CHAPTER XV: REGISTRATION OF THINGS, REAL RIGHTS AND JURIDICAL FACTS**

# Sachenrecht in Schweden: Beispiel Grundstücksgesetz

## Part one: Legal relations affecting real property

- Chap. 1. The real property unit and its boundaries
- Chap. 2. Property fixtures
- Chap. 3. Legal relations between neighbours
- **Chap. 4. Purchase, exchange and gift**
- Chap. 5. Effect of a party being dispossessed of real property following protest etc.
- Chap. 6. Mortgage lien
- **Chap. 8. Leasehold in general**
- ...

# SachenR im Ostseeraum im Vergleich

## Thema 1: Erwerb und Verlust des Eigentums

# Vergleich Schweden, Litauen und Estland

## Schweden: BodenG 1970

### Section 1.

A purchase of real property is **concluded through the drawing up of a document of purchase signed by the seller and buyer**. The deed shall contain a statement of the purchase price and a declaration by the seller **that the property is transferred to the buyer**. In the event of other property besides real property being purchased for a combined purchase price, it is sufficient for the document of purchase to contain a statement of the combined purchase price.

## Litauen ZGB 2000

### SECTION TWO: PROVISIONS REGARDING ACQUISITION AND LOSS OF OWNERSHIP RIGHT

#### Article 4.47. Provisions regarding the acquisition of ownership right

Ownership right may be acquired in the following way:

- 1) **by contract**,
- 2) by inheritance,
- 3) by appropriating fruit and income,
- 4) by producing a new thing,
- 5) by appropriating a owner-less thing,
- 6) by appropriating wild animals, wild and domestic bees,
- 7) by appropriating stray and guardian-less domestic animals,
- 8) by appropriating a find or a treasure,
- 9) by obtaining, upon compensation, inappropriately kept public cultural values and other items (property),
- 10) by confiscation or else alienating things (property) as a retribution for violation of the laws,
- 11) by acquisitive prescription,
- 12) as else described by law.

#### Article 4.48. Acquisition of ownership right by transfer

1. The right of ownership may be transferred to another person only by the owner of a thing or by a person given such powers by the owner.
2. The new owner acquires such rights and obligations regarding the transferred thing (property) as had the former owner of the thing (property), if the laws and the contract do not stipulate otherwise.

#### Article 4.49. The moment from which the acquirer of the thing by contract acquires ownership right

1. The acquirer of a thing (property) acquires the ownership right to the thing (property) as of the moment these are transferred to him, provided the laws or the contract does not stipulate otherwise.
2. The right of ownership to an immovable thing by contract is acquired as of the moment established by law.
3. The contract may stipulate that the ownership right shall pass to the acquirer only after the latter shall have carried out a condition established in the contract.
4. Ownership right to a future thing, with the exception of a thing subject to registration, may be transferred by contract in advance.

# Estland SachenRG 1993

## Division 3 GENERAL PROVISIONS CONCERNING REAL RIGHTS IN RESPECT OF IMMOVABLES

### § 64<sup>1</sup>. Transfer and encumbrance of immovable property ownership

For the transfer of **immovable property ownership** or encumbrance of an immovable with a real right and for the transfer or encumbrance of a real right encumbering an immovable or the amendment of the content of such real right, a notarially authenticated agreement between the entitled person and the other party (a **real right contract**) is required **and a corresponding entry shall be made in the land register**, unless otherwise provided by law.

## Chapter 6 MOVABLE PROPERTY OWNERSHIP

### Division 1 CREATION OF MOVABLE PROPERTY OWNERSHIP

#### Subdivision 1 Delivery

### § 92. Creation of movable property ownership by delivery

- (1) **Movable property ownership** is created by delivery of a movable if the transferor delivers possession of the thing to the acquirer and they have agreed that ownership transfers to the acquirer.
- (2) If a movable is already in the possession of the acquirer, an agreement between the transferor and acquirer concerning the transfer of ownership is sufficient for the creation of ownership.

