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SCHWABENSPIDDEL: LEHENRECHTBUCH

AN ENGLISH TRANSLATION

by

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Abstract

SCHWABENSPiegel: LEHENRECHTBuch
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This English translation of the Lehenrechtbuch (Book of Territorial Law) of the thirteenth century Schwabenspiegel (Swabian Mirror), a German lawbook written in Middle High German, has two basic objects. The immediate goal of the translator was to work with the Middle High German text as a philological problem, the solution of which is a rendering of the text into an English version which attempts to express as literally as possible the German sense of the words, yet preserve the spirit in which the Schwabenspiegel was composed. The second goal, the more significant of the two, is to present for the first time to English readers with an interest in medieval law the text of a legal document which was previously accessible only to those who could read Middle High German.

The translation procedure was as follows: The main text upon which the translation is based, the edition of F. L. A. von Lassberg (Der Schwabenspiegel [Neudruck der Ausgabe 1840, 1893, Eisenheim/Glan, 1961]), was supplemented by the translator in places where it seemed garbled, incomplete, or otherwise in error, by making reference to an edition by K. A. Eckhardt (Schwabenspiegel Kuraform [Göttingen, 1960-61]). This translator knows of no other extant translations of the Schwabenspiegel in English, modern German, or any other language, and therefore a comparison of this translation with another one to clarify obscure passages was out of the question. The translator did, however, lean heavily upon the various histories of German law listed in the bibliography. In these books one
can often find commentaries on the meaning and application of any law which might seem unclear at face value.

Whenever a place name which is not immediately recognizable occurs in the translation, the translator has attempted to identify it in a footnote. To help the reader in regard to puzzling Middle High German terms, a glossary is provided at the end of the translation. The glossary gives page references not only to definitions of these terms, but also to other places where the terms occur in the course of the translation.

The introduction which precedes the English translation is intended to show the relation of the Schwabenspiegel to the Middle Ages. First, the conception and attitude of this epoch in regard to law is discussed. Then follow sections dealing with (1) the origins of the Schwabenspiegel and of other medieval lawbooks, (2) the place of these lawbooks in Middle High German prose, and (3) the relationship of the Schwabenspiegel to thirteenth century feudalism. Finally, the manuscript sources of the English translation are analyzed.
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The Medieval Conception of Law

The mind of the Middle Ages firmly believed that its laws constituted an order which—having been carefully handed down from one generation to another—was not to be arbitrarily altered. Thus medieval law consisted largely of those old laws which had been transmitted from earlier times, since people shrank from making changes in the existing system. "Das Mittelalter zeigte die Neigung, das Recht nicht auf Gesetz zu gründen, sondern mit Hilfe von Weisstümern für immer festzulegen." Thus, although the laws could be found in the old precedents, they could not be newly legislated. The author of the Sachsenspiegel (see below) was careful to include no new laws in his book:

Diz recht hän ich selbe nicht irdâcht,
iz habent von aldere an unsich gebrâcht
Unse güten vorereven.

It was desirable to be able to trace a contemporary law back to a great lawgiver. If this could be done, the law in question was held in great esteem. Indeed, even the great medieval legislators tried to base their laws on a higher authority by referring back to famous lawgivers of earlier times. Thus, Frederick I (Barbarossa) liked to refer to the Roman emperors and Charlemagne in order to lend his own laws greater validity.

The laws of the Middle Ages were primarily handed down by oral transmission. Laws which were written down in statute form constituted only a small part of the total body of laws. Not until the thirteenth century and the advent of the lawbooks did a written legal literature begin to assume significance.

*Hermann Conrad, Deutsche Rechtsgeschichte (Karlsruhe, 1954), I. 468.

The medieval mind ultimately traced all laws back to God, the creator of the world with its order and the origin of all that is good. The system of laws was simply a portion of the divine order of the world. Thus, the laws strove to bring about righteousness—which was, of course, the goal of divine order. God, in whom all righteousness originated, was also the creator of all laws. "Got ist selbe recht, där uma is gm recht lieph."* Whoever broke the law sinned against God and against the divine order. The author of the Sachsenspiegel uses such an argument in warning men to heed the laws:

Swer büten märer lære gôt,
her sprechit lichte,
des her laster hät,
Unde düt sunde jegen got;
went her brichet der ê bot
Swer ê recht virkëret. ("Reimvorrede," vs. 133, p. 7).

According to the medieval conception of the state, the most important goal of the inhabitants was the establishment of law and peace among themselves and throughout the state. Since law helped assure peace, it came to be considered equivalent to peace. Law stood above the state, which was subordinate to the law, just as the individual was subordinated to laws. The state itself was seen as only the best means of putting law into effect. According to this concept, the medieval ruler was bound to act according to the law. It was the ruler's task to preserve the contemporary law. Any ruler arbitrarily changing a law would actually be breaking it. Such a man would be considered an unjust tyrant who was serving only his own welfare and not that of the members of the state. Conrad (p. 146) mentions the Tegernsee play about Antichrist (performed about 1160) as an example. In this drama, the Antichrist proclaims that a new system of laws will cause

the old customs to fall. By so doing, he characterizes himself as an unjust ruler. The ties between the ruler and the already existing laws resulted in a limiting of royal legislative power. Only toward the end of the Middle Ages did the ruler's power to legislate increase.

Every medieval body of people, even as small as the clan, developed its own body of laws. This is the real cause of the progressive disunity of the law in Germany during the Middle Ages. Until the twelfth century, when true imperial legislation began to exert some influence, there was no way to halt the trend toward disunity. Even this imperial legislation limited itself essentially to constitutional law and to laws concerning internal peace (Landfriedensrecht). This, of course, left many other areas of legislation open to an uncontrolled development. Even the king's court did not have the power to effect a unification of the laws.

The two important forces which did, however, work toward a unification of German laws were the lawbooks of the thirteenth century and also the municipal laws (Stadtrecht). In northern and eastern Germany the Sachsenspiegel achieved popular acceptance, where it became the most influential lawbook of the day. Also, exerting a unifying influence in south Germany were the Schwabenspiegel in Swabia and the Frankenspiegel in Franconia. A counterpart for these books in Bavaria apparently does not exist. The unifying importance of municipal laws lay in the fact that the laws of important cities (Cologne, Lübeck, Magdeburg) were adopted or imitated by other cities. But conscious attempts at legal unity in the Middle Ages were rare.

With the breaking up of the old tribal organizations, which was almost complete by the twelfth century, the law of the newly emerging sovereignty of princes began to take the place of the old tribal law. With the firm
establishment of the princely sovereigns in the thirteenth century came
the period of territorial laws (Landesgesetze). Now the idea that each
man should be judged according to his tribal law was abandoned. Now a
man was subject to the law of the political area in which he lived.
Men recognized their territorial law as the only valid law and subjected
foreigners to this law.

By the twelfth century, a resurrected form of Roman law was beginning
to exert some influence upon development of law in Germany, but a true
German reception of Roman law can only be spoken of beginning with the
fifteenth century. According to Conrad, "...dannals [fifteenth century]erst
begannen römisches Recht und römisches Rechtsdenken in Deutschland
in stärkerem Maße einzudringen und das deutsche Recht zu übertreffen"
(p. 147).

The influence of canon-law upon medieval German law was of significance
because of the close connection between the medieval church and state and
also because of the prominent position enjoyed by the church and the clergy
in the Middle Ages. The church had legislative and jurisdictional authority
in numerous legal customs (matrimony, for example). The strong influence of
 canon-law was also felt in such seemingly secular and public legal matters
regarding procedures for the election of a ruler. In fact, the second
article of the Schwabenspiegel (Lehnrecht) contains a description of how the
newly elected emperor and the electors shall travel to Rome for the
emperor's consecration.

Such were the conceptions of the nature of law and the situations in
which law was applied at the time the Schwabenspiegel and the other medieval
German lawbooks were written.
Origin and Relationship of the German Lawbooks of the Middle Ages

It has been mentioned above that, although the imperial legislative power was initially not very effective in contributing to a unification of German law, the lawbooks were somewhat more successful. This is not meant to imply that these lawbooks were originally written to promote unification. As Conrad tells us, they were "Von Hause aus Privatarbeiten, eigentlich private Sammlungen des geltenden Rechtes, die aber auch eigene, teils rechtsschöpferische Gedanken der Verfasser enthielten..." (p. 176). The lawbooks later came to be used as legal source material, while their contents achieved the status of venerable laws which had been passed down through the ages.

Probably the most important and best known lawbook was the Sachsenspiegel (Saxon Mirror), which originated in Saxony and concerned itself with the laws of Northern Germany. It is the work of the Saxon knight, Eike von Repgow, who is also believed to have been responsible for the Sächsische Weltchronik (see below). Probably born between 1180 and 1190, Eike was the son of a magistrate in the court of Count Hoyer von Falkenstein and therefore had opportunity to learn well the Saxon law of his time. It soon became his ambition to share his legal knowledge with all honorable men so that the law might be strengthened (see "Reimvorrede," vs. 154, p. 8). He did so in his lawbook, which he himself named Spiegel der Sassen since he desired to reflect the law of his homeland as a mirror reflects:

'Spiegel der Sassen'
Sol diz bûch sîn genant,
wen Sassen recht is hîr an bekant,
Also an eyme spiegle die vrowen
ir antlizze schowen. ('Reimvorrede,' vs. 178, p. 9).
The first copy of the Sachsenspiegel was written in Latin, probably sometime before 1220 (see Conrad, p. 477). According to Eike's own testimony, he then translated the book into German (Middle Low German) at the request of Count Hoyer von Falkenstein. Eike is believed to have been his vassal. The Sachsenspiegel, like the Schwabenspiegel, is divided into two books: the Landrechtbuch (Book of Territorial Law) and the Lehnrechtbuch (Book of Feudal Law).

The influence of the Sachsenspiegel was considerable. By the end of the thirteenth century, the book was being used in northern Germany with the authority of a book of statutes. In the fourteenth century, the laws in the Sachsenspiegel were being traced back to renowned lawgivers: the Landrecht portion was said to come from Charlemagne and the Lehnrecht section from Frederick I (Barbarossa). As will be shown, the Sachsenspiegel also extensively influenced the southern German Deutschenspiegel and Schwabenspiegel.

The Deutschenspiegel (Mirror of all German People) originated about 1274-75 and was partly the result of a High German translation of the Sachsenspiegel done in Augsburg sometime between 1265-75. The second half of the book is indeed a direct translation of the Sachsenspiegel, although the unknown author of the Deutschenspiegel also based his book on various other sources and upon Roman and canon-law to some extent. The author, probably a member of the clergy in Augsburg, had a somewhat different goal than Eike. He attempted "...anstatt eines speziellen Stammesrechtes, wie des Sachsenspiegels, ein gesamtdeutsches Recht darzustellen." Thus,


**Ibid.
he rendered Eike's work usable for south Germany. According to Conrad (p. 179), "Bedeutung hat der Deutschenspiegel nicht erlangt." Friedrich Vogt* indirectly supports this statement when he tells us that the Deutschenspiegel only survived in one manuscript, while numerous texts of the Sachsenspiegel and Schwabenspiegel are still extant. The reasons for this seeming lack of popularity of the Deutschenspiegel are unclear.

The time was now at hand for the appearance of the subject of this translation, the so-called Schwabenspiegel (the Swabian Mirror). This name was actually not used until the seventeenth century; the old manuscripts use the terms Kaiserliche Land- und Lehrechtsbuch or Kaiserrecht. The origin of the Schwabenspiegel is similar in some aspects to that of the Deutschenspiegel. The unknown author probably lived in Augsburg**, and was a member of the clergy. Hans Fehr*** maintains that this author became acquainted with the Sachsenspiegel by reading the portions of it which had been used in the Deutschenspiegel; Ehrismann (Part 2, Schlussband, 140) relates that portions of the Deutschenspiegel were borrowed and inserted in the Schwabenspiegel. At any rate, the "Urschwabenspiegel," which we do not have, was put together probably about 1275. The earliest manuscripts which we have are of a later date and underwent some revision. Following the example of Eike, the author divided the book into Landrecht and Lehrechts portions. His object, as the name Kaiserrecht implies, was to present the imperial laws, i.e., the laws of the whole Holy Roman Empire.


**Nevertheless, Vogt, p. 205, maintains that not enough evidence has been offered to prove an Augsburg origin; Bamberg and Würzburg seem to him more likely places of origin.

Actually, as Fehr (p. 44) states, the book offered only a southern German conception of imperial law.

The author availed himself of numerous other sources besides the Deutschespiegel. Conrad names "...vor allem bayerisches Volksrecht, fränkische Kapitularien, Reichsrecht und Landfriedensrecht, römisches und canonisches Recht" (p. 479). Also used as sources were the writings of the minister and mystic David von Augsburg (died 1272?) and the sermons of the popular medieval Volksrediger Berthold von Regensburg (died 1272).

One of the important differences between the Schwabenspiegel and Eike's work is the pronounced religious emphasis employed by the author of the Schwabenspiegel. "Das Hauptziel, das er verfolgte, war eine Stärkung der geistlichen Gewalt auf Kosten des Kaisertums. Er steht vor uns als geflügelter Verfechter kurialer Ideen, dem die Kirche mehr galt als der Staat." (Fehr, p. 44). As a result of this attitude, the Schwabenspiegel was looked upon favorably by the church and escaped the fate of Eike's work.

As Conrad (p. 478) explains, the attitude of the Sachsenspiegel toward the church and laws connected with the church led to clerical attacks on the lawbook. An Augustinian monk, Johannes Klenk of (died 1374) drew up a paper in 1372-73 accusing 21 articles of the Sachsenspiegel of being anticlerical. The paper was given to Pope Gregory XI, who in 1374 condemned in a papal bull the use of fourteen of these articles.

In contrast to the Sachsenspiegel, which originated in the first half of the thirteenth century, the Schwabenspiegel mirrors the legal situation of the second half of this century. This is, of course, the period after the great Interregnum. Thus as Conrad points out, the Schwabenspiegel "...trägt daher auch den inzwischen eingetretenen Wendungen im Verfassungs- und Rechtsleben weitgehend Rechnung (aB. im Recht der Königswahl durch die
Kurfürsten, in der Anerkennung der Landesherrschaft, der Erwähnung der Blutgerichtsbarkeit, auch kennt er schon die Anwendung der Folter” (p. 179).

The over 350 existing manuscripts of the Schwabenspiegel give testimony of the extensive circulation it enjoyed in southern Germany. It was, in fact, translated into Latin, French, and Czech. Its laws, like those of the Sachsenspiegel, came to be regarded as statutes stemming from the venerable lawgivers of olden times: "Und also stet an disem buche deheiner slahte lantreht noch lehenrecht, noch deheiner slahte urteile, van als es nit rehte von romischer pahete (pactum) und von karls rehte her is komen, und als es die pabeste ze iren conylien uf habent gesast, und die keiser und die kunige ze iren höven, und als die meistere durch ir liebe uz decreten und uz decretalen habent gezogen..."* In other manuscripts the laws are even traced back as far as Constantine and Justinian, who are then said to have passed them down to "...der werde keyser karle und seyn sun Lodewick und des sun der edell Lether."**

Perhaps it should be pointed out here that this very tendency of the Germans to accept as actual law what was written in the lawbooks is a distinguishing characteristic between the acceptance of lawbooks by the Germans and by the French people.*** The thirteenth century also saw the appearance of books of feudal and local law in France.**** These books

*This passage is found in section lb of Schwabenspiegel Landrecht portion. Cf. Lassberg's (see p. xvi below) edition of the Schwabenspiegel, p. 6.


****Ibid., p. 47.
were also probably the work of private compilers and bore such names as *Trés Ancien Coutumier* (appeared in Normandy), *Conseil* (written by Pierre de Fontaines for the Vermandois), and *Livre de Justice et Plot* and *Établissements le Roy* (both written for the Orléannais). According to Jenks (p. 47), the French rarely lost sight of the purely expository character of their law books and felt that authoritative law must be searched for in the register of the individual court or fief in question; if this failed, the men of the fief should be called together and an inquiry held.

Other German lawbooks did arise following the *Schwabenspiegel*, but none of them played as significant a role as did either the *Sachsenspiegel* or the *Schwabenspiegel*. Mention should be made of the *Frankenspiegel*, which—because of its imperialistic spirit—was also called *Kleines Kaiserrecht*. This book originated between 1328-38 in Franconian Hessa during the reign of Ludwig the Bavarian. At this time the idea of one united empire was very popular, and this trend of thought influenced the lawbook. It overextends itself somewhat in trying to produce in written form a common law of the entire world, or, as Ehrismann puts it, "das Recht der gesamten christenheit" (Part 2, Schlussband, h1). This book circulated both in northern and southern Germany.