## Chapter 3 IMMOVABLE PROPERTY OWNERSHIP

### Division 1 CREATION AND EXTINGUISHMENT OF IMMOVABLE PROPERTY OWNERSHIP

### § 119. Transaction for acquisition of immovables

- (1) A transaction by which **acquisition or disposal of an immovable** is undertaken shall be notarially authenticated.
- (2) A transaction constituting an obligation entered into without observing the formality provided in subsection (1) of this section becomes valid if a real right contract is entered into for the performance of the transaction and a corresponding entry has been made in the land register.

### § 120. Real right contract for transfer of immovable property ownership

- (1) A real right contract required for the transfer of immovable property ownership shall be **notarially authenticated**. A judicial compromise may also contain a real right contract.
- (2) Any **real right contract** required for the transfer of immovable property ownership which is entered into **conditionally** or by setting a term is void.

# SachenR im Ostseeraum im Vergleich

**Thema 2: Sonderstellung des Staates?**

# Stellung des Staates (1)

## Litauen: ZGB 2000

### **Article 4.100. Expropriation of property for public needs**

1. A thing or other property belonging to a person as private ownership may be expropriated for public needs only in exclusive cases and only in the order established by law.

2. In cases provided for by paragraph one of this Article the owner of a thing (property) shall be compensated for in money the value of such thing (property) at market prices, and by agreement between parties, by transfer of another thing (property).

3. Disputes on expropriation of property, its value and on losses incurred due to such confiscation shall be decided by court.

4. Ownership right to a movable thing (property) claimed for public needs shall pass to the State as of the moment of payment for such thing (property) to the owner. Ownership right to immovable thing claimed for public needs shall pass to the State since the moment of registering such immovable thing in a public register, however, such thing may be registered in the public register as state property only after payment has been effectuated to the owner of such immovable thing.

# Stellung des Staates (2)

## Russisches ZGB Teil 1 (1994)

### Chapter 19. Right of economic jurisdiction, right of operative management

#### Article 294. Right of Economic Jurisdiction

A State or municipal unitary enterprise to which property belongs by right of economic jurisdiction shall possess, use, and dispose of this property within the limits determined in accordance with this Code.

#### Article 295. Rights of Owner with Respect to Property in Economic Jurisdiction

1. The owner of property in economic jurisdiction shall, in accordance with a law, decide questions concerning creation of the enterprise and determination of the purposes of its activity, its reorganization and liquidation, appoint the director of the enterprise, and shall control the use according to designation and preservation of property belonging to the enterprise.

The owner shall have the right to receive part of the profit from the use of the property in the economic jurisdiction of the enterprise.

2. An enterprise shall not have the right to sell immovable property belonging to it by right of economic jurisdiction, lease it out, pledge it, contribute it as a share to the authorized (or contributed) capital of economic societies and partnerships or otherwise dispose of this property without the consent of the owner. It shall autonomously dispose of the remaining property belonging to the enterprise, except in the instances established by a law or other legal acts.

#### Article 296. Right of Operative Management

1. A State-owned enterprise, as well as institutions, shall exercise the rights of possession, use, and disposition of the property allocated to it within the limits established by a law and in accordance with the purposes of its activity, the targets of the owner, and the designation of the property.

2. The owner of the property allocated to a State-owned enterprise or institution shall have the right to withdraw redundant, unused, or unduly used property, and to dispose of it to his discretion.

#### Article 297. Disposition of Property of State-owned Enterprise

1. A State-owned enterprise shall have the right to alienate or otherwise dispose of property allocated to it only by consent of the owner of this property. A State-owned enterprise autonomously shall sell the products manufactured by it unless otherwise established by a law or other legal acts.