Additional lawbooks written in German which arose in the thirteenth century include the *Meinser Reichslandfriede* of 1235 and the *Bairische Landfriede* of 1256. The oldest lawbook of German imperial law is believed to be the *Mühlhüsner*, dating from the beginning of the thirteenth century.

The Lawbooks and Middle High German Prose

All of the lawbooks discussed above, including our *Schwabenspiegel*, were written in prose. Although the *Schwabenspiegel* originated in the
thirteenth century, the time of the golden age of Middle High German literature, by far the great majority of this literature was composed in verse. Prose, at this time, was limited to material in the fields of science, history, religion and law. Thus, prose played no part in the prolific literature of chivalry and the court which was so popular in the thirteenth century and which was almost without exception written in verse form. Not until the fourteenth and fifteenth centuries was prose destined to reach maturity. During the later period it became "...wirklich die sprachliche Wiedergabe der herrschenden Geistesart, einerseits der realistischen Zeitströmung, andererseits der mystischen Verinnerlichung" (Ehrismann, Part 2, Schlussband, 435).

There is very little material in Middle Low German prose besides the Sachsenspiegel which has come down to us. Eike's lawbook was considered by Ehrismann (Part 2, Schlussband, 439) to have been the first important work in Middle Low German prose. Mention should also be made, however, of the Sächsische Weltchronik, which existed in its earliest form about 1225 and which was also written by Eike von Repgow. It is significant as the first historical German work in prose. Eike tried in this work to present the most important events from the beginning of the world up to his time. The chronicle includes the history of the creation, the Israelites, the ancient world, the Roman Empire, and the Holy Roman Empire.

Many examples of Middle High German prose are still extant. The first historical work in High German, quite similar in content to the Sächsische Weltchronik, was the Buch der Könige alter und neu (Old and New Testaments). It is believed to have been written by the author of the Schwabenspiegel, for it appeared with the Schwabenspiegel as a type of introduction. It is another chronicle of the world and deals first with
the Jewish history of the Old Testament up to the time of Esther and Judith; then (die niuwe &) the Roman Empire and the Roman and German emperors are discussed.

The influence of the religious Middle High German prose has already been alluded to in the discussion of the Schwabenspiegel. The influence of David von Augsburg and Berthold von Regensburg was widely felt elsewhere as it was in the Schwabenspiegel. They were leaders in the development of a new type of religious prose; theirs was a prose which was full of spiritual power, which possessed an independence from the rigid Latin patterns that earlier prose had followed, and which presented a theme in a unified manner. David, born around 1210-1220, was professor of theology in Regensburg and a teacher of Berthold. He was also active in Augsburg. His works include Die sieben Vorregeln der Tugend, Der Spiegel der Tugend, and Von der Erlösung des Menschengeschlechts. Berthold was born before 1220. As Ehrismann tells us, "In seinen Predigten hat die deutsche geistliche Beredsamkeit des Mittelalters ihren Höhepunkt erreicht" (Part 2, Schlussband, l17). A born speaker, Berthold travelled and preached through all of upper and middle Germany. He did not write his sermons down himself; this was done by his listeners and those of the clergy who accompanied him. The prose examples of his works which we have thus originated with such people. Other popular preachers followed Berthold's example and helped to establish Middle High German prose.

This, then, is a sampling of the other prose literature which existed at the time when the Schwabenspiegel came into being. Even though all of it did not concern itself with legal subjects, there nevertheless existed threads of unity between these other works and the Schwabenspiegel, as has been shown above.
Feudalism and the Schwabenspiegel

The picture of feudalism which the Schwabenspiegel presents is typical of the thirteenth century, as we shall show. As the reader has already seen (cf. above, p. vii), the Schwabenspiegel came into being about 1275. According to F. L. Ganshof, we can roughly divide the existence of feudalism in France and Germany into two periods: (1) Carolingian Feudalism (the eighth and ninth centuries), and (2) the Classical Age of Feudalism (the tenth to thirteenth centuries). Thus, according to this chronology, the Schwabenspiegel would definitely belong to the latter part of the so-called "Classical Age". As will be briefly shown here, and as the reader will see in this translation, the Schwabenspiegel does indeed mirror feudalism in its later stages.

Originally, vassalage and the benefice (fief) were not related. The relationship between "lord" and "vassal" developed from mutual needs. The lord needed support of some kind, sometimes political, but also commonly for defense either against his neighbors or a foreign foe. The vassal, who was a free man and often of considerable means and social rank himself, but who needed protection against enemies (and later political protection, e.g., in court), was perfectly willing to perform some sort of service in return for the protection of his lord. Therefore the two parties made a solemn agreement to the effect that the vassal would serve the lord in a specified manner in return for the lord's help and protection. To the lord fell the responsibility of providing a means by which the vassal could render his service. Originally, the lord either granted the vassal a sum of money, took him into his (the lord's) household, or did both.


**See Ganshof, p. 15.
"A lord could indeed grant a benefice to his vassal in order to provide the latter with the maintenance due him in return for service, but such a union of the two institutions was quite exceptional. Only during the later part of the Carolingian period did this union become more common. The important point here is that, during the period of Carolingian Feudalism, the fief was a by-product of the contract made between lord and vassal; the fief--when it was granted--was simply one means by which the vassal might be enabled to fulfill the obligations due to his lord.

By the time the Schwabenspiegel was written, however, an important change had occurred in the way a fief was regarded. Vassals realized that the more land they could control (even if it really belonged to a lord), the more powerful and wealthy they could become. Therefore fiefs came to be in increasing demand, until the primary object for which a man requested of a lord to become his vassal was not the lord’s protection, but the lord’s fief. The fief was no longer simply the means by which the vassal fulfilled his obligations to his lord, but the reason for which these obligations existed.

The second basic change in feudal relationships which took place during the tenth, eleventh, and twelfth centuries was the gradual increase of power of the vassal and the decrease of his lord’s power.

For example, at first the contract between lord and vassal was made for only the life span of the two parties. This is logical when one remembers that the object of the lord-vassal agreement during the early

*See Ganshof, p. 15.

**Ibid., pp. 150-155.

***Cf. Schwabenspiegel Lehrechz, sections 72a and 74.
Carolingian period was to benefit one another. If the lord granted his vassal a fief to aid the latter in fulfilling his obligations, this fief, upon the vassal's death, reverted back to the full control of the lord. But gradually, probably due to the vassal's natural concern for the welfare of his family after he was dead, fiefs became customarily inheritable. By 1275, when the Schwabenspiegel was written, it was almost an unwritten rule that fiefs passed on to the vassal's nearest of kin upon his death.

Another example which is characteristic of the waning authority of the lord over his vassal concerns the vassal's right to enfeoff another person with his own fief. "Originally, no doubt, the subinfeudation of all or part of his fief was certainly not permitted to the vassal without the lord's authorization; it would have been regarded as an 'abridgment of the fief'. But from the eleventh century onwards, it seems to have been generally and freely practised in France and Germany without any intervention on the lord's part."

As a final illustration, one might briefly examine the development of grounds for breach of the lord-vassal contract. Originally, the vassal could only be released from his contract if the lord abused his power over him. But from the end of the eleventh century and certainly by the first half of the twelfth century, it was admitted, in France and western Germany (Lotharingia), that a vassal might break his engagement on condition that he made a solemn statement to that effect and renounced his fief.

*See Ganshof, p. 134-135  Cf. also Schwabenspiegel Lehnrrecht sections 22, 38, 48, 51, 51, 64.

**Ibid., p. 144  Cf. also Schwabenspiegel Lehnrrecht section 47.

*** Ibid., p. 98.

**** Ibid.; Cf. sections 6 and 153 of the Schwabenspiegel Lehnrrecht, where the right of the vassal to renounce his fief seems to be taken for granted.
It should be emphasized that now, with no implication of wrongdoing on either side, the vassal could simply terminate the relationship at will.

A reading of the Lehnrecht section of the Schwabenspiegel will therefore show, in the light of these comments, that the lawbook definitely presents a picture of the "Classical Age of Feudalism".

The Manuscript Sources of the Translation

The main source of this translation has been the edition of the Schwabenspiegel published by Dr. Friedrich L. A. von Lassberg in 1840. Lassberg's edition is essentially based upon two manuscripts, although he referred to several others for clarity, as footnotes to this translation will indicate. The first basic manuscript is known as the v. Lassberg'sche Handschrift (Cod. Wizalheimeri). This is made up of 136 sheets of parchment and was believed by Lassberg to have been copied in 1287. At the time when Lassberg used the manuscript for his edition, it belonged to his father, Freiherr Joseph von Lassberg. The parchment pages had been found in 1830 at Weinfelden in Thurgau (Switzerland), and they subsequently came into the possession of Lassberg's father. Unfortunately, not all the pages were available, so Lassberg used in addition to it the second main manuscript, upon which his edition of 1840 is also based, the Zürcher Pergament-Codex. It was believed to have been copied about the end of the thirteenth or beginning of the fourteenth century. The Lehenrechtbuch (subject of this translation) of Lassberg's 1840 edition is based upon the two manuscripts as follows: (1) sections 1-93a. are from the Lassberg'sche Handschrift.

*Der Schwabenspiegel oder schwäbisches Land- und Lehenrechtbuch (Hedruck der Ausgabe 1840) (Kaisenhein/ülen, 1961). Footnotes to the translation refer to this edition of Lassberg's text.
(referred to in the footnotes in this translation as Lassb. C. [odex]);
(2) sections 93b.-159 are from the Zürcher Handschrift (referred to as Zür. C. [odex]).

A list of the abbreviations used in the footnotes of the translation for the other manuscripts which Lassberg also consulted in preparing his edition and a brief description of the manuscripts are as follows:

1. Ebn. C. [odex]: Ebernscher Codex (Cod. manganese). (Also known as Lassberg'scher Cod., but not the same one used for the first 93 sections of Lassberg's Lehenrechtbuch edition.) This manuscript was bought by Friedrich von Lassberg from Statrath Prof. Cramer in Kiel in 1335, and is believed to have been copied in the early fourteenth century.

2. Einsidl. C.: Einsidler Cod., probably copied in the fourteenth or fifteenth century.

3. Faesch. C.: Fesch'scher Cod., located in the university library at Basel. It was probably copied in the fourteenth century.


The numbers of the various sections of the Lehenrechtbuch were put in by Lassberg himself, since the manuscripts had no section numbers. The section headings, however, are taken from the manuscripts. Aside from occasional capital letters, there was no punctuation in the manuscripts except frequently-appearing periods, which could also represent commas. Lassberg's edition adhered to this system by simply reproducing the punctuation of the manuscripts.

The other edition of the Schwabenspiegel which was consulted for comparison and for clarification in making this translation is the
Schwabenspiegel Kurzform.* The Kurzform (Short-form) manuscripts of the Schwabenspiegel, as their name implies, seem to be a condensed form of the law book. Eckhardt relates (p. 7) that manuscripts of the Kurzform appear in print for the first time in his edition. There are twenty-one known manuscripts of the Kurzform. The five examples which are reproduced in Eckhardt’s edition (although each manuscript has gaps in various places) include the first 313 sections of the Landrechtbuch (Lassberg’s edition contains 377 sections) and the first 51 sections of the Lehnenrechtbuch (Lassberg’s text has 159 sections).

A list of the abbreviations which were used in the footnotes of the translation for the manuscripts of Eckhardt’s edition and an identification of these manuscripts are as follows:

1. Kb.: Located in the Berlin Staatsbibliothek (Hf. 1097), this manuscript was copied in the fifteenth century and is written in Upper German (Austro-Bavarian) dialect.

2. Kg.: The manuscript is located at the Giessen university library (Nr. 975). It was copied in an Upper German dialect in the first half of the fourteenth century.

3. Km.: This is an early fifteenth century manuscript located in the Munich Staatsbibliothek; it is written in Upper German (Bavarian).

4. Ks.: It is in the Innsbruck university library (Nr. 999/1) and was copied in the fourteenth century in Upper German (Bavarian).

5. Kt.: There are four copies (Kt. 1, Kt. 2, etc.), ranging in date

*Published by Karl August Eckhardt (Göttingen, 1960-61).
from the late thirteenth to the fifteenth centuries. All are written in an Upper German dialect. Their locations (in ascending numerical order) are Tambach in Upper Franconia, Donaueschigen, Heidelberg, and Schloss Kreuzenstein.
The Book of Feudal Law

Here begins the noble and genuine book concerning giving and holding of hereditary fiefs. Let it tell of these matters so that nothing related to them be lost through silence.

1. Of "herschilt" and eligibility to grant and hold fiefs.

a. Let him who would understand feudal law follow the precepts of this book. First of all we must take note that the kings have established seven feudal classes of knights (herschilde) distinguished by their coats of arms. Of these the king has the first; clerical princes, the second; the lay princes, the third; the viren harren, the fourth; the mittel viren nobles, the fifth; Ministerialen, the sixth; the semperen laute, the seventh. As little as one knows about when the world in which we now

1 Heinrich Hitteis, Lehenrecht und Staatsgehalt (Weimar, 1958), p. 137, explains that, although "having" herschilt originally meant simply possessing the right to call up vassals for military service and to command them, the word had gained additional significance by the end of the 12th century: at this time it signified "die Möglichkeit, Vassallen zu haben, und zwar nicht schlechthin (absolut), sondern einer bestimmten Kategorie angehörende (relativ)."

2 (This footnote has three references.) Heinrich Zoepfl, Deutsche Rechtsgeschichte (Braunschweig, 1871-72), II, 107: "Im ersten Herschilde steht der König, als oberster Lehn- und Kriegsherr. In zweiten Schilde standen ursprünglich alle Fürsten, weil diese die Reichslehen, d. h. Territorien mit Hoheitsrechten unmittelbar aus des Kaisers Hand hatten. In diesem zweiten Schild blieben aber nach den Spiegeln nur die geistlichen Fürsten stehen: die weltlichen Fürsten aber (die Leienfürsten) wurden in den dritten Schild gestellt, weil sie Vasallen der geistlichen Fürsten geworden seien. Dieses lässt sich jedoch in solcher Allgemeinheit nicht erwiesen, und daher werden auch jene weltlichen Fürsten, welche nicht Vasallen der geistlichen geworden waren, noch in späterer Zeit zu dem zweiten Schilde gerechnet."


live will end—for that is the seventh world—in the same manner one knows with no certainty whether or not those having the seventh herschilt are able to have the right of investiture.6 The kings have

sonst auch mitunter Bannerherren, weil sie noch mit Hoheitsrechten (dem Banne) beliehen sein konnten. Diese vier ersten Schilde erscheinen dennoch als feudalistische Abstufungen in den Stande der Höchstfreien.4 Additional information concerning those of the fourth herschilt is given by Richard Schröder, Lehrbuch der deutschen Rechtsgeschichte (Berlin and Leipzig, 1922), pp. 459-470: "Neben den Fürsten standen die 'Edeln',… oder 'Freien Herren'.… Zu ihnen gehörten die Grundherren, denen es durch ihren Grundbesitz, auch wenn sie in kein Lehnverhältnis getreten waren, ermöglicht wurde, ihrer Heerfolgspflicht in rittermäßiger Weise zu genügen, während sie anderseits als Schutz- und Vogteiherrn ihrer Hintersassen, als Obrämäler, Traumbild- und Gerichtsherrn eine herrschende Stellung einnahmen, die sie den Fürsten annäherte." In this group were included counts not of princely rank.

4Zoepfl, II, 107: "In den fünften Schilde standen sodann die Schöffenbarfreien und die ritterlichen 'Hamen' (Vasallen) der Höchstfreien überhaupt. Daher nennt hier der Schwabenspiegel die Mittelfreien, d.h. die Freien, welche eigentliche Kriegs- oder Ritterlehen,… mit gutsherrlichen Rechten, jedoch ohne Hoheitsrechte haben."