# SachenR im Ostseeraum im Vergleich

## Thema 3: Gutgläubiger Erwerb

# Vergleich Schweden - Litauen

## Schwed. BodenG (1970)

Chap. 18. Bona fide acquisition **by virtue of title registration** and the import of title registration in certain other cases

Section 1.

If real property has been acquired by transfer and the transferor was not the rightful owner of the property, due to its acquisition by him or by one of his predecessors being invalid or for some other reason not applying against the rightful owner, the acquisition is nevertheless valid if at the time of the transfer registration of ownership for the property had been granted to the transferor and if the purchaser at the time of the transfer or, when the property was subsequently transferred to another party, that party at the time of his acquisition neither knew nor ought to have known that the transferor was not the rightful owner. The aforesaid does not apply to acquisitions made through executive sale.

## Litauen ZGB 2000

**Article 4.96. Vindication a thing from an acquirer in good faith**

1. If **movable thing** was acquired upon payment from a person who had no right to transfer this property, and the acquirer **did not and could not know this (acquirer in good faith)**, the owner shall have the right to vindicate the thing from the acquirer only if the thing belongs to the owner or to a person to whom the owner had given it in possession, if the thing was lost or stolen from one of these, or if it stopped being in their possession against their volition. The owner may vindicate the thing within three years from the moment of the loss of the thing.
2. **Immovable thing may not be vindicated from an acquirer in good faith** with the exception of cases when the owner had lost such thing due to a crime committed by other persons.
3. If a thing was acquired without recompense from a person who had no right to transfer its ownership, the owner shall have the right to vindicate the thing in all cases. This rule shall apply to movable as well as immovable things.
4. This article shall not apply when a thing was sold or otherwise transferred in compliance with a procedure for the enforcement of court judgments..

# SachenR im Vergleich

## **Thema 4: Dingliche Sicherheiten, insbes. Mobiliarsicherheiten**

Vgl. Deutschland – Estland –  
Polen – Lettland – Russland –  
nordische Staaten



# Wechselbeziehung BGB-AT - SchuldR-AT - KaufR in verschiedenen Zivilgesetzbüchern

## Deutschland: BGB

### Buch 1: Allgemeiner Teil (§§ 1 – 240)

**Personen** (nat. P. – j.P.) – Sachen u Tiere – Rechtsgeschäfte (einschl. **Vertrag**, Stellvertretung, Verjährung, Ausübung von Rechten, Sicherheitsleistung)

### Buch 2 Recht der Schuldverhältnisse (§§ 241 - 853)

- **Abschnitt 1 Inhalt der Schuldverhältnisse (§§ 241 - 304)**
- **Abschnitt 2 Gestaltung rechtsgeschäftlicher Schuldverhältnisse durch Allgemeine Geschäftsbedingungen (§§ 305 - 310)**
- **Abschnitt 3 Schuldverhältnisse aus Verträgen (§§ 311 - 361)**
- Abschnitt 4 Erlöschen der Schuldverhältnisse (§§ [362](#) - [397](#))
- Abschnitt 5 Übertragung einer Forderung (§§ [398](#) - [413](#))
- **Abschnitt 8 Einzelne Schuldverhältnisse (§§ 433 - 853)**
- **Titel 1 Kauf, Tausch (§§ [433](#) - [480](#))**
- **Untertitel 1 Allgemeine Vorschriften (§§ [433](#) - [453](#))**
- **Untertitel 2 Besondere Arten des Kaufs (§§ [454](#) - [473](#)): Kauf auf Probe – Wiederkauf - Vorkauf - Verbrauchsgüterkauf**
- **Untertitel 3 Verbrauchsgüterkauf (§§ [474](#) - [479](#))**
- **Untertitel 4 Tausch (§ [480](#))**
- **Titel 2 Teilzeit-Wohnrechtverträge, Verträge über langfristige Urlaubsprodukte, Vermittlungsverträge und Tauschsystemverträge (§§ [481](#) - [487](#))**