6Zoepfl, II, 108-109: "In den siebenten Schilde stand jeder freie Mann, welcher ehelicher Geburt war. Hier wird aber in dem Landrechte der Spiegel selbst der Zweifel aufgeworfen, ob dieser Stand (ritterliches) Lehnrecht habe oder nicht. Für die letztere Meinung erklären sich aber ausdrücklich die Lehrechtstexte der Spiegel, indem sie die gemeinsen Freien als Personen erklären, welche des Herders daren und sie in dieser Beziehung mit jenen Personen zusammenstellen, welche nach ihren Stände oder Geschlechte zum Ritterdienst untauglich sind, oder an einer Infamie oder Auffälligkeit leiden, oder unfreier Geburt sind." Also, Zoepfl's footnote 17, pp. 108-109, explains, "(Es) werden... in siebenten Schilde... die gemeinsen Freien genannt... Der Schwabenspiegel, welcher Schöffenbarfreie gar nicht kennt, (versteht) unter Samenleuten (im Gegensatz von den Serpenfreien) die freien Landsassen, d.h. Bauern..." Kurat-Sonders Eayklokdäisches Wörterbuch, 4 vols. (Berlin, 1905), IV, 1532, speaks of "So, High German" manner: "... aus sentens, zur Teilnahme an Send berechtigt." The land was a synod (ecclesiastical council).
arranged things as follows: whoever has the seventh herschilt is to do without the right of investiture. The first world began with Adam; the second with Noah; the third with Abraham; the fourth with Moses; the fifth with David; the sixth with Jesus Christ. Each one lasted a thousand years. That was six thousand years altogether. After that our Lord Jesus Christ was born of holy Mary, the eternal Virgin. The sixth world in which we live has no certain number of years, for God did not want to tell his disciples or anyone else when the world will end.

b. The clergy and peasants and all those who are not semper and not of knightly descent shall do without the right to take possessions in fee except as we shall presently determine. After Christ's birth, the fixed number of years is one thousand; after that comes the seventh millennium during or after which the world must come to an end, whenever God wills it. But if a lord bestows a landed property in fee upon one of these (clergy, peasants, etc.), the receiver has as good a right to his fief as one who has the proper herschilt. And if the children of such receivers inherit the fiefs from their forebears, those who lack the herschilt cannot render court decisions concerning any matter of feudal law except before the lords from whom they have their fiefs.

2. Those who lack the "herschilt."

Their testimony in matters of feudal law can well be denied before all other lords except their own.

3. Of equal claim.

a. If two men claim a landed possession and acknowledge the same before a lord and offer equal testimony, and if one possesses a herschilt by birth

7See footnote 6.
and the other does not, the lord is to accept the testimony of the one with a herschilt by birth and not to accept the testimony of the other man.

b. Whoever does not have a herschilt by birth cannot prevent the fief which he has in fee from his lord from reverting to the lord to the misfortune of that one who has no herschilt. He must receive it from his lord as property taken in fee. This is because he may well be of birth equal to that of his lord.

4. Fiefs of clergymen and ladies.

a. If it be that a clergymen or a lady receive property of the empire, they may well take it in fee and may succeed to the property if it passes to another lord if both clergymen and lady are of noble descent. Every clergymen who is of noble descent can well have a fief of his own. He may not, however, grant it in fee or do anything else with it except by the consent of his lord.

b. If a clergymen who has a brother receives a fief jointly with his brother, and if he and his brother have legal possession and profit, and if they die without heirs to the fief, the right to bestow the land in fee remains properly with the lord, as has been written before.

c. And if a lady has land in fee from a lord, she has the same right as the clergymen.

If a man, whoever he may be, receives it with her, and if they have equal legal possession, such a transaction is legal, just as in the case of the clergymen.

5. How the vassal swears fealty to his lord.

The vassal shall do fealty to his lord with his oath that he is bound to serve him and to be loyal, just as he has to speak according to law.
wherever he may be asked concerning it. He shall swear to further his lord's profits and to prevent his lord's losses insofar as he is capable.

6. How the vassal gives up fiefs.

And if a vassal desires to give his fief back to his lord and does not want to have it any more from him, the lord may lawfully not refuse. He must take it back from him. And if the lord is not willing to do so, the vassal is to speak as follows: "Lord I tender back to you the fief given me which I have from you; and I tender it to you once, twice, three times," And the vassal is to do that with hands folded. And if the lord does not receive it back, the vassal is nevertheless set free from his fealty obligations. The vassal shall also release the land back to the lord which he had in fee from him. The lord cannot take his vassal's fief from him, however, unless the vassal forfeits his fief as is written later in this book.

7. During the period when the vassal has not sworn fealty.

During the period when the vassal has not sworn loyalty to his lord, he can be no one's witness before his lord in matters of feudal law, nor can he render a court judgment in cases of feudal law. However, if one of the lord's vassals makes an appeal that he be the vassal's witness concerning a fief, and if this vassal can have no one else except the one who has not sworn, then he can lawfully help the vassal needing a witness.

The lord may not reject him. The lord can well bid his vassal to swear to him as has been spoken of before. If the vassal does not do so, then the lord still would have the property that the vassal should have in fee from him. A vassal is also to do honor to his lord with words and deeds. He shall rise in his lord's presence whether the lord is riding or walking. He is also to let his lord precede him. He shall hold the stirrup for his lord when he mounts. It is sufficient to do this once in the course of a day.

8. **How a king calls up his military expedition.**

a. Whoever has fiefs from the king or from the empire shall be ordered by the king to assemble forces which will travel with him. The lords shall be summoned to participate in the expedition on behalf of the king with his own special messenger at least six weeks and a day before the king is to set out. And two of the king's men are to hear the summons so that they can be of assistance to the king in case a lord wishes to deny that he was ordered to take part in the expedition. And the king can duly bid those who do not have fiefs from the empire to take part in the expedition. Furthermore, all those shall serve who are invested with fiefs in the east or are ministerialen of the empire in the land of the Wends or in Poland. Every man is to serve the empire at his own expense for six weeks and is to be free from the jurisdiction of courts of all types six weeks before the expedition and six weeks afterward, whether it be a case concerning feudal law or civil law or whatever else the case may be.

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9 Lassberg's text, p. 173, states, "...die sult dienen za zwein." But his footnote 5 clarifies the passage: "'zwein' ist offenbarer Schreibfehler; nicht weniger 'geriennen' in Fassch. C. Kol. 94b.; allein richtig ist dagegen 'ze vinden' ('.emann') in Zür. C."
b. However, when the Germans choose a king and he travels to Rome to be consecrated, it is the duty of the princes who have elected him king to travel with him. This includes the bishops of Magentze,\(^{10}\) of Trier, of Cologne, the count of the Palatinate on the Rhine, the duke of Saxony, the margrave of Brandenburg, and the duke of Bavaria. Also, all princes and all free lords whom he bids go shall accompany him. If a vassal has property of the empire taken in fee from the king, and if he has in turn enfeoffed it to other people, he can lawfully compel them to travel with him in the service of the empire. And if they desire to stay at home, they can discharge their obligation to go on the expedition by paying ten pounds (phünde).\(^{11}\) This sum relieves them of such obligation for a year. The vassal may fulfill his obligation by choosing whichever of the two alternatives he wishes. The king is to have the expedition to Rome publically proclaimed one year, six weeks, and three days in advance. And the expedition will end for the Germans when the king is consecrated. He can no longer have power over them in this matter.

9. At what time of day the vassal is to appear at the court hearing.

a. Whenever the lord grants his vassal a legal hearing before the lord in a matter of feudal law, if those involved in the case come before noon, they have come in good time. And if they come after noon, they are subject to the lord's penalty. The lord is not to process fiefs during the

\(^{10}\)It is probable that this is Mainz. The Roman name of Mainz was Mogontiacum.

\(^{11}\)See footnote 16 below.
days in which legal and judicial procedure are limited; we call them days of rest.

b. Whoever lends his horse or any of his possessions to his lord is not obligated to serve him during the period in which the lord has not returned them to him. The vassal is not to come to the court hearings which his lord bids him attend concerning cases of feudal law. And if the lord is negligent in observing his vassal's rights, during this period the vassal can be negligent toward the lord regarding all the lord's rights.

10. If the lord denies the vassal a legal proceeding.

a. If a vassal asks his lord to grant him a legal proceeding before the lord's vassals regarding his bestowed fief, and if the lord disputes it with him and denies it to him, he has not thereby lost his right to the hearing if he has held his land legally for a year and a day. When a year and a day have passed, he is to ask his lord for a legal proceeding so that the vassals of the lord hear the request. This is so that—if the lord wishes to deny the vassal's wish—the vassal will have the lord's vassals as witnesses to that fact.

b. Whoever has the right of ownership of a fief—if a second man who lacks right of ownership claims the fief—he who has right of ownership is to be given witnesses. If he has his ownership unlawfully, he shall win it for himself legally. If he thereafter produces his witness, and if either his lord or he who is claiming the fief still contests its possession with him, the vassal may establish his right of possession using people not in his lord's service or using his lord's vassals, whatever the circumstances permit.
11. If a lord denies his vassal a fief.

If a lord denies his vassal a fief, and if the vassal has had lawful possession of it a year and a day peacefully, and if the vassal is able to establish his possession as has been spoken of before, let him prove his right of possession against his lord with one of his own vassals and with a second honorable man. If he does not have right of possession, let him lawfully establish his right of possession of the fief using two of the lord's vassals for witnesses.

12. Of enfeoffment by contract.12

a. And if a vassal enters into an enfeoffment by contract in the presence of his lord concerning an estate, and if the lord denies him the estate, it is because he lacks the right of possession. Because of this he must give proof of his enfeoffment by contract with vassals of the lord.

b. Suppose a lord grants a man land in fee in any place where an estate first may become free to be given in fee (unbenanntes Gedinge), be it a large estate or small one. The lord assigns the vassal the land wherever the fief may eventually be located. Then another man comes and the lord grants certain land in fee to him whenever the fief may first become free to bestow and specifies a certain fief (benanntes Gedinge) and assigns it to him. Now the one dies who had held the specified fief;

12"Lehen unter Gedinge." Rudolf Heubner, A History of Germanic Private Law (Boston, 1918), p. 338, explains gedinge enfeoffments: "In case of an enfeoffment without immediate investiture and livery of seisin, men spoke of feoffment by contract. In this case the vassal acquired only a personal right against the feoffor. This form was chosen when lands were to be conveyed which at the time were still in the feudal possession of a third person, whether a particularly designated holding ('geiiehenes oder benanntes Gedinge'); or that holding among several of the same lord, which should first become vacant,—in other words, a deed of undetermined reversion ('Anwartung,' 'Anwartshaft,' 'unbenanntes Gedinge.')"
the two vassals both come before their lord and ask for their fiefs. The lord says "I shall give it in fee to only one man." His vassal who had come first speaks: "Lord, you bestowed a fief upon me first." The second vassal speaks: "Lord, you bestowed a fief upon me and specified this land to me and assigned it to me." And the lord says to the second vassal that this is sufficient for him. But if the first vassal does not want to accept as true that the land was given in fee and was designated to the second vassal, he must verify it with two of his lord's vassals. And if the lord does not want to accept the second vassal's story, then he must verify it in the same manner. And he who claims the first investiture is to say to his lord, "Lord, you have done me wrong." And if the lord affirms that the fief rightfully shall go to the second man as has been previously mentioned, then the lord may afterwards give no land in fee nor promise any that would hurt the cause of the first vassal. For the first fief that becomes free to bestow—whether promised in a benanntes Gedinge or not—belongs to this vassal. For the lord is to legally bestow this fief upon him.

13. If two vassals are lacking the right of ownership.

Whenever two men claim a fief and both are lacking the right of ownership, they are both to name the time of their investiture, and whoever has proof of the earlier investiture is to legally receive the fief. This he must prove with two of the lord's vassals. And suppose a lord gives an

13. Schröder, p. 438, explains why such a case would be legal: "Bestand an denselben Lehen ein (benanntes) Gedinge und eine Anwartung (unbenanntes Gedinge), so ging das erstere, vor, weil das von der Anwartung vorausgesetzte Ledigwerden des Lehns gar nicht eintrat, das Lehen vielmehr von rechts wegen unmittelbar auf den Gedingsmann überging."
estate in fee to a man in this fashion: "I designate to you the fief of the vassal Cunrat," or whatever he is named. When the vassal whose fief has been designated dies, the estate goes to the new vassal. And when the man dies, the vassal is to go to his lord and ask him to be assigned control over the estate. And if the lord does not do so, let the vassal take possession of the fief himself; and this is not illegal. But if the lord denies him the fief, he is not to take possession of it. He must convince the lord of the truth of his claim with testimony as has been said before. That is proper.

14. He who enfeoffs a vassal with the right to receive a rent valued at a "phunt."[14]

If a lord enfeoffs a vassal with the right to receive a rent valued at a phunt or more from an estate, and if this estate gives a return to the lord worth more than a phunt, the lord is to pay the vassal his proper income from the property. And if the lord does not do so, the vassal is to take possession of all of the estate and is to take his income from it, and he shall keep faithfully the other portion for his lord. And when the lord asks him for it, the vassal is to give it all to him.

15. If a vassal rejects a fief.

If a vassal rejects a fief that has reverted to his lord to be bestowed in fee when the lord has formally promised a fief to the vassal wherever an estate first may become free to bestow, and the lord has not stipulated to him how large the area of the fief is to be, and if the vassal does not claim the fief within a year and a day, then the lord is free of obligation.

to the vassal. The lord is to hold in his possession the fief which has become available to bestow for a year and a day untouched. But if the vassal swears by the saints of his own accord that he did not know that the fief had become available for his lord to bestow, he shall suffer no penalty and the lord is to bestow the fief upon him.

16. When two vassals have a fief.

a. In a legal action concerning one fief, two vassals cannot give testimony as long as they have not received shares in the fief. And if they divide the fief with one another, then each of the two is the other's witness concerning the fief.

b. If two vassals are enfeoffed with an estate from a lord and both share the profit, the one cannot give the estate back to the lord without the consent of the other; nor can he make any changes with it which might work to the detriment of the other unless they have separate shares in the fief and the profits.

c. Every lord can demand to know of his vassals who share a fief from him from whom he is to expect his feudal service. He is to ask of them that they render this service for a period of six weeks and a day. If they do not do so, they shall be bereft of the fief that they have from the lord if the lord prosecutes them according to feudal law as has been set forth before.

17. He who lacks a "herschilt."

Whoever is the vassal of a lord can well act as an advocate and render

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15 The sections of the Lehenrechtsbuch frequently refer to "what has been written earlier" or to similar phrases concerning the principles under discussion. If the reader comes to such a reference and finds that nothing has appeared yet in the translation concerning the reference, it may be assumed that the referral probably indicates a portion of the Landrechtbuch, preceding the Lehenrechtsbuch in the Schwabenrecht and also in the Sachsenspiegel.
judgments in cases of feudal law. If he lacks a herschilt, and if another
vassal contests his verdict before his lord, and if he himself obtains two
others who will swear with him and support his case, he may suffer no
penalty. But if he has no one who supports his case, he is to give his
lord a pledge of his atonement.

18. How many men must be at proceedings regarding fiefs.

A lord is to have at least twelve men when he hands down judgments
concerning fiefs. If the lord has the estate which the judgment concerns
in fee from another lord, and if one of his vassals rejects the judgments
and is sustained in his opinion concerning the judgments by two others
before the higher ranking lord, and if the estate is this lord's property,
then this lord is to appeal the judgments to the king if he is within the
German realm. And if he is not in the German realm, let him appeal it
before the chief justice of the provincial court. The lord shall legally
go to this court. But if the lord does not go there after he has been
notified to appear there three times, the underlord has gained the fief;
and the king or the chief justice of the provincial court—if the estate is
in the court's jurisdiction—shall assure the underlord of peace and of
favorable treatment against harassment.

19. Granting enfeoffment by contract concerning a fief without
the vassal's consent.

Some people say that the lord can grant enfeoffment by contract con-

16. The text uses the word lantrihter. Eichhorn, II, 430, speaks of
"Das Gericht, in welchen ursprünglich der Graf oder Vizegraf selbst zu
Gericht sass; es wurde an der ursprünglichen Melstätte durch einen von
Landesherrn bestellten stellvertretenden Richter gehalten, der gewöhnlich
der Landrichter...heisst. Es führt die Bezeichnungen: Landgericht
(judicium provinciale), Comitia, commune terrae placenti, Landvogtei."
cerning a fief without the consent of the vassal who has it in fee from
him and who has actual possession of it. That is not right. No lord
can grant any enfeoffment by contract concerning a fief that his vassal
has from him in fee without the vassal’s consent and without his request
to do so.

20. If the lord does not assign the fief to the vassal.

Whenever a lord bestows an estate upon his vassal in fee and assigns
it to him with his own messenger and designates this fief as the vassal’s
fief, the vassal has the right of possession of the fief immediately,
even if he is not yet getting any return from it at the time the lord
assigns him the fief. But whenever the lord refuses to assign the vassal
the estate, let the vassal get two men to help him—whoever they may be—
who heard the lord refuse to assign the vassal the fief, and let them then
travel to his estate and take possession of it. The vassal does so legally.

21. He who sells fiefs.

And if a vassal gives another vassal a fief to buy and promises to
arrange the transaction with his lord so that no one would come to grief
by it, then let the first vassal ask his lord to take back the estate from
him and bestow it on the other vassal. If the lord refuses him, the vassal
is nevertheless to act just as favorably toward the lord as he would if the
lord had granted the request. For the lord can legally deny it. And if
he is not able to talk his lord into it, he is to give the other vassal
another estate that looks just as good to him as the first one. And if he
does not succeed in this attempt, let him swear by the saints how valuable
the estate was to him; and let him give the other vassal property equaling
this estate in value.
22. If the lord takes away his vassal's fief by force.

And if a lord takes a fief forcibly from his vassal which the vassal has from him in fee, the vassal can legally make complaint of it. And if he dies afterwards, the fief legally falls to his heir. If his lord keeps his fief by force for a year and a day, and if the lord has the estate in fee from another lord, the vassal shall come to the higher ranking lord and shall ask for his fief. And this lord is to bestow it upon him in fee legally when he and two others give proof of the forcible seizure by testimony. And if this lord does not bestow it on him in fee, he is nevertheless still legally the possessor of the fief. And if the estate belongs to this lord, then let the vassal go before the king or the chief justice of the provincial court; and let him make complaint as was mentioned before.

23. Of him who takes property in fee concerning right of coinage, mill, or customs.

a. Whoever has anything in fee in connection with the right of coinage or mill or customs or other things, to him the lord shall allot his property as has been spoken of before.

17 Earlier, of course, the fief would simply have reverted to the lord upon the vassal's death. See Introduction, p. xv.

18 Heubner, p. 337, explains, "...although only lands—that is possession of land, including e.g. castles—were originally granted as fiefs, certain rights also later became the object of feudal tenures; namely, those that secured a permanent user or an assured income, such as various regalities and real-charges (rights of mill, coinage, customs, tithes), and above all public offices (dukedoms, earldoms, judicial offices, bailinicks, etc.)." This is in accordance with the original concept of the lord-vassal relationship (see Introduction, pp. xiii-xiv): namely, that enfeoffment was a way in which to enable the vassal to perform the duties expected of him by the lord. Enfeoffment with a fief of land was only one means of so doing.
b. And if a lord has in his power the property of a vassal which he has bestowed upon the vassal in fee or is legally to bestow in fee, whatever profit it may bring during that time or whatever loss it may incur, the lord is to make good everything which the vassal can swear by his oath to be a worthy compensation for the value of the property. But if the lord bestows in fee property which was to yield a greater income than is actually to be had from the property bestowed, the vassal shall exhort the lord to make good the value of the property which was not to be found in the bestowed fief. The lord is legally to do that as soon as property becomes free to him to bestow in fee.

24. Who may administer feudal law.

a. And if a man has in fee from a lord property worth only five schillings, he cannot be an advocate or a witness or render judgment or reject it in cases of feudal law. He must have in fee at least the value of a phunt in coin of the realm or a half hufe of land which is worth...
that much or more. Then he can legally be a witness and advocate and can render judgment and reject it.

b. The testimony of the outlawed and banished vassal can be legally rejected in the diocese in which he has been outlawed and in the jurisdiction of the court in which he has been banned. And he himself can serve as witness for no one. And if he lodges a complaint against someone, the accused person need not legally defend himself against the charge. But if someone lodges a complaint against him, he must answer such a charge. And if he requests his fief from his lord, the lord may legally deny it to him, saying he will not enfeoff him. And if the vassal denies that he is subject to either ban or pursuit, he must give proof of this with a document from the magistrates or with testimony of witnesses who have made him liable to be banned that he is no longer subject thereto. In this way he can prove his case.

25. Giving in pledge without the lord's consent.

If a vassal gives up a fief as pledge which he has in fee from a lord without the lord's permission, and if the man to whom it is pledged has it in his possession peacefully for a year and six weeks during which time the

sitting unerg is pflznige. Dagegen wechselte das verhältnis des pfundes zur mark mit jeder veränderung des minzfusses..."

lord does not legally settle the matter with either his vassal or with him to whom the fief is pledged, the one to whom it is pledged has a right to the pledge; and the lord cannot pronounce any sentence against his vassal except that, when the fief reverts back to the lord free to be bestowed, this vassal must redeem it with gold as we shall state. If the lord did not know that the fief was pledged, and if he goes before his vassal and swears by the saints that he did not know that his vassal had pledged his fief, let the vassal disprove this by giving his oath together with the oaths of two others that the lord did indeed know of the transaction. And if the vassal has his own vassals as witnesses, they are acceptable. And if he does not have any of these, let him get other people. That is legal. No one can pledge his fief without his lord's consent and expect the contract to be valid. The lord shall order any vassal so doing or the vassal's own men or those who have a fief from him to see that this vassal redeems the fief for the lord within six weeks and a day from the day that the lord becomes aware that his fief has been pledged. And the lord shall so order three times: that comprises eighteen weeks and three days altogether. And if the vassal is out of the country and no one else is to be found on the fief, the lord shall give him time until he returns. During the period he is known to be alive, the lord shall await him with the message. But if the lord wants to decide to send a messenger to the place where the vassal is who will give the vassal the redemption order mentioned above, the lord can duly do so. The lord should also have people present when the vassal receives the message who will help him and be witnesses in case the vassal wishes to deny that the message was given him. And if the vassal dies after the
command is given and after the time allotment which was given him in the
command is past, the fief reverts back to the lord free to be bestowed.
But if the vassal leaves heirs to the fief, these heirs are to redeem
the fief within six weeks and a day after the day that they are informed
of their father's death. And within a year's time after their father's
death, they are to come to their lord and shall request their fief; and
he is legally to bestow it upon them in fee.

26. A testimony with seven vassals.

Wherever one is pleading a case concerning feudal law before a lord
and a verdict concerning the testimony is reached by seven vassals, the
lord shall ask twenty of his vassals for their opinion concerning the case.
And if the men are not to be found, let the complaint be put off until
another day and let the lord bring more of his men to the court. Then the
proceedings concerning the seven vassals as witnesses can continue.

27. Three witnesses.

a. Whenever one produces three vassals as witnesses, the lord shall
ask for a judgment by seven of his men. But the lord is to have at least
twelve vassals at his court who render and pronounce judgments.

b. Whoever the lord may be, if he does not have twelve vassals present
when he is to try a case concerning feudal law, he shall come before the
lord from whom he has the estate in fee and shall call together the correct
number of men from among both lords' vassals so that he may be able to arrive
at a decision. Then the men of both lords will render their judgment; they

22 Lassberg's footnote 14, p. 179, explains: "dri man ze' ist beim
Reptumwenden vergessen worden, und aus dem Z.tr., Fassch. und Ear. CC,
ergänzt."
are acceptable advocates and witnesses in cases of feudal law. If the fief belongs to the lord trying the case, and if he is not able to produce twelve men as has been stated above, let him go before the king; if the king is not in the country, let him go before the chief magistrate of the provincial court.

28. Restoring land in fee for rent without fealty.

Whenever one pays a yearly tribute for an estate, that is not true enfeoffment. But if the vassal claims it is his true fief and denies that he is supposed to pay tribute for it, the lord must accept the vassal's word or he must convict him with witnesses proving that he has given him tribute from it or that—before the estate came in the vassal's possession—the lord was given tribute from it. And if the lord proves this by witnesses, the vassal has lost his fief. In whatever way a vassal may lay claim to an estate which he has legally lost, all of his claims to the estate will be denied.

29. Restitution is to be made to him who has legal possession.

An estate can belong to many lords, in that in each case one man is enfeoffing another. But nevertheless, only one man is to have actual legal possession. If anyone does any acts of insult or injury on the estate against any man who may have legal possession of the estate, the offender shall make restitution to him who has legal possession and not to the man from whom the offended person has his fief. That is lawful.

30. He who gives a portion of his fief to another lord.

If a vassal grants any part of his fief to a lord other than the one from whom he has the fief and does this to the disadvantage of his own lord,
and if his own lord seeks to keep the fief by producing two witnesses to swear with him that the section in question is his property or his fief, then he has indeed won it back; and his vassal has lost his fief. But, if the man to whom the vassal has granted or promised the property obtains it, then the vassal has also succeeded in keeping his share.

31. How the vassal is to pay the lord for his property.

When a vassal receives property from his lord, the lord is to tell him where the property is located and how large it is. Let the vassal ask this by the oath which he swore to the lord or by the lord's grace. Then the lord is to tell him whatever he knows about the estate. And the lord shall grant the vassal a period of three fortnights so that said vassal can rectify any lack of knowledge concerning the estate. And whatever the vassal leaves unsaid after this period is to the advantage of the lord, whatever else said lord may discover. And the vassal must repay the lord with as great a quantity as the fief which he has in fee from him produces.

32. How the lord is to defend his vassal's cause.

If a lord gives a vassal an estate in fee which the lord himself has in fee from another lord, and if the overlord goes to the fief and takes possession of it himself, the underlord is to defend the right of his vassal to the fief. But if the underlord himself loses the estate in the proceedings, he shall make good the estate to his vassal. However, if the overlord desires to bestow the estate in fee upon the vassal, he shall readily accept it from the overlord if the underlord legally loses it.

33. Legal claims.

No one need accept his estate for the second time if he has already received it once from his lord and if, for example, this lord relinquishes
the estate to his overlord or sells it and gives it up and receives it a second time. Unless the vassal does not have the estate in his possession, he is to make claim for it of whomever his lord points out to him as long as the new lord is at least equal in birth to the old lord. And if the old lord bids the vassal accept his fief from a lord of lesser rank, the vassal can refuse, thereby preventing the new lord from debasing him, the vassal, against his (the vassal's) will. This is the right of equals.

34. He who is referred to the overlord.

Whenever the vassal is legally referred to the overlord, he is to swear allegiance to him as has been previously stated. And after the oath, the lord is to assign him the fief. And if he is not informed about the fief at that time, let them both handle the matter as has been previously stated. But if the overlord denies him the fief, then things are to proceed as has been spoken of before. That is lawful.

35. He who defends his fief.

Whenever the lord bestows any vassal's estate upon another man in fee in a manner such that the vassal who has received it from the lord or is to receive it observes the transaction, said vassal no longer has a right to the fief if he does not challenge the action after having seen it or heard of it; the fief reverts from him back to the lord, free to be bestowed, unless the vassal fears for his life if he challenges the action. But if he does come to contest, he is to come before the lord from whom he

23(This footnote has two references). Lassberg's footnotes 19 and 20, p. 180: "Lassb. C. hat den Schreibfehler 'erben herren'; Ztr. und Brn. CC, haben 'oberherren'."
has the estate in fee within six weeks and demand a legal hearing. The vassal shall request this of him before the lord's vassals. He shall make the request for the second time fourteen days later, and for the third time in another fourteen days. And if the lord does not appear, let the overlord bestow the fief upon the challenging vassal. He then has it legally. And if the fief belongs to the vassal's lord himself, let the vassal go before the king or before the chief magistrate of the provincial court and demand justice there as has been stated previously; and if they do not settle the dispute for him, let him take possession of his estate himself. That is legal. And if none of the lords are in the country, this fact shall not cause the vassal any disadvantage. When they return to the country, the vassal shall demand his right of whatever man from whom he is legally to claim it.

36. When a vassal is not to be liable to the lord.

If the lord summons his vassal to appear in court concerning a feudal law case, during this time the vassal is not liable to answer the lord's charges concerning any other transgressions: this means during the period of time that the case for which the vassal was summoned is being tried in court. But, if the lord's feudal law proceeding is postponed by court judgment, and if during that period an estate devolves upon the vassal which is designated to go to him because of an enfeoffment by contract, and if the vassal requests his lord to bestow the fief upon him, the lord is legally to do so. And if the lord does not do so, let the vassal demand it as has been spoken of before.

2hLassberg's text, pp. 180-181, reads: "...und richten in die..." at this point. It is perhaps clearer to use the wording as found in his footnote 21, p. 181: "Sir. und Iun. CC.: richten in die nit! (nicht)."
37. How advocates are assigned.

Lest it happen that a vassal appearing before the court in a matter concerning feudal law not have faith in the words of his advocate, the lord, when he appoints an advocate, is to ask the vassal if he wishes to put his trust in the words of his advocate. If the vassal says yes, the advocate stays to defend him. If he answers in the negative, the lord does not assign him the advocate. Wherever judgments are handed down concerning feudal law, the lord is to assign no advocate unless the vassal declares his trust that whatever the advocate may say represents his own opinion. If the advocate's words create a favorable impression, the vassal reaps the benefit. If the advocate's testimony is not to his benefit, the vassal reaps the harm of the words which are spoken there. If the advocate is negligent in his duty, the vassal suffers the injury, for he will be given no other advocate that day concerning the matter in question. The advocate shall say whatever the vassal bids him speak and shall try to enhance the effectiveness of the vassal's words as much as he is capable and can do so legally.

38. Unborn heirs to a fief.

Suppose a man dies and leaves a pregnant wife who subsequently bears a son who lives long enough for his voice to be heard; if people are not willing to believe it, the son's existence shall be proven using witnesses at least fourteen years of age. It can well be proven with two ladies who have seen her in labor with the child or who have seen the child alive. They are legally witnesses.
39. When the vassals legally can refuse to serve.

Whenever the son is not of birth equal to that of his father, those who were the vassals of his father can refuse to accept fiefs from the son. And if the father had the fief from another lord, they may well legally go to the overlord and receive their fiefs from him. But if the fief was the father’s alodium, the vassals are either to accept their fiefs from the son or release them to him.

40. When the lord shall reject as vassal.

a. The lord shall reject the feudal homage and obligations of no one except those of one who lacks a herzchilt. But, if the lord bestows an estate upon such a man in fee, he has an equally valid right to it as one who has a herzchilt and who has such rights as can be found in a previous section of the Book of Feudal Law. Let a lord also refrain from bestowing fiefs upon those who have been outlawed and banished according to law as has been spoken of before.

b. And the lord is not legally to enfeoff those who are summoned to appear in court concerning robbery or plundering or murder or perjury or arson or questionable fealty during the period in which they have not yet appeared and have not been found innocent. But, if they are proven innocent, their lord shall enfeoff them. If they are found guilty, however, and if they atone for their guilt legally, the lord shall bestow their fiefs upon them. If the man dies while he is making amends for his offense but before he can fully atone for his transgression, and if he leaves heirs

25"Alodium" is legal terminology to describe land owned independently without any rent or payment. In the framework of feudalism, this would also imply land to which the owner has full title and for which no services are due anyone.
to his fief, the lord is to legally bestow upon them their father's fief. The son is not to be punished in matters concerning the guilt of his father.

c. The lord cannot refuse to enfeoff the children of whomever he has bestowed a fief upon, for that would not be legal. The lord shall grant his vassals their fiefs at all times and in all places where they may request them except where the church and the cemetery lie. Here the lord may not legally bestow a fief upon his vassal. But, if such a case happens, the lord shall send for his vassals, or the man is to come forward of his own accord to the lord and return the fief to him and receive it again in fee. That is legal.

41. Enfeoffment of princes.

a. The king is to bestow undivided in fee the sees of bishops and the secular "flag-fiefs." All bishops receive the right to strike coinage and the right to receive taxes from the king, and some receive flag-fiefs, and some receive the office of magistrate in the secular court. Whatever the judicial office may be, when it concerns itself with bloodshed and murder, the bishop shall send any man to whom he assigns such judicial

26"Fahnlehen." Schröder, p. 43: "Bei den Fürstentümern war es schon früh üblich geworden, als Wahrzeichen des zu übertragenden Heerführeramtes eine Fahne an der Speerstange zu befestigen; so wurde die Fahne zum Investitursymbol bei der Verleihung der weltlichen Fürstentümer, diese selbst wurden zu 'Fahnlehen'."

27Schröder, p. 572, footnote 28: "...Unter Friedrich I waren die Bischöfe von Reichs wegen mit der Beaufsichtigung der Münzprägungen innerhalb ihrer Diözesen beauftragt."

28Schröder, p. 575: "Den geistlichen Fürsten machte die Confoederatio cum prinicibus ecclesiasticis von 1220 das Zugeständnis, dass in ihren Territorien ohne ihre Genehmigung von seiten des Reiches keine neuen Zölle errichtet werden dürften..."
power to the king to bestow jurisdictional power upon the man. Whoever hands down decisions dealing with human lives who has not received jurisdictional power from the king shall have his tongue cut out at the request of the king or shall redeem his tongue according to the king's favor. And if the king denies the bishop's request when he first sends him an official letter by not bestowing jurisdictional power upon the bishop's man, this judge can legally hold court without this power for a year, just as if the bishop had received the king's permission for him to do so.

b. The king shall know well upon whom he can bestow jurisdictional power so that the man can legally perform his duties as judge. In such cases, the king shall look in the Book of Territorial Law. Therein he will find information as to who can legally be a judge and who cannot. All judicial offices which have jurisdiction over bloodshed and murder must be bestowed by the emperor of the Holy Roman Empire. The lay princes need not bid their judges to receive jurisdictional power from the king. They can duly bestow it themselves as legitimately as they received it legally from the king. When the king is not in the German realm, the judges of the princes of the clergy can duly perform their

29 Lassberg's text, p. 182, reads at this point: "...unde mag gesin..." which would appear to be redundant. However, in Eckhardt's (Karl August Eckhardt, ed.) Schwabenpiegel Kurzform (Göttingen, 1961), II, 277, we find a negation of these three words in MSS, Kb, Ks, and Kt, e.g.: (Kb) "...das vindet er wer richter mag gesein oder nicht gesein mag..." This seems more meaningful.