## Polen: ZGB (1964 ff)

### *Buch 1: AT*

**Personen** (nat. P. – j.P.) – Vermögen – Rechtsgeschäfte (einschl. **Vertrag**, Stellvertretung ua.) – Fristen – Verjährung

### *Buch 2: Eigentum und andere dingl. Rechte*

### Buch 3 Recht der Schuldverhältnisse (§§ 353 – 921/16)

- Titel 1 Allg. Vorschriften (353 – 365/1)
- Titel 2 Mehrheit von Schuldner und Gläubigern (§§ 366 – 383/1)
- Titel 3: Allg. Vorschriften über vertragl. Schuldverhältnisse (§§ 384 ff)
- Titel 4: Vertragsschluss zwischen Einheiten der vergesellschafteten Wirtschaft (397- 404: aufgehoben)
- Titel 6a: Produkthaftung (449/1 – 449/11)
- Titel 7: Erfüllung von Schuldverhältnissen und Folgen ihrer Nichterfüllung (§§ 450 – 497)
- Titel 8: Aufrechnung, Schuldenerneuerung, Schuldbefreiung (§§ 498 – 508)
- **Titel 11: Kauf (§§ 535 – 602)**
- **Abschnitt I: Allgemeine Vorschriften**
- **Abschnitt II: Gewährleistung für Mängel**
- **Abschnitt II/1: Ansprüche des Verkäufers aufgrund der Mangelhaftigkeit der verkauften Sache**
- **Abschnitt III: Garantie beim Kauf**
- **Abschnitt IV: Besondere Arten des Kaufs**
- **Unterabschnitt 1: Ratenkauf**
- **Unterabschnitt 2: Eigentumsvorbehalt. Kauf auf Probe**
- **Unterabschnitt 3: Wiederkaufsrecht**
- **Unterabschnitt 4: Vorkaufsrecht**
- Titel 12: Tausch (603 – 604)
- **Titel 13: Liefervertrag (605 – 612)**
- **Titel 14: Landwirtschaftlicher Werklieferungsvertrag (613**

# Systemzusammenhang des KaufR

- **Nordische Staaten**, zB Dänemark, Finnland, Schweden
- *Es fehlt allg. Regelung zum Schuldrecht, sei es zum SchuldR-AT oder zum SchuldR-BT. Nord. Vertragsgesetz 1915 regelt im wesentlichen nur den Vertragsschluss, nicht z.B. LeistungsstörungenR. Analogien erfolgen insbes. zu den Kaufrechtsgesetzen.*
- Nord. Kaufgesetz 1905/reformiert nach Vorarbeiten im Rahmen nordischer Zusammenarbeit seit den 1980er Jahren
- Verbraucherschutz bei Kaufverträgen: besonderes Verbraucherkaufgesetz (so Schweden) – Verbrauchervertragsgesetz (so Finnland) – Besonderer Abschnitt (Art.72 – 87) im allgemeinen Kaufvertragsgesetz (so Dänemark)
- Bodengesetze: enthalten auch Kaufrecht (z.B. Finnland)

# Struktur des Kaufrechts in Zivilgesetzbüchern

## • Estland: ObligationenG 2001

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# Anwendungsbereich des KaufR am Beispiel von Finnland

## Finnland: KaufG 1987

### Chapter 1— **General provisions**

#### *Scope of application*

##### Section 1

- (1) This Act applies to the sale of property other than real property (goods).
- (2) This Act applies, where applicable, also to barter.
- (3) This Act does not apply to the conveyance of a building or fixed installation or structure on the land of a third person if the lease of the land is simultaneously transferred.

##### Section 2

- (1) This Act applies to a contract for the supply of goods to be manufactured or produced unless the party who orders the goods undertakes to supply a substantial part of the materials needed for the manufacture or production. The Act does not apply to a contract for the construction of a building or other fixed installation or structure on land or in water.
- (2) This Act does not apply to a contract under which the party who furnishes the goods also undertakes to perform work or other services if the services constitute the preponderant part of the obligations of that party.