30 Lassberg's text, p. 182, has here only "Die leigen..." after which "fursten" has been inserted in parentheses. His footnote 28 explains: "Zfr. C.: 'leigen fursten,' voraus Obiges ergänzt."
judicial duties without jurisdictional power until they receive a document from the king. And when the king leaves the German realm, he can duly give the power to bestow jurisdictional authority to the grand marshall of the empire. This means the Duke of Saxony. He is to wield this power over Thuringia and Saxony and Hesse all the way to Bohemia and over all the Franks—in short, over any man who is subject to him. And if the king gives him the authority to bestow jurisdictional power, the grand marshall has right of authority over all Swabia as far as the Rhine and through the mountains up to a German mile this side of Trident.  

II. The count of the Palatinate on the Rhine has the authority to bestow jurisdictional power on the other side of the Rhine up to a mile this side of Metz and all the way to the Use  and in Flanders. And whether the king bestows the authority to grant this power upon him or not, he nevertheless

Trident (Roman Tridentum; Italian Trento; also known as Trivio and Trent) is located in present-day northern Italy about 80 miles south of Innsbruck. Charlemagne added the territory surrounding this city to the Frankish empire, and in 952 this area came under the influence of Bavaria and thus also that of the Holy Roman Empire. There had been no change in this status at the time the Schwabenspiegel was written. Trident, the location of a bishop's see since the Fourth century, was the site of the famous reforming Council of Trent (1545-63). It is probable that this is the city mentioned in the text. (See "Trient," Meyers Lexikon, 8 vols. [Leipzig, 1961-1969], VIII, 146. See also "Trient," Der Grosse Brockhaus, 21 vols. [Leipzig, 1928-1935], XIX, 72.)

According to Zedler ("Use oder Usbach," Grosses Vollständiges Universal-Lexikon, ed. Johann Heinrich Zedler, 61 vols. [Graz, 1962: reprint of the ed. Leipzig-Halle, 1732-1750], LII, col. 353), the Use is "Ein Flüssgen in der Wetterau... [It] fliesst unten an der Kayserlichen Freyen Reichsstadt Friedberg vorbei und flull... in die Wetter." Zedler also states that this stream flows by the town Neuheim. (Bad) Neuheim and Friedberg, located within a few miles of each other, are to be found about fifteen miles north of Frankfurt-on-the-Main and approximately 40 miles north-east of Mainz. (See the Index and Atlas of Encyclopaedia Britannica, 2d ed. [Chicago, London, Toronto, 1957], XXIV, Plate 9.) Thus the location of the course of Zedler's Use can plausibly fit the context of the above text. Zedler's Use is probably the stream mentioned in the text.
is mighty enough to bestow it. This is because of his special privilege: when the princes wish to make complaint against the king if he acts illegally, they shall do so before the count of the Palatinate on the Rhine, who has princely might above all other princes. The two lords have this right to bestow jurisdictional power for periods when the empire is without its king.

42. How the vassal is to speak and to conduct himself when he receives his fief.

a. If the son does not wish to become a vassal in the place of his father, he is not elevated to a higher herschilt by refusing. The herschilt of the lord is not elevated except in the event that a flag-fief is bestowed upon him. No one can bequeath fiefs except a father to his son. This is called a hereditary fief.

b. After the death of the father, the son shall come to the lord who is his lord within the period of a year and a day and, with hands folded together, shall offer to be his vassal. If the lord is standing, the son shall approach close enough to him so that he can extend his hands to him. But if the lord is seated, the son shall kneel before him. Some people say that he is to move his hands when confronting the lord. That is not right. For when the man comes before the lord where he is standing or kneels before him where he is seated, his whole body is in motion and his hands too. The man shall speak as follows when, with folded hands, he asks for his property: "Lord, I request of you said property, for which I have

33 The word heizet is inserted in parentheses here in Lessberg's text. His footnote 31 relates: "'heizet' ist aus den Zfr. G. ergänzt..."
legally brought my plea to you; I offer you for it my oath as a vassal once, twice, three times; and let your vassals be my witnesses to that fact." If the lord illegally refuses to accept him as a vassal, he shall retain his property since he has offered his services as a vassal for it and shall possess it without being subject to the lord for services. And he need no longer request possession of his property of the lord for as long as he has two of his vassals as witnesses. But if these two die, let him request his fief again. And let him take for the request the same number of his lord's vassals so that he will have two men with whom he can establish his rights in case the lord wishes to answer in the negative. He shall bequeath this property to his son when he dies. Then the son is to request the fief of the lord as the father did. If the lord bestows it upon him in fee, that is as it should be. If he does not grant him the fief, let the son do as has been explained above. Whoever requests his fief of his lord as mentioned above may well enfeoff his own men with the same property, the right of which was denied to him.

But whenever the right of possession is taken from the vassal by force, he shall renew his complaint yearly before the overlord or before the king or before the chief magistrate of the provincial court. He should do this because he does not have possession.

c. And if the lord offers the vassal his estate, he shall accept it immediately. And if he doesn't accept it, this can prejudice his case. For, by offering to bestow the fief, the lord disposes of the need for the
normal year's period\textsuperscript{31} which the vassal has to request the fief. In like manner, any vassal who puts off requesting his fief from his lord for too long has used up his year's period.

\textbf{d.} If ever the lord asks for a judgment from his vassal\textsuperscript{35} concerning whether or not he should again accept the services of a vassal who has offered to renew his oath of fealty to the lord, and if the vassal who was asked to render judgment refuses to do so through no fault of the lord, the vassal wishing to renew his oath is also to be free of blame and is legally to keep his estate; for this vassal has requested renewal of this estate in a lawful manner. He therefore now has a year's period of grace, during which he is not to request his estate. However, if the lord requests the presence of this vassal and of his other vassals at a legal proceeding concerning the matter, they shall come to the hearing; and the lord shall act justly in dealing with the vassal's request for a fief according to his judgment.

\textbf{43. When the lord lacks a witness.}

\textbf{a.} When a lord lacks testimony against his vassal in cases of feudal law, he shall appoint witnesses for himself; he shall produce whomever he appoints—and no one else. The vassal is to do likewise against the lord. Whichever persons the vassal names to the lord as his witnesses shall be

\textsuperscript{31}Jarsle. Georg Weitz, Deutsche Verfassungsgeschichte, (Kiel, 1874-1876), VI, 55, discusses the "Vorschrift, dass die Huldigung und das andende Gesuch um Investitur sowohl bei dem Wechsel des Herrn wie des Vassallen in bestimmter Frist, binnen Jahr und Tag, erfolgen solle..."

\textsuperscript{35}Lassberg's text, p. 188, has here: "sine man..." An accusative sing. construction such as is found in Eckhardt's ÆS, Æb and Æs, p. 283, "seinen man..." (Æs, Æt has "den man..."); would seem to be more meaningful.
compelled by the lord to appear on behalf of the vassal at the legal proceeding which the lord has appointed for the vassal. If some of the vassal's witnesses do not appear, the vassal has won. And if the witnesses which the lord appoints against the vassal do not appear at the first proceeding, the lord has not lost his cause until the third hearing. Then the lord has lost.

b. The vassal can never lose to the lord if a witness which has been allotted him does not appear. For the lord is legally to compel the witness to appear. During the course of as many as three hearings, the lord can attempt to produce a witness against his vassal. The lord shall also attempt to compel the witness for his vassal to appear during the course of as many as three hearings. Each of the hearings is to be separated by a period of two weeks. If anyone fails to come whom the lord has bidden appear three times, said person shall be bereft of the fief which he has from the lord unless it be that he is detained by legal impediment. He shall prove such a commitment in the manner stated earlier in the Book of Territorial Law. What constitutes valid commitment has also been previously set down.

c. Neither the lord nor the vassal is required to produce any witness who establishes valid commitment legally. Both are to choose another witness, and the lord shall compel the witnesses to appear at the

36 Apparently, the scribe who copied what we now have as Lassberg's text left out some words at this point. According to Lassberg's text, p. 185, this sentence has little meaning: "Swelh geziug die ehafte not behebet als reht ist des ist ouch der man..." Eckhardt's MSS.—Kb, Ke, and Kt—all substantially agree with one another in offering a longer sentence; e.g.: (Ks) "swelhe zeuch die ehaft not behabt als reht ist des ist ouch der herre ledich ze leiten und ouch der man." This would seem to be closer to the intended meaning of this sentence; the translation thus is a rendering of the version quoted from Eckhardt's MSS.

next hearing. That is legal. If the lord alleges that a certain man who is his vassal is not worthy to serve as a witness, the vassal in question must establish proof of the property which he has in fee from the lord. He must do this by producing witnesses or by showing the lord the property itself. When this happens, the vassal can indeed by a witness. The choice of whether to use such a man as a witness is left to the vassal needing a witness and not to the lord. And if the vassal does not use this man for a witness, he shall legally be given a limit of three hearings to produce his witnesses.

44. Valid commitment.

If confinement in prison detains the vassal so that he is neither able to come to the hearing nor send a messenger, he shall come to the lord when he is freed from prison and bid him to hold a second hearing; and the lord is to bid him prove his valid commitment and shall judge the validity of the commitment as has been spoken of previously.

45. If the lord dies.

And if the lord of a vassal dies and leaves a son who is not yet of age, the vassal is nevertheless to come to his young lord and speak as follows: "Lord, I am to have a fief from you. I will gladly accept it if you can now legally bestow it upon me." And he shall call upon the people to be his witnesses. Whoever they may be, they are acceptable. If the son has the estate in fee from an overlord, and if this lord bestows it upon the young lord in fee, he may well bestow the estate in fee in turn, however young he may be. And his vassals cannot neglect their feudal obligations to him during the period when he has not yet received the estate in fee.
46. Successions.

If a lord succeeds the young lord who is not of age, or if the young lord is negligent in his feudal obligations to his own lord, that does not put the vassals' claims to their fief in jeopardy. Their obligations and ownership revert to the overlord along with the estate itself. If a lord who is of age neglects his feudal obligations to his overlord, and if his property is confiscated legally, the vassals shall not lose their fief in this action. They shall come to the overlord and shall request their fief from him, and he is legally to bestow the fief upon them. If he does not do so, and if he has his estate in fee from still another lord, (the vassals shall) approach this lord (and) make complaint to him of the underlord, and he shall bring the delinquent lord into line in the matter. And if the delinquent lord will not appear so that settlement can be made, the higher ranking lord shall bestow the fief upon the vassals himself.

47. Into the seventh hand.

It can happen that a fief bestowed upon one man may be bestowed by that man upon another and that as many herschilde may be involved as the number of times that a fief is bestowed from one lord to another. A fief can be bestowed from one lord to another up to six times. But, if a lord bestows a fief upon a vassal who is the seventh man to have a part of the estate, such an enfeoffment is stable, as has been written before.

37 (This footnote has two references). Lassberg's footnote 39, p. 185, explains: "Die inclav. Worte, ohne welche aller Sinn fehlt, sind aus Zür. C."
48. Period of eligibility. 38

a. Every vassal's period of eligibility in relation to his lord begins when the lord in enfeoffed with his property by the lord's lord. We consider the period of eligibility to be a year and six weeks in length. And if a lord is out of the country or is taken prisoner, the period of eligibility is not 39 in effect during this time. And when he returns, the period goes into effect. During the time the lord is not in the country or is in prison, let the vassal take possession of his estate himself. He does so legally.

b. The age children must have attained 40 to be considered eligible to accept a fief is thirteen years and six weeks from the date of their

38 järsal. Here, as in section 42 c. (see also footnote 34), it is used to express a period of eligibility. For example, when a lord died, a man who had formerly been the lord's vassal had a time period of a year and a day in which to go to the new lord to whose control his fief had passed in order to renew his right to his fief and to receive the fief from the new lord. Similarly, a man who inherited a fief from his father was allotted a period of a year and a day in which to go to his father's lord and be enfeoffed by him. In both cases, the men were only eligible to receive their fiefs during a stipulated period.

39 Lassberg's text, p. 186, does not negate this clause. However, the clause is negated in Eckhardt's ESS, Kb, Ks, and Ke (p. 289). In view of the following sentence, a negation seems to make better sense.

birth. And, if the lord who is to enfeoff him wants to forgo doing so, the child's friends must provide him with a guardian who is responsible to the lord for the child in matters of feudal law and who will act as his advocate whenever he be needed. The guardian shall be responsible to the lord for the youth until he reaches twenty-one years of age. The youth's guardian shall be a vassal of the lord. No child's age shall be reckoned from the time that its mother conceived it. Its age shall be reckoned from the time that she brought it into the world.

Whenever anyone brings a claim against a child concerning feudal law, his guardian is responsible for handling the matter. If it is a matter of the youth swearing an oath, and if he is under fourteen years of age, he shall not swear. When he passes the age of fourteen, he can duly swear oaths. But if his guardian desires, he can still duly swear for him until he reaches the age of eighteen. That is legal also in all territorial law and feudal law cases, for the youth still has insufficient knowledge.

c. If a lord does not believe that the youth has reached the age of eligibility for enfeoffment, the youth's next of kin—whether said relative be from the father's or the mother's side—shall testify whether or not he is old enough. Or, if they do not know, his guardian shall swear for him, if he knows. And if none of these swear on his behalf, his cause is still not lost. Someone should feel above his upper lip; if he has short hairs there, that is one proof. If they find hair in his armpits, that is the second proof. And if they find hair between his legs.

\[1\] Lassberg's text, p. 186, uses the word vor at this point. Eckhardt's MSS. KB, KS, KT, and KA all use the word von instead. This seems clearer.
in his genital region, that is the third witness. With that the boy has
proved he is of age.

49. When a youth is eligible to be enfeoffed.

a. No one can be a witness who has not come of age; we shall make
this clearer. A child thirteen years and six weeks of age is eligible to
be enfeoffed. And when he is fourteen years old, he can duly swear con-
cerning his own legal agreements but can be no one's witness until he
reaches age eighteen. However young the youth may be, if he has a legal
guardian who is a vassal of the lord from whom the youth is to have a
fief, and if the guardian brings the child before his lord and requests the
boy's fief legally, the lord shall legally bestow the fief upon the youth.
If there is more than one child in the boy's family, the lord should be
given security that the others will not expect from the lord that he also
bestow the fief upon any other children except upon the oldest while the
oldest is alive. And when the oldest dies, the fief reverts back to the
lord free to be bestowed. Then let the lord bestow it upon the next oldest
child.

b. Whoever requests of a youth before he has come of age that the boy
bestow a fief upon him is doing the boy an injustice, for he cannot bestow
a fief which he himself has not received. If a lord bestows a fief upon a
youth who is not of age, and if someone requests to be enfeoffed with the
same estate, the lord shall exempt the boy and his guardian from having to
bestow the fief. If the lord does not wish to do so, the guardian shall
demand it of the lord; and the lord is required by law to grant him a legal
hearing before his vassals. And the guardian shall legally obtain the lord's
consent that he will defend the boy's feudal rights concerning his fief.
50. Of enfeoffed youths.

a. No one can act as witness for another in matters of feudal law if the would-be witness—be he the recipient of a fief or not—has not come of age.

b. Whenever the boy is enfeoffed by his lord, the period of eligibility for his vassals begins, during which they are supposed to receive their estates. During the time before they have received their estates from the youth, they shall render to the overlord the service which is stated in this book.

51. Of successions.

a. Bestowal of a fief is not legal when the right of succession is disregarded. Nevertheless, if a vassal dies and leaves children who are not of age, the lord can bestow the reverted fief upon another if the oldest child does not have a guardian who is a vassal of the lord. If the child has a guardian, said guardian shall demand the fief for the child. The lord shall legally bestow it upon the child, and the guardian shall be responsible to the lord for the fief. (If the child has not already had the fief bestowed upon him), his inherited fief (if it has been bestowed elsewhere) reverts free to be bestowed upon him when he comes of age.

Also, if the lord dies (who bestowed the inherited fief elsewhere during the time the child had not yet come of age), the man upon whom the lord

The words in parentheses are not in Lassberg's text; they are simply added to clarify which party is being discussed.

Lassberg's text, p. 187, does not make clear who is meant at this point; "Alse der stirbet der das aneual hat..." Eckhardt's MSS, Kb, Ks, Kt, and Kn (p. 296) all clarify the situation: (Kb) "und auch der stirbet der das aneual gelihen hat..." According to these MSS, der must refer to the boy's lord.
had bestowed the fief during this period has no right to continue in
possession of the fief, and it reverts free to be bestowed upon the child.

b. During the time in which their estate has not been bestowed upon
them, a child and also those who are older are not obligated to the lord to
settle on the fief, or to make payments to him.

52. Fiefs put in pledge.

No one whose fief has been put in pledge can legally have the right
of possession of such a fief without the lord's consent. If a youth's
 guardian puts the fief in pledge with the consent of both the lord and the
boy, and if the boy comes of age and requests his estate again, he should
be permitted to have it. If this is not done, the youth shall come to his
lord and ask him to help him obtain justice against the one who is withhold¬
ing his estate from him. If the lord does not do so, let the boy come to
the chief magistrate of his province and lodge complaint with him concern¬
ing his lord and his guardian. If his lord has the estate in fee from
another lord, the boy shall come to this overlord and make complaint to
him. And the overlord, over the head of the boy's lord, is to settle the
matter, just as this book states.

53. When the vassals shall request their fiefs.

If a youth hesitates to bestow fiefs when he has come of age, his
vassals shall request their fiefs as this book states. During the period
of a year, each of them shall request his fief so that the youth's other
vassals hear it. In case he wishes to deny that any of them have made
request for fiefs, they have the other vassals for witnesses.

Substitution of the word "nan" for "van" in this heading would seem
to clarify an otherwise senseless phrase.
54. Of requests for fiefs.

a. If a man who has sons and who was to receive his fief dies within the period of eligibility, the fief is nevertheless not taken from the son because of this. He shall come before his lord and shall request his father's fief from him. And the lord is legally to bestow it upon him. He shall do this before the fief can be allotted elsewhere. Also, if a lord's son dies within the period of eligibility, and if the vassal was to receive an estate from his father, the vassal's right accompanies his fief to whomever it may revert; and he does not lose it because of what has happened. The lord cannot bestow the man's fief upon two vassals unless the lord has this fief from more than one lord. If the lord wants to set things right again, the smaller portion of land should always accompany the larger portion unless the lord himself takes as a fief the smaller section of his vassal's property which the vassal had from another lord originally. Then the new lord cannot receive the fief from the vassal's other lord. He is to receive it from the lord of higher rank, for that is legal.

b. Nor shall the vassal receive his lord's estate in fee except from one man and from none other, for the lord can compel more brothers than one that they receive land in fee from him. If there be more than one brother, and if the lord is enfeoffing only one with the land, the brothers can compel the lord to bestow it upon them all in fee. And if the lord leaves more sons than one when he dies, his vassals shall receive their fiefs from only one son. But if the sons' overlord has bestowed the property upon all the sons in fee, and if the brothers therefore all wish to bestow the fiefs and strive for the right to do so, they shall all bestow
the fiefs. And those who are the dead lord's vassals shall all receive their fiefs from each of the sons. They can well refuse to do so legally: the vassals are then to go before the overlord and he shall determine from which one of the brothers the vassals shall receive their fiefs. The overlord shall indicate how things are to be as follows: if the brothers are all of age, the lord shall refer the vassals to the oldest brother. And if none except one has come of age, he shall indicate this one. If none of them has come of age, and if the overlord has still not bestowed their land upon them, he shall give them possession of it. And if he has enfeoffed the children with the property, he shall refer the vassals to the oldest child and to the boys' guardian. He can legally bestow the property in fee.

55. When a fief is the personal property of its bestower.

If an estate which is the alodion of a lord is to be bestowed in fee by this lord, and if he illegally denies to do so, let the vassals come before the chief magistrate of the court in whose jurisdiction the estate is situated; and let them lodge complaint concerning their land. The magistrate shall legally set things in order. And if the king is in the country, people can also legally make their complaints to him.

56. Which child is eligible to be enfeoffed.

The lord is to bestow a father's estate in fee upon only one child. Who shall receive the estate is to be decided by the children and not by the lord. If they have requested the fief within a period of a year, the choice is thus up to the children. But if the period of a year passes, and if the children then approach the lord with the request that he still

45 Lessberg's text, p. 188, reads: "...sint die bruder alle mir tagen mit komen..." at this point. But his footnote 49: "Mir C. richtiges Eine
bestow the fief upon them, he has the choice of bestowing the fief upon
whomever he desires. And if a lord bestows land in fee upon a child of
his own free will and not according to law, this does not put the rights
of the children in jeopardy. And if one of the children is negligent
concerning his year's period of eligibility, as has been mentioned before,
the lord has no obligation to the negligent one unless the child can prove
valid commitment.

57. When several brothers expect to receive a fief.

If a vassal's son who has come of age requests his fief of his lord,
and if he has brothers who are still not of age, he must promise his lord
that—when his brothers come of age—they will not make claims for pro-
erty of the lord while their brother is alive. If, when the brothers come
of age, they request the oldest brother's fief of the lord, this brother
shall defend the lord's position and his fief and shall request the lord
to give him and his brothers a legal hearing before the vassals. There
the legality of the fief bestowal will be decided. The law says that this
choice is up to the oldest brother: if he wishes to let his brothers re-
ceive the fief with him, he may well do so; if he does not so wish, that is
acceptable also. The lord has the following choice: he is actually only
to bestow the fief upon the oldest brother. But, if the lord bestows the
fief upon all the brothers of his own personal goodwill and not according
to the law, they shall all share the right of ownership with one another.
If they do not do so, they will have no right to the fief. Feudal law
states that a fief held without right of ownership is no fief. Possessing
a fief without it having been bestowed upon the possessor by the lord and
the pledging of a fief to a person without the consent of the lord are in both
cases not legally binding.
58. He who wishes to deprive someone of a fief.

Whoever wishes to deprive his lord or his son—or someone who has a deed of undetermined reversion[^16] (unbenanntes Gedinge)—of receiving a fief cannot prejudice the chances of the one expecting to receive the fief, whether the one desirous of depriving gives the fief back to his lord or bestows it upon someone else in fee. If the first owner takes back the fief for his own profit and has it in his lawful possession until he lies on his death bed, the heirs to his fief shall legally have the fief. If he has no heirs, the fief reverts back to the lord free to be bestowed.

59. If the vassal goes blind.

A lord cannot refuse to enfeoff his vassal nor can he take his fief from him if he is blind or is lacking any of his limbs or if he becomes a leper or for whatever sickness he may get.

60. He who deeds[^17] a fief.

If a man makes up a deed of determined reversion (benanntes Gedinge)[^17] concerning his fief, and if said agreement is to the effect that the fief shall become the property of his wife, and if the heirs to the fief have come of age, neither the lord nor the children can break the agreement.

If, however, the children have not come of age, whether they are able to maintain the conditions of the agreement or not, the lord shall maintain them. That is his duty.

61. He who bestows a fief upon several brothers.

a. A lord can bestow a fief upon several brothers which they all

[^16]: See footnote 12 above (p. 9).

[^17]: This footnote has two references. The first word of Lassberg's text is this paragraph, p. 199, is "Eigent..." But his footnote 52: "Kir. C. § 36. u. a. assen: 'Dinget...'"
receive in common and to which they all have equal right of possession. If they want to dissolve their partnership in the estate, and if they divide it among themselves, they can indeed do so without the lord's permission. Whenever they split the fief up among themselves in this way, however—if one of them dies without heirs to his section—none of the surviving brothers has any right to the dead brother's portion. His portion reverts back to the lord free to be bestowed. If one of the brothers dies while the brothers have not divided up the fief, let the dead brother's son take the place of his father and hold the estate in common with all his father's brothers, as his father did. For the period that those who were enfeoffed together hold an estate in common, no one of them can—without the consent of the others—enter into any transaction concerning the fief or the improvements thereupon. But if one of them bestows any portion of the fief or abandons it, he cannot by himself break the bargain. If the other brothers wish the agreement to remain unchanged, he shall not change it.

b. If several vassals are enfeoffed in common with an estate and have not divided it up among themselves, and if their lord dies, none of them can individually give his allegiance to another lord unless they all do so as one man.

62. He who bestows fiefs improperly.

a. A lord shall make restitution of whatever he improperly bestows upon a vassal in fee in such a way that the vassal's right of possession is not assured. If the vassal has not been negligent during his period of

\[\text{Lassberg's text: "Swaz aber einer da von lihat oder lat..." See footnote 67 below (p. 74).}\]
eligibility, he shall take possession of the property. And if someone
takes it from him, he shall inform the lord of it within a year's time.
If he does not do so, let the lord make no restitution to him for the
property.

b. However, whenever the lord is legally compelled to bestow the
estate in fee which he has already improperly bestowed—if the fief is
thus legally taken out of the first vassal's hand—the lord shall not
make amends to this vassal for the property which he bestowed upon him.
But if a vassal has given the lord his own property so that the lord
would bestow the fief upon him—however the estate may legally pass out
of this vassal's hands—the lord shall make restitution to the vassal.
Either the lord shall give him another fief or his own possessions back.
The vassal has the choice, not the lord. If the lord has promised to
make restitution to the vassal, he is legally to do so.

63. Enfeoffed women and maidens.

Enfeoffed women and maidens shall not take part in military expedi-
tions in the service of the empire. If they have fiefs from the empire,
they are exempt from all such operations. For, according to established
law: whatever they have in fee from the empire, they shall give a tenth
of its area to the empire as a war tax. Also, all those of the clergy
who are not princes shall do likewise.

64. When children receive a fief during their father's lifetime.

If the lord bestows upon the children their father's estate in fee
while the father is still alive, and if the father alone has right of
possession of the estate until his death, the children shall come to the
lord after the father's death and ask him to remember the fact that he
bestowed the fief upon them along with their father and ask him to allow them to keep their fief. They shall make the request during their period of eligibility. This must be done because they did not have right of possession. If they had had possession, they would not have needed to make such a request. They are to make said request during their year's period of time. And if the lord does not acknowledge their right to the fief, they shall take for witnesses the lord's vassals to help them if the lord wishes to deny their request. The children did not help their own cause when they received the estate with their father, inasmuch as they did not have right of possession. They shall now therefore request their father's fief as if the lord had not previously bestowed it upon them with their father. It is much better for the child that he not receive the fief together with the father. However, in whatever case the father and the children have a common and equal right of possession to the estate; if they have received the estate in common, and if the father dies, they shall take their father's place and are not to receive their father's estate a second time. If the lord denies them the fief, they shall establish their right to it with two of the lord's vassals and are to do so within the period of a year. If he will not allow them to produce testimony, they have still legally maintained their right to the fief. And if the lord uses force against them, they shall make complaint to the overlord from whom their lord has the estate in fee. And if their lord owns the property himself, let complaint be made to the king if the lord is a prince. And if he is any other type of lord, let the complaint go to the chief magistrate of the provincial court. And if the king is out of the country, the vassal can legally lodge complaint with the chief magistrate of the court
in whose jurisdiction the fief lies. And if the prince or the lower ranking lord does not appear before the chief magistrate, the magistrate is nevertheless to defend the rights of the vassals to their estate. It often happens that a fief is situated in a different area of jurisdiction and that the man to whom it belongs has his home in the same area of jurisdiction or in another area. Whoever makes complaint concerning the estate, and wherever the home of the man may be against whom the complaint is made or who is lodging complaint, the chief magistrate shall make the settlement concerning the fief.

65. How the lord breaks his obligation of loyalty to the vassal.

If a vassal gives an estate back to his lord under the stipulation that the lord bestow the property upon another vassal, and if the lord desires to keep the property for himself, the lord has thereby broken his obligation of loyalty to the man. And if the lord does not help the vassal, he has not legally lost his estate. He shall request that the lord bestow it back upon him again. If the lord does not do so, let the vassal have ownership of his estate legally. If the lord therefore employs force against him, let the vassal make complaint as this book stipulates.

66. How heirs exchange fiefs.

a. If a vassal gives his estate back to his lord and asks him to bestow it upon his son, this is not termed an hereditary enfeoffment unless the vassal dies at this time. Whoever gives up his hereditary fief and then receives it a second time cannot call this an hereditary fief.

b. Nevertheless, if any man claims for himself any other right to an estate than he actually has to it, and if he is not able to establish by proof his eligibility for this additional right which he has allocated
himself in regard to the estate, he loses all the rights to the fief that he had previously. This is because of his illegal claims.

67. Of legal possession.

a. If another person disputes the claim of anyone having rightful possession of an estate, the vassal having legal possession shall be provided with witnesses. The claimant who lacks legal possession is not to be assigned witnesses.

b. If any man gives up such a fief which he has in fee from an underlord to a higher ranking lord, and if such a vassal then receives the estate in fee again, and if he is in possession of it for a year and a day without legal objections, said vassal has the right to the estate. The vassal shall not take such steps unless the underlord has denied him his right, for such actions would otherwise result in his losing the estate completely. And if the underlord comes before the overlord within a year's period of time and pleads his innocence—that he did know his vassal was proceeding in such a manner against him—the overlord shall take the other lord's oath concerning the matter and shall mete out justice to both the underlord and his vassal as this book states. But if the vassal, using two of the overlord's vassals as witnesses, is able to prove against the underlord according to feudal law as stated in this book that the vassal's right to his estate has been dissolved by the lower ranking lord, the underlord has lost and the vassal retains his fief. If the vassal loses his case by not being able to convict the lord of having acted unlawfully against him, the vassal loses not only his case but his estate.

68. Who can serve as a witness.

a. No one can have any man for a witness in cases concerning possession
of a fief except those who are enfeoffed by his lord. Any such vassal can be a witness concerning possession whose rights have not been limited because of some fault, as the Book of Territorial Law already has stated. No one shall have his right of possession taken away unless he loses it legally by the decision of a court.

b. Whoever has his estate taken from him by feudal law or who gives it up of his own free will lacks legally right of possession of the estate.

c. If a lord bestows an estate in fee which he had already bestowed upon another vassal, and if the vassal who already had the fief is present but makes no complaint because he fears for his life, this case should be handled as has been stated earlier.

69. How the vassal shall defend his rights to his fief.

But if a lord bestows a vassal’s estate in fee upon another when the vassal who first possessed it is not present, the rights of such a vassal are not harmed. When he hears that his fief has been bestowed elsewhere, he shall come to his lord and ask him if such be the truth. If the lord says yes, the vassal shall speak as follows: "I contest my estate once, twice, three times." And he shall take witnesses to help him who will hear the proceedings. Anyone can serve as witness who is not deprived of his rights. And then the old vassal retains his estate legally.

70. Of illegal coercion.

If the lord treacherously compels his vassal or uses actual force so that the vassal has to give up his estate to the lord, the rights of the vassal are not harmed if he makes complaint to the lord in the lord's presence concerning the injustice the lord has done him, as this book states. And if the vassal convicts the lord of the injustice which he has done said
vassal, the lord shall make amends to the magistrate as the Book of Territorial Law states. The lord shall restore to the vassal his loss two fold, and the vassal shall retain possession of his property in peace.

71. When the vassal has right of possession.

If a vassal gives up his fief to another vassal before their lord, the second vassal has the right of possession to the estate immediately after he receives it, which right had belonged to the first vassal.

72. How the rights of the vassal are more favorable than those of the lord.

a. The cause of the vassal may prevail against that of the lord in more cases than the lord's against that of the vassal.

b. If two men make equal claim of an estate and both maintain in the same manner that they have the right of possession, and if both offer witnesses with comparable testimonies, the lord shall bid them both appear at a legal hearing where the estate is located. And the lord shall accompany them there if he can. If he can't come, let him send one of his men along with the two who claim the estate. The lord or his representative shall question the inhabitants and legal residents of the area concerning the right of ownership. Whoever has the majority and the more noble witnesses on his side will retain the property and the right of possession. Either the lord or men who are his messengers shall hear this testimony. The lord shall ask his messengers who, by his grace, has retained right of possession. The lord shall legally bestow the estate in fee upon whichever person they name.
Right of possession.

Whenever the two opposing claimants cannot prove their right of possession with witnesses, both parties shall come before their lord. And both shall swear before him that they believe they are right. Afterwards, the lord shall bid them both to divide up the estate equally between themselves. If one of the two vassals desires, he can indeed request judgment by water. In such a case, the lord must give them permission for the contest. This is not to be done, however, except in cases when persons cannot be obtained as witnesses.

How the vassal shall prevail against the lord.

If the lord and his vassal both make equal claims of right of possession of an estate, and if both offer witnesses with comparable proof, the proof of the vassal shall take precedence over that of the lord. This is because the lord does not actually lose the estate if the vassal retains it in his possession, for the vassal still has it in fee from the lord. And if the lords were to win estates from the vassals in such cases, many a fief would be lost which their vassals would otherwise keep.

If the vassal is not present at the lord's legal proceedings.