*Consumer contracts* - Section 4: The provisions of this Act are subject to the provisions of the Consumer Protection Act (38/1978).

# Verhältnis von KaufR und SchuldR-AT am Beispiel von Finnland (ausgewählte Bestimmungen)

## Finnland: KaufG 1987 (Forts.)

### Chapter 1— **General provisions**

#### *Freedom of contract* Section 3

- The provisions of this Act are subject to the terms of the contract between the parties, to any practice which has been established between them and to any other usage which is to be considered binding on the parties.

### Chapter 2— **Delivery of the goods**

#### *Sale of goods to be collected by buyer* - Section 6

- (1) The goods shall be placed at the buyer's disposal at the place where the seller had his place of business at the time of the conclusion of the contract or, ...

#### *Right to withhold the goods* - Section 10

- (1) Unless the seller has granted the buyer credit or a period of grace for the payment of the price, he is not required to hand over the goods nor, by handing over documents or otherwise, to release his control over the goods until the price is paid.

# Leistungsstörungenrecht im Kauf

## Estn. ObligationenG 2001: Regelung im SchuldR-AT

### § 103. Excused non-performance

(1) An obligor shall be liable for non-performance unless the non-performance is excused. It is presumed that non-performance is not excused.

(2) Non-performance by an obligor is excused if it is caused by *force majeure*. *Force majeure* are circumstances which are beyond the control of the obligor and which, at the time the contract was entered into or the noncontractual obligation arose, the obligor could not reasonably have been expected to take into account, avoid or overcome the impediment or the consequences thereof which the obligor could not reasonably have been expected to overcome.

(3) If the effect of *force majeure* is temporary, non-performance is excused only for the period during which *force majeure* impeded performance of the obligation.

(4) In the cases provided by law or the contract, a person shall be liable for non-performance regardless of whether the non-performance is excused.

### § 104. Liability in case of culpability

(1) In the cases provided by law or contract, a person shall be liable for non-performance only if the person is culpable of the non-performance.

(2) The types of culpability are carelessness, gross negligence and intent.

(3) Carelessness is failure to exercise necessary care.

(4) Gross negligence is failure to exercise necessary care to a material extent.

(5) Intent is the will to bring about an unlawful consequence upon the creation, performance or termination of an obligation.

(6) If, pursuant to law or a contract, a person is required only to exercise such care as the person would exercise in the person's own affairs, the person shall nevertheless also be liable in the case of intent and gross negligence.

## Finnland KaufG 1987

### Damages Section 57

(1) The seller is entitled to damages for losses that he suffers because of the buyer's delay in payment unless the buyer proves that the delay was due to a provision of law, general interruption of communications or payment services or to other similar impediment which the buyer could not reasonably be expected to have taken into account at the time of the conclusion of the contract and whose consequences he could not reasonably have avoided or overcome.

(2) Under conditions corresponding to those stipulated in section 27, the seller is also entitled to damages for losses that he suffers because of the buyer's failure to cooperate in accordance with section 50(1), or because of the buyer's delay in collecting or taking over the goods where the contract or the circumstances indicate that it is of special interest to the seller that the goods be removed.

# Leistungsstörungenrecht im Kauf - Russland zum Vergleich

## *Art.401. russ. ZGB*

### **Article 401. Grounds of Responsibility for Violation of Obligation.**

1. A person who has not performed an obligation or who performed it improperly shall bear responsibility when there is fault (intent or negligence) except for instances when other grounds of responsibility have been provided for by a law or by contract.

The person shall be deemed not to be at fault if he has taken all measures for proper performance of the obligation with that degree of care and circumspection which was required of him by the character of the obligation and conditions of turnover.

2. The absence of fault shall be proved by the person who violated the obligation.

3. Unless otherwise provided for by a law or by contract, the person who has not performed or who performed an obligation improperly while effectuating entrepreneurial activity shall bear responsibility unless he proves that proper performance turned out to be impossible as a consequence of force-majeure, that is, unusual circumstances unavoidable under the particular conditions. There shall not be relegated to such circumstances, in particular, a violation of duties on the part of the debtor's contractors, the absence in the market of goods necessary for performance, and the lack of necessary cash resources on the part of the debtor.

# Sachmängelgewährleistung im KaufR am Beispiel von Finnland (1)

## Finnland: KaufG 1987 (Forts.)

### Chapter 4— Conformity of the goods

#### *Conformity with contract* - Section 17

- (1) The goods must conform with the contract in regard to description, quantity, quality and other properties and be contained or packaged in the manner required by the contract.
- (2) Except where the parties have agreed otherwise, the goods must:
  - (1) be fit for the purpose for which similar goods are ordinarily used;
  - (2) be fit for any particular purpose for which the goods were intended if the seller knew or must have known of this purpose at the time of the conclusion of the contract and it was reasonable for the buyer to rely on the seller's skill and judgement;
  - (3) possess the qualities of goods which the seller has held out as a sample or model; and
  - (4) be contained or packaged in a manner that is usual or otherwise appropriate for similar goods, if packaging is necessary to preserve or protect the goods.
- (3) If the goods do not conform with the provisions of paragraph (1) or (2), they are defective.

#### *"As is" clause* - Section 19

- (1) If the goods have been sold subject to an "as is" clause or a similar general reservation concerning their quality the goods shall, nevertheless, be considered defective if:
  - (1) (i) the goods do not conform with information relating to their properties or use which was given by the seller before the conclusion of the contract and (ii) the information can be presumed to have had an effect on the contract;
  - (2) (i) the seller has, before the conclusion of the contract, failed to disclose to the buyer facts relating to the properties or the use of the goods which the seller could not have been unaware of and which the buyer reasonably could expect to be informed about and (ii) the failure to disclose the facts can be presumed to have had an effect on the contract; or
  - (3) the goods are in essentially poorer condition than the buyer reasonably could expect taking into account the price and other circumstances.

# Sachmängelgewährleistung im KaufR am Beispiel von Finnland

## Finnland: KaufG 1987 (Forts.)

### Chapter 4— Conformity of the goods

#### *Examination of the goods before the conclusion of the contract - Section 20*

- (1) The buyer may not rely on a defect which he cannot have been unaware of at the time of the conclusion of the contract.
- (2) If the buyer, before the conclusion of the contract, has examined the goods or, without acceptable reason, has failed to comply with the seller's exhortation to examine the goods, he may not rely on a defect that he ought to have discovered in the examination unless the seller's conduct was incompatible with honour and good faith.
- (3) The provisions of paragraph (2) shall apply also when the buyer, before the conclusion of the contract, had an opportunity to examine a sample of the goods and the defect relates to a property of the goods that appeared in the sample.

## Vgl. mit § 563 poln. ZGB

§ 1 Der Käufer, verliert bei einem Kauf zwischen Unternehmen die Recht aufgrund der Gewährleistungshaftung, wenn er die Sache nicht in der Zeit, die unter den gegebenen Verhältnissen üblich ist, und dem Verkäufer nicht unverzüglich den Mangel anzeigt; ...

## S.a. § 377 deutsches HGB

## Article 477. russ. ZGB Time-limits of Discovery of Defects in Transferred Goods

1. Unless otherwise stipulated by the law or the contract of sale, the buyer shall have the right to make claims associated with defects of goods, provided they have been discovered in the time-limits fixed by this Article.
2. If no guarantee period or serviceable life is established for goods claims for defects in goods may be made by the buyer, provided that the defects of goods sold have been discovered in the reasonable period of time, but within two years since the day of transfer of goods to the buyer or within the longer period of time, when it is fixed by the law or the contract of sale. The time-limit for the discovery of shortcomings in goods subject to carriage or dispatch by post shall be reckoned since the day of the delivery of goods to the place of their destination.
3. If a guarantee period has been fixed for goods, the buyer shall have the right to make claims associated with defects of goods upon the discovery of defects during the guarantee period.