If the lord tells his vassal that his fief has been confiscated and

Grimm, Rechtsalterthümer, II, 578 and 582-583, explains that there were two basic types of judgment by water: 1. mit heissen wasser...Wasser wurde in einem kessel zum sieden gebracht und ein ring oder stein hingeworfen, der mit blossen arm unverletzt herausgeholt werden musste, wenn der beweisende recht hatte... 2. mit kaltem wasser...Der angeschuldigte, ein seil um den leib gebunden, wurde ins wasser geworfen; schwamm er oben, so war er schuldig, ging er unten, unschuldig, und dann zog man ihn schnell heraus. Hierbei scheint ein altheidnischer volksglaube zu walten, dass das heilige element, die reine flut, keinen missethilter in sich aufnehme. Waitz, VIII, 84, explains that Pope Stephan forbade both judgment by fire and by water in the ninth century. But according to Waitz, the ban was not effective. This statement is borne out by the mention made of judgment by water in the Schwäbenschloss—four centuries after the pope had tried to do away with the practice.
claims that he has good reason for doing so in the testimony of his vassals, the vassal can refute the lord's proof in the following manner. He shall ask the lord to give him a legal hearing before his vassals, and the lord is to do so. And the vassal shall prove at this hearing with the lord's vassals that he has been present at all of the lord's legal proceedings which he has given him; or the vassal shall prove that he was never asked to come to a proceeding. Or the lord shall prove against the vassal with his messenger and with two others that he was summoned three times at the place where he peacefully lives, maintains his property, and exercises his official authority. The messenger and the other men shall be the lord's vassals. But if the vassal then, along with two others, wished to establish that he could not come to the legal hearings because of legal impediment, his proof prevails against the lord's proof. If the lord reproaches the man, saying he should have sent a messenger when he couldn't come himself to the proceedings; and if the vassal then offers proof by his own word and that of two others that he had sent a messenger to the meeting to establish his legal impediment; whether the messenger reached the meeting or not, the lord no longer has right of redress against the vassal. And if the messenger, along with two others, can prove that he was at the proceeding to which the vassal was summoned, the vassal is vindicated.

76. He who neglects to request his estate.

If the lord accuses his vassal of being negligent in regard to requesting his fief during the year's period of eligibility and of not requesting the

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50 It was common for a benefice (fief) to consist of both land and the rights, duties, and privileges of a public office. See footnote 18 above (p. 15). See also Ganshof, pp. 52-54.
estate in the proper manner, the vassal shall maintain his innocence in
the matter by swearing an oath. But if the lord, in the presence of his
vassals and using six men besides himself, can prove that the estate was
taken from the vassal after the year's period of eligibility had expired,
the vassal has legally lost the estate. More weight should be given to
the testimony of the vassal's witnesses against the lord than to the testi¬
mony of the lord's witnesses against the vassal. That is because the lord
does not actually lose the estate, but the vassal can lose everything.

77. **Illegal force.**

If the lord takes the vassal's estate from him illegally when the
vassal is not present and enfeoffs the plaintiff with the estate and
defends the plaintiff's right of possession, this is not binding against
the first vassal if he had the right of ownership himself. When he finds
out what has happened, he shall come before his lord and request a legal
hearing before the lord's vassals. There can only be one legal hearing
granted. And if the vassal appears and the plaintiff does not appear, the
vassal retains his fief. But if the plaintiff comes later and proves valid
commitment as has been spoken of before, the lord shall accept the proof.
If the vassal dies before the complaint is settled, and if he leaves heirs
to the fief, they have the same right that their father had if they are not
negligent in regard to their year's period of eligibility.

78. **How the year's period of eligibility can vary.**

a. The vassal shall take care of any litigation with the lord within
the year's period of eligibility. If he dies and leaves heirs to the fief,
and if someone has brought suit against the deceased concerning the estate,
the rights of the heir in regard to the plaintiff and the lord are just as
valid as were those of the father when he was alive.

b. The year's period of eligibility changes as often as the man's grievance is appealed to another lord. That is legal.

79. The son's responsibility to defend himself.

The son is not responsible to defend himself in the place of his father in matters of feudal law unless the son is in possession of a fief concerning which a suit was filed against the father when he was alive, or if a fine was levied against the father in regard to the estate when the father was living. Such a fine shall be paid unless he can legally defend himself against it.

80. Enfeoffment without right of possession.

If the vassal claims an estate from his lord as a fief, and if the vassal does not have said estate in his possession, the lord shall give him a legal hearing in the matter. During the period in which the vassal has not won the right to ownership of the fief from the lord and also during which the vassal does not have the fief in his possession, he cannot bestow any portion of it in fee nor do anything else with it that would be to his benefit. This shall be understood as follows: during the period that the lord and the vassal are exchanging words in the legal matter, the vassal cannot do anything with the estate. But if the lord exerts force upon the vassal in regard to the estate, and if the vassal can prove the use of force with honorable witnesses—even if they aren't the lord's vassals—the vassal can bestow the land in fee if he wishes.

81. One whose estate is taken from him with his knowledge.

If any vassal's estate is taken from him when he is present at the procedure, and if the vassal cannot legally contest the loss, and if a
hearing is granted him according to law at that time, the vassal has lost the estate forever.

82. What the lord can convict his vassal of.

The lord can convict his vassal on only three grounds. The first ground: If a vassal denies or wishes to retract whatever he promises or does or swears to in matters of feudal law, the lord can convict him of wrongdoing. The second: If the vassal is summoned to appear concerning feudal law as has been spoken of earlier, and if he is summoned to the service of the empire by court order, these two summonses are legal. The lord can convict a vassal of breach of these summonses. The third ground is very similar and occurs when the lord summons the vassal to appear in the lord's own court concerning a matter of feudal law, and when the lord and the vassal are confronting one another when he summons the vassal to appear by court judgment rendered by the lord's vassals. On these three grounds, the lord can convict his vassal using the testimony of the lord himself and two of his men who saw and heard the proceedings. With that, the vassal is found guilty.

83. Of services to the empire.

If the vassal has two or more lords, and if all of them summon him by judicial order to render services to the empire, the vassal shall travel with the lord who first summoned him. To all the other lords he shall give contributions. The vassal shall contribute as a war tax a tenth of whatever revenue the fief yields in a year's period. The lords must receive this as an acceptable reply. If the vassal has property of the empire in fee from only one lord, he must travel with that lord or relinquish the property to the lord. No lord can summon his vassal to the
service of the empire unless the lord has the fief which is bestowed upon his vassal in fee from the empire. Neither can the lord summon his vassal to the empire's service unless the lord has a judicial summons to that effect.

64. The lord shall have at least seven vassals.

Whenever the lord is of high enough rank to have the right of bestowing land in fee, and whenever he has enough vassals who are able to render legal judgment, he can well hold a legal proceeding for his vassals concerning matters of feudal law. The lord shall have at least seven vassals.

65. He who wishes to lower his vassal's position.

a. If a lord yields the estate of his vassal to his own lord without the vassal's consent, and if the new lord is of lower rank than the vassal's lord, the vassal can refuse to accept his fief from the new lord.

When a lord hands over a vassal's property to another lord, he shall inform his vassal of the transfer within a year's period of time. The vassal's year's period of eligibility begins when his old lord informs him in the presence of the lord's vassals that the vassal is to request the fief which

51 Eichhorn, II, 448-449 (Anmerkung), explains concerning the relationship of lord and vassals at a court proceeding: "Die Gerichtsbarkeit des Lehensherren in Lehenssachen mit Zuziehung seiner Knecht als Schöffen war nach der constitution Conrads II. von 1037 zu dieser Zeit...ein völlig ausgebildetes Rechtsinstitut... Alle Lehenssachen [werden] von dem Lehensherrn und seinen Knechten als Schöffen entschieden..." Speaking of section 64 above, where the rank of the lord is mentioned in connection with his eligibility to hold a court of feudal law, Eichhorn believes the reference to rank here "...bezieht sich wohl eher auf den Rang in Heerschilden, von welchem es abhängig war, ob die Lehen als rechte Lehen angesehen werden mochten, als auf den Besitz der Gerichtsbarkeit überhaupt. Die öffentliche Gewalt, die zur Ausübung der Lehengerichtsbarkeit erforderlich war, lag vielmehr schon in den uraltischen Ermittlungsrechten, die freilich jeder Herr hatte, 'der also hoch war, dass er Lehenrechte haben mochte,' oder entsprang wenigstens aus der verliehenen Gerichtsbarkeit, die in dieser Zeit einer Person, die in fünften Heerschild stand, schwerlich mehr fehlte,"
he had from this lord from the new lord. Or, if the new lord makes known to the vassal that he has obtained the estate which the vassal is now to have from him in fee, or if someone else who is designated to do so informs the vassal, the lord from whom the vassal previously had the fief shall send one of his men to tell the vassal he should request the fief within a year's time of the lord whom his old lord names to him—if the new lord is of higher rank than that of the vassal. If not, the vassal can well refuse to accept a fief from the new lord.

b. No one shall request his fief of a lord higher than his own unless he hears from the lower lord that this is his will or that the lord has yielded the fief to the overlord or unless the vassal has been negligent in requesting the fief during his year's period of eligibility so that the fief has been taken from him in the presence of his lord by the decision of the lord's vassals. In such cases, the vassal has the right to request his fief of the overlord.

c. And if a vassal commits such a crime that he is deprived of his possessions and his estate before the king or the chief magistrate of the provincial court, his possessions shall go to his heirs. If he has no heirs, the possessions go to his church. If he belongs to no congregation and if he has ties to some lord, the belongings go legally to the lord. If he is free born, the empire falls heir to his possessions in the event that he has no heirs. And if he does leave an heir, the belongings go to this lord.

d. And if the vassal does not want to believe that the estate has been taken from him; the lord, with the magistrate and two others, shall prove that the vassal has been deprived of the fief and that he no longer
has any right to it. But if the vassal has a son, the lord shall bestow the fief upon him. No son shall pay for the crimes of his father when he himself is guiltless, for that would be contrary to God’s will.

86. What the vassal shall make complaint of to the overlord.

If a lord takes his vassal’s estate from him or refuses to bestow it upon him in fee or refuses to give him justice in some matter of feudal law or breaks his part of the oath of fealty, the vassal shall make complaint to the overlord before the overlord’s vassals. And, by court decision, the overlord himself or with his messenger—so that two of the lower ranking lord’s vassals hear it—shall order the lower lord to give his vassal justice. The lower lord shall be informed that the estate is to be in the vassal’s possession according to law. If the vassal’s lord does not act accordingly, the overlord shall bestow the fief and shall be the defender of the vassal in all aspects in which he legally should defend the vassal. And if the vassal’s lord denies to him that he is guilty of the actions of which he is accused, the vassal shall prove him guilty using two men who are the lord’s vassals as witnesses in addition to himself. Four illegal acts are implied here. If the vassal convicts the lord of just one of them, the lord has lost his rights in relation to the overlord and his vassal as if he were guilty of all four acts.

87. How the lord can lose his right in relation to the vassal. 52

If a lord bestows an estate upon two men or more than two men wherever

52 This heading does not seem to be connected with the passage following it. Lassberg’s footnote 68, p. 197, states: "Diese Rubr. ist richtiger im Ein. C. 103; ‘von zweyer maße gedinge,’ Zähr. C. hat hier keine Rubr...."
a fief may revert to him to be bestowed, the vassal who was enfeoffed first shall await the first fief which reverts to the lord free to be bestowed, and the two or more men are to share this fief. If the lord has designated them an income of a phunt or more, and if a fief reverts to be bestowed again which does not yield an income as large as what was promised, the aspirant vassals shall wait until more property reverts to the lord.

88. When the vassal’s year of eligibility begins.

a. If the lord is out of the country during the vassal’s period of eligibility, and if the vassal is to receive his estate, this does not adversely affect the vassal’s rights. But, when the lord returns, and when the vassal receives word of his return, the vassal’s period of eligibility begins.

b. If the vassal seeks out the lord during his period of eligibility at the lord’s residence or at legal proceedings or at an assembly when the lord has returned, the vassal shall request his fief from the lord; and the lord shall legally bestow it upon him. Also, if the vassal knows that the lord is dead, and if he leaves the country during the year’s period of eligibility, he does not lengthen his year’s period by taking such a trip.

c. And if it happens that the vassal is not in the country when his lord dies, his year’s period does not begin with the death of the lord. His year’s period begins when the vassal returns to the country and hears that his lord is dead.

53. In such a case, the lord would have entered into a contract or deed of undetermined reversion (ubenefinitus sedimento) with the men. See footnote 12 above (p. 9).
d. If the lord is in hiding or has locked himself up in a fortress so that the vassal consequently cannot come before him, and if the vassal can give proof of the situation by using two witnesses who are neither his nor the lord's vassals, the vassal's rights shall not be adversely affected by this circumstance. If the vassal attempts to see the lord three times a year, he has properly tried to request his fief as is legal.

89. Of the year's period of eligibility.

a. If a vassal who has crossed the sea or who is on this side of the ocean or elsewhere within the country dies, the year's period of eligibility to receive the fief begins for his children when they hear that their father is dead.

b. Also, if a lord who is not in the country dies, and if his vassals do not know of his death, the year's period of eligibility for the vassals in which they can receive their estates in fee from the heir to the lord's property begins when the vassals first hear of his death.

c. In the legal year's period of eligibility, a vassal can legally be free of obligation concerning all fines to which he has been sentenced in regard to the lord with whom the period of eligibility is in effect, unless the vassal himself does not so desire.

90. Who must produce pledges of good faith in feudal law cases.

If a vassal claims a fief which the lord is unwilling to grant him, and if the vassal does not have the right of possession, he must produce pledges of security for the lord as a restitution of fines which he already owes the lord or which he might incur. This is not legal except in cases of feudal law. But if the vassal has the right of possession to
the estate, the lord shall prove that he is lying as has been previously mentioned. If the vassal has another estate in fee from the lord besides the one he makes claim to, and if he has the right of possession of the other estate, the lord shall have possession of the vassal's old estate.

91. He who bestows an estate which has already been bestowed.

If a lord bestows his vassal's estate in fee upon another vassal, sealing the agreement with the handclasp and kiss, and if the lord defends the other vassal's right to the estate; the first vassal shall not be deprived of his right of ownership because of the lord's actions unless the lord can prove that the vassal's fief and right of possession thereto have been confiscated by court decision. This must be legally done in the presence of the lord's vassals. That is the law. For the lord cannot bestow a fief upon anyone and then act as surety for the bestowal unless the lord first has the right of possession of said estate.

92. He who lowers his feudal position.

Whenever the lord lowers his feudal ranking by becoming another man's vassal, he loses in so doing all the estates which his vassals have which are not his personal property. And the vassals are to receive their estates from the overlord, or their lord shall refer them to a man of rank equal to his own before he lowered his position; and if he refers them to a lower ranking lord, they can legally receive their fiefs from the overlord. The lord has the same right if such a situation happens to one of his vassals. If a vassal forfeits his fief because he becomes the vassal

54. Eichhorn, II, 46-48, explains: "Die Herrschaft...welche die Vassallität begründete, erfolgte in alter Weise regelmäßig durch Handreichung...Mitunter wird eines Kusses gedacht, den der Herr dem Mann ertheilte..."
of someone of lower rank, the lord can bestow this fief upon him again if he desires. Nevertheless, a man's feudal ranking is lowered if he becomes the vassal of a man who is of equal rank to him, for he falls from his high position in so doing and becomes unworthy of it.

93. He who bestows fiefs under the conditions of a promise.\textsuperscript{55}

a. If property is bestowed upon a vassal with a promise\textsuperscript{55} that the lord will redeem the property by giving the vassal another estate, and if they have contracted to do so on a certain day, the lord can redeem the property if he desires; or he can properly abandon the land.\textsuperscript{56} For there is no law concerning this.

b. If the vassal dies without any heirs to the property bestowed upon him, the property reverts back to the lord. No\textsuperscript{57} wrong doing is involved. The lord is not obligated to give a portion of the property to those of the vassal's family who survive him. If the lord desires, he can carry out his agreement and redeem the estate for the sake of those surviving the vassal. But if he does not so desire, he can well abandon the fief without breaking faith. This is because the bestowal of a fief should not be complicated and altered by other nonessential and nontraditional stipulations. The transaction must be traditional bestowal and nothing else. And if the lord who has bestowed the property with such an

\textsuperscript{55}(This footnote has two references). Lassberg's footnote 71, p. 198, explains: "Lassb. C, hat fehlerhaft: 'uf sin gut.' Zlr. und Ebn. Cc. haben richtiger: triuwe."

\textsuperscript{56}See footnote 67.