# Verzug im KaufR am Beispiel von Finnland

## Finnland: KaufG 1987 (Forts.)

### Chapter 5— **Consequences of delay in delivery**

#### *Avoidance of the contract - Section 25*

- (1) The buyer may declare the contract avoided on account of the seller's delay in delivery if the breach of contract is of substantial importance to the buyer and the seller knew or ought to have known this.
- (2) If the buyer has fixed an additional period of time for the delivery and the time is not unreasonably short, the buyer is also entitled to declare the contract avoided unless the goods are delivered within the additional period of time.
- (3) During the additional time, the buyer may declare the contract avoided only if the seller makes known that he will not perform the contract within that time.



# Einige Vorschriften des KaufR von Zivilgesetzbüchern u.ä. zum Vergleich

## Thema 3: Leistungsstörungenrecht

### Lett. BGB 1937

1. Rights shall be exercised and duties performed in good faith.

### Estn. AT-ZivR-G

#### 7. Part Exercise of Civil Rights

#### 9. Chapter Principles in Exercise of Civil Rights

##### § 138. Principle of good faith

(1) Rights shall be exercised and obligations shall be performed in good faith.

(2) A right shall not be exercised in an unlawful manner or with the objective to cause damage to another person.

##### § 139. Presumption of good faith

If legal consequences are bound to good faith by law, good faith shall be

## • Topic 4: Mistake

### • Estn. AT-ZivR-G

#### • § 92. Mistake

- (1) Mistake is an erroneous assumption relating to existing facts.
- (2) A transaction is entered into under the influence of a relevant mistake if upon entry into the transaction the mistake was of such importance that a reasonable person similar to the person who entered into the transaction would not have entered into the transaction in the same situation or would have entered into the transaction under materially different conditions.
- (3) A person who entered into a transaction under the influence of a relevant mistake may cancel the transaction if:
  - 1) the mistake was caused by circumstances disclosed by the other party to the transaction, or non-disclosure of circumstances by the other party if disclosure of the circumstances was required pursuant to the principle of good faith;
  - 2) the other party knew or should have known of the mistake and leaving the mistaken party in error was contrary to the principle of good faith;
  - 3) the other party to the transaction entered into the transaction on the basis of the same erroneous circumstances, except if the other party could have presumed, having the correct perception of the circumstances, that the mistaken party would have entered into the transaction even if it had known about the mistake.
- ...
- (5) A person who has entered into a transaction shall not cancel the transaction if according to the circumstances under which the transaction was entered into and the content of the transaction, the risk of mistake was to be borne by the person

# Einige Vorschriften des KaufR u.ä. zum Vergleich

## Thema 5: SchadensR

### Lett. BGB 1937

1. Rights shall be exercised and duties performed in good faith.

### Estn. AT-ZivR-G

#### 7. Part Exercise of Civil Rights

#### 9. Chapter Principles in Exercise of Civil Rights

##### § 138. Principle of good faith

- (1) Rights shall be exercised and obligations shall be performed in good faith.
- (2) A right shall not be exercised in an unlawful manner or with the objective to cause damage to another person.

##### § 139. Presumption of good faith

If legal consequences are bound to good faith by law, good faith shall be presumed unless otherwise provided by law.

- **Estn. AT-ZivR-G**

- **§ 92. Mistake**

- (1) Mistake is an erroneous assumption relating to existing facts.
- (2) A transaction is entered into under the influence of a relevant mistake if upon entry into the transaction the mistake was of such importance that a reasonable person similar to the person who entered into the transaction would not have entered into the transaction in the same situation or would have entered into the transaction under materially different conditions.