\textsuperscript{57}Lassberg's footnote 72, p. 198, states: "Hier endet der Lassb. C, und beginnt die Ergänzung aus dem Zlr. C, § 89. bis Ende."
altered agreement dies, his heirs may bestow the property or abandon it—whatever they desire. And if it is a prince of the clergy who bestows property, as has been spoken of earlier, he and all his posterity have this right, as has been explained before.

94. What the lord shall prove using two witnesses.

a. A lord can convict his vassal of most offenses concerning pledges or feudal law cases by using two of the lord's men as witnesses. In whatever case, however, the vassal is liable to lose his fief as part of the punishment, the lord must have six of his own men in addition to himself as witnesses. And, if the lord were to convict his vassal as easily as the vassal can convict the lord, many a fief would be lost.

b. The vassal is not obligated to carry out his vows to his lord—nor are the children to carry out the vows of their father—in cases in which they give up their property or lose it. A lord may allot property to a man without an oath of fealty on the man's part, but it depends on the good faith of the lord whether the agreement is adhered to or not. But if the man can prove that the transaction occurred in court, he wins in addition a pledge which can well be redeemed as the Book of Territorial Law stated earlier.

95. Fiefs inherited by the masculine progeny.

a. Concerning fiefs the lord bestows which can be inherited by the vassal's male descendants: it depends on the vassal's good faith whether he abandons the fief or not, unless the lord can establish by witnesses that the vassal has promised according to feudal law to accept the fief. The witnesses shall be the lord's own vassals.
b. Whoever declares himself to have a fief and a pledge of surety at the same time in property bestowed in fee makes a false declaration. For fiefs cannot be pledges of surety and pledges of surety cannot be fiefs. If property is put in pledge to aid a situation, it must happen with the approval of the lord. Pledges can be duly proved by a vassal with witnesses who are not vassals of the lord. But if enfeoffments occur with the lord’s permission\(^{58}\) and in the presence of his vassals, this must be proved using the lord’s vassals as witnesses.

c. When the lord bestows a fief inheritable by the vassal’s progeny—and the lord’s men are not present—this can cause the vassal problems if the lord decides to deny that he enfeoffed the vassal. For the vassal must always establish his right to the fief in a suit against his lord using the lord’s vassals as witnesses. If people other than the lord’s vassals are present when the vassal receives his fief, I give you the right for all these people to be considered not of lesser importance as far as this matter is concerned; and they shall have the right to be your witnesses in a case of feudal law if you should be in trouble. This is not legal except as we determine for you. For example, if the lord does not have seven vassals who have fiefs from him, the vassal can use such people as witnesses.

\(^{58}\) At this point Lassberg’s text, p. 199, reads, "...daz sol geschehen..." But his footnote 73: "'daz sol geschehen' hat nach dem Faesch. C. fol. 103. a. ganz wegzubleiben, was auch den Satz verständlicher macht. Das Zürcher Mschrift. hat zwar in diesen Worten ein Versetzungszeichen, welches 'sol daz geschehen' geben würde, womit aber nicht viel verbessert ist.
96. Of fiefs pledged in surety.

A fief pledged in surety is neither a fief nor a pledge. Being enfeoffed without right of ownership does not give a vassal a valid fief. Having right of ownership without being enfeoffed does not yield a legal fief. Whoever has his right of ownership taken from him by force loses neither right of ownership nor the fief itself. Also, whoever has his fief taken from his by force loses neither the fief nor his right of ownership.

97. True fiefs.

Whatever the lord bestows as a fief with enfeoffment shall be considered a true fief. And inherited fiefs, fortress-fiefs, enfeoffments by contract made relating to a living man's estate (benanntes Gedinge) and contracts concerning an estate that the lord bestows upon his vassal in fee as soon as any estate reverts back to him (unbenanntes Gedinge)—all these transactions are considered true enfeoffments.

98. Fiefs for which the enfeoffed must perform military service.

Fiefs for which the vassal is obligated to perform military service are no longer valid when the lord receives back the vassal's shield. If the vassal gives his shield back to his lord, the lord cannot forbid his doing so. He must receive it. Then, however, the vassal's tenure over his fief is ended.

99. Treasury enfeoffment ("Kameralen").

Treasury enfeoffment is not true enfeoffment. It terminates when the

lord or the vassal so desires. Treasury enfeoffment occurs as follows:

When a lord says to his vassal, "I bestow upon you in fee out of my treasury a mark or more;" the vassal has no right of possession in such agreements. It is not a true enfeoffment unless the vassal has right of possession.

100. **Conditions under which a vassal receives an estate together with a lady.**

a. A vassal can receive an estate together with a lady; he shall represent her in legal proceedings whenever her interests in the estate so warrant. And if her lord dies, she shall continue to possess the fief as it passes to another lord. The male vassal shall have right of possession in preference to the lady, and he can well let her make legal use of the estate for her own profit. When the lady dies, the vassal's fief tenure terminates unless he received the fief with the lady jointly and unless he has made use of the estate for his profit along with the lady. If such is the case, he has the estate as a legal fief when the lady dies. If both the man and the lady have an enfeoffment by contract in regard to the fief, he still has legal right to it when the lady dies.

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wären eine Bezahlung, ein Sold. Verweigerte der Vassal den Dienst oder verletzte er die Treue, so wurde ihm einfach die Rente gesperrt. Der Herr befand sich in einer viel besseren Lage als bei Überlassung eines Sachguts, wobei er gleichsam vorleisten musste und der Vassal eine Art von Pfand in die Hand bekann." Bruce D. Lyon, *From Fief to Indenture* (Cambridge, Mass., 1957) pp. 102-103: "In Germany almost all the earliest fiefs were of money...It was common...in Germany for concessions to stipulate the camera as the source of payment; and this camera...was not that of a large feudal estate but simply the treasury of an abbey, bishop, or ordinary feudal lord."

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60 mark, mare, march (pl. marken; Matthias Lexer, *Mittelhochdeutsches Handwörterbuch* (Leipzig, 1872-1878), i, col. 2616, defines mark: "...Mark, halbes pründ (silbers od. goldes)..." See also footnote 20.
No one can inherit the fief from the lady, for she lacks a herschilt.

b. And if the lady gives her estate back to the lord, or if it is confiscated from her by law before her lord, the man who also had legally received it with her has no more claim to it if she alone had right of possession. If he gives up his right of possession, or if he enters into some bargain or trade, this does not harm the position of the lady, for she has the right of possession. The man cannot bestow land from the estate in fee without the consent of the lady, unless he is compelled to do so according to feudal law. She shall bestow the fiefs with him. With the consent of the lady, he can well grant enfeoffments by contract concerning bestowed fiefs. Whatever estate reverts back to the lady is her property and not that of the man who received the fief with her.

101. He who grants enfeoffment by contract to a man and his wife.

a. If a lord grants a man and wife together an enfeoffment by contract in regard to an estate, the right of possession of the fief goes to the man and his wife and the fief is legally theirs when the vassal who has had right of possession of the estate dies—if he dies without heirs to the estate.

b. And if the lord denies having granted them enfeoffment by contract, the man shall give proof of it using two of the lord's vassals who saw and heard the bestowal as witnesses to the fact that the lord granted him enfeoffment by contract. In the same manner, a man of the clergy and a lady shall establish proof.
102. If a vassal dies without heirs to his fief.

Whenever a vassal who does not have right of possession of an estate dies, the lord shall rightfully take possession of the estate if he does not think he has bestowed it elsewhere in fee, and if he is doing no injustice by taking possession. And if someone comes to him and asserts that it is his fief or that an enfeoffment by contract in regard to this fief has been granted him, the lord shall bestow the fief upon him; or, he shall otherwise do justice to the man in the matter. The man shall make his request within the year's period of eligibility. When the vassal requests his estate of the lord within his year's period of eligibility, he cannot request his estate any more until a year has passed from the day of his previous request. If the lord offers to give him justice, and if the vassal does not wish to accept the estate within a year's time, he has lost his estate if the lord can prove his refusal legally by using seven of his vassals for witnesses.

103. If the lord dies.

If the lord dies or relinquishes his vassal's estate to his overlord during the year's period of eligibility when the vassal was to receive it in fee, let the vassal's right to the fief accompany the fief to the new lord when the old lord dies and the vassal is supposed to remind the new lord of his enfeoffment. And let the vassal take possession of the property not as an estate, the bestowal of which is promised him, but as a legal fief. When the vassal is lawfully sent to the overlord, he shall request this lord with the help of witnesses, to defend his rights to the estate. And, if the underlord illegally denies the vassal's rights, the vassal has legally
won his estate. This is because the underlord has been acting contrary to law in regard to his vassal.

104. How one takes charge for a child.

a. If an estate is bestowed upon a child in fee, said child cannot bestow a fief upon another child during the time he has not come of age. During the period in which a vassal has not yet received his estate, he can grant no fiefs from it. If anyone comes before him to ask for a fief illegally, he shall make complaint of it as has been mentioned before.

b. Every lord shall take charge of a fief for a child who has not yet come of age unless the lord's intervention is precluded by the fact that the child has a guardian who is a vassal of the lord. Such a guardian can handle the child's affairs as has been mentioned before.

105. Of deceitful bestowal of property to the disadvantage of the creditor ("fluhtsal").

Whoever bestows property so that the receiver is detrimentally deceived must make atonement to the lord for his act unless he can legally absolve himself of guilt. And the lord shall order the vassal to break off the enfeoffment and make restitution again within six weeks. If the vassal does not do so, the estate is legally confiscated from him. Fluhtsal occurs whenever a vassal fears for his life or is sick or wishes to leave the country and bestows property in fee in such a way that, if he lives or if he returns, he expects to have his property back again. The practice is also called fraud (gevaerde) as well as fluhtsal. Fraud also occurs if a

61 At this point Lassberg's text, p. 201, repeats: "und heizet och gevaerd..." His footnote 75 explains: "Offenbare Wiederholungen aus Versehen des Schreibers. Der Faesch. C. fol. 103, b. hat nur: 'ez ist auch geverde! Ich ein man! etc.'"
vassal goes to his lord and bids him to let him make an agreement concerning the vassal's estate with one of his friends or if the vassal himself assigns the estate to one of his friends for more profit or less and the vassal does not have any heirs to the fief. The lord forbids the vassal to make such an agreement in both cases. The vassal goes back home and bestows the property in fee upon one of his friends and requests the friend to assign the property to his wife or one of his friends. This is not legal, for when the lord forbids it to him, the vassal cannot bestow his fief in such a manner without the lord's consent that this is the proper thing to do. Therefore the vassal cannot bestow the property in fee upon the man to whom he was going to give the profit and the right of possession of the fief. The vassal cannot do anything similar to what he has attempted with the fief without the lord's consent, for all such actions are termed fraud. Whoever bestows property in fee in such a manner is enfeoffing contrary to God's will and the law and his own fealty. For when his lord bestows a fief upon him, he swears fealty and truthfulness to the lord. With such an act as that above, the vassal breaks this oath. The vassal is not bestowing his own property in fee but that of his lord or of another who would have possession of the estate after him.

106. "Fluhtsal." 62

a. If a vassal bestows property in such a deceitful manner upon his own vassals or those of another lord when he wishes to leave the country or when he is sick in bed, 63 and if the man does not return or if he dies in

62 See heading of section 105.

63 Lasser, II, col. 908, states that the word siiich (used here in Lassberg's text, has the implication of leprosy.
his sickbed, the bestowed property reverts to the lord. That is because
the vassal has bestowed the lord's property deceitfully. And if the vassal
returns home or is healed of his sickness, the lord shall legally take
possession of the estate. If the vassal denies having acted deceitfully,
he shall absolve himself of guilt by taking an oath. Let the lord prove
his case with seven of his own vassals who know it to be true that the
vassal has done what he is accused of. If the lord does not succeed in
proving his case, and if he nevertheless can prove that those to whom the
vassal deceitfully assigned the estate went to whore it was located and
took possession of it without asking their lord's permission, the lord has
legally won back his estate. But if the lord wants to legally retain his
estate, he shall go before his vassals, establish his proof, and win a
court decision directed at those to whom the estate was bestowed in such a
deceitful manner. And if they have other property in fee from the lord,
they have also legally lost this property if they knew that the deceitfully
bestowed estate was a fief belonging to the lord. All enfeoffment without
right of possession entails no right of succession. And any right of
possession without enfeoffment is illegal. A vassal must have both. Who¬
ever does not have both does not have a fief.

b. If a vassal makes claim of the right of possession of the vassal
to whom an estate has been given in fee, the plaintiff can well prove his
right of possession case against his lord using inhabitants of the surround¬
ing area who are not vassals of his lord. Using such people as these, who
are just as trustworthy as the one against whom they are testifying, the
plaintiff shall present his case. Any other way is not legal.
107. Of illegal possession.

If any man has illegal possession of an estate without enfeoffment, and if he wishes to retain possession by claiming that the estate is a rental property, he can prove that the lord enfeoffed him with the property for a ground-rent by using the testimony of any vassal whose character is still unmaligned. Such men must help the vassal by establishing that the lord bestowed the estate upon him in return for a ground-rent. Each witness must individually testify that the rent has formerly been paid from the estate. And if the vassal cannot establish such proof, let him prove that he himself paid a tribute from the estate. And if he cannot do so, proof of the first point will suffice.

108. "Zinslehen." 61

a. No man can legally bestow zinslehen upon a man of equal position. Indeed, he can bestow it upon one of lesser rank, but such a bestowal is

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61 Richhorn, II, 678-680, defines the term zinslehen and partially explains the circumstances under which such a fief was held: "Erblich waren die nach Hofrecht besessenen Besitzungen regelmässig; das Erbrecht war jedoch sehr beschrankt, weil der Hof untheilbar war, und sehr oft dem Gutscherrn das Recht zustand, unter mehreren Descendenten den Anerben zu wählen; häufig hatte jener auch eine Prüfung vom Anerben zu fordern, die durch den Namen Lehware am sprechendsten bezeichnet wird. Ein Gut dieser Art hiess ein Erben-Zingsgut, oder wenn die Verleihung ausdrücklich nach Lehenrecht geschah, ein Zinslehen (feudum rusticum). Der Bauer hatte daran wenigstens in gewisser Beziehung die Rechte der Gewehre, die man aber nicht mit dem vollständigen Recht der Gewehre und noch weniger mit den echten Eigenthum, d.h. mit den in vollen, freien Eigenthum liegenden Gerechtsamen verwechseln darf, von welchen manche in den Händen des Gutschern blieben. Diese, mit den gutsherrlichen Gerechtsamen in Beziehung auf Dienste, Zinsen, dem Rechte des Rückfalls und der Befugniss, den Zinsmann wegen nicht bezahlten Zinses zu pfänden und von Gut zu vertreiben, machten die Gutsherrschaft aus. Verlussem darf auch der Erbzinsemann in der Regel nicht ohne Einwilligung des Gutscherrn, weil sonst dessen Rechte gefährdet werden konnten; die Einwilligung war daher eine nothwendige wo diese gesichert waren, weil der Erwerber es von ihm wieder in Erbzinsem nehme; die im Eigenthum liegenden Nutzungsrechte waren ihm aber gestattet."
not true enfeoffment. Rights of mill, coinage, customs, and all property that is bestowed in fee for the sake of rent or tribute cannot be received by the descendents of those who received the property previously. No rental property is to be received by anyone except the one upon whom it was originally bestowed. The descendents shall pay their tribute on the day that is designated to them and they have thereby succeeded in maintaining possession of their estates.

b. Whoever desires to legally have a rental property must clear the land and work it himself or have his farm-hands do so, for which he shall pay them with food and wage.

109. Bestowal in fee of the office to administer justice.65

a. Neither clergymen nor women can have the office of administrator of justice bestowed upon them, unless the clergymen are also princes as the Book of Territorial Law has stated earlier. A monk cannot legally be a judge. The Book of Territorial Law has stated before who can legally be a judge.

b. If the lord from whom the office of judge has been received dies, or if he gives the power over this office back to his own lord from whom he received the office, the man to whom the judgeship had been assigned shall continue to exercise his office for a period of one year following the change. There is nothing illegal in so doing. But, if the lord who

65 See footnote 18.

66 At this point, Lassberg's text (p. 203) reads "dem er daz geriht empfohlet hat..." But his footnote 78 explains, "Faesch. C: 'Von dem er daz gerichte empfangen hat.'"
now has power over the office bestows it upon another, the former judge shall step down from office and shall yield the position to the man to whom it is being assigned. That is legal.

110. Of enfeoffment of officials.

a. No one who is an official of the lord can take the right of possession of a fief from his lord simply by granting himself the property in fee along with the right of possession. This is because the official cares for and has a measure of authority over all the lord's properties. Therefore he could grant himself whatever estate he desired. And if the lord bestows property upon him in fee and allots it to him, he obtains the estate just like any other vassal if he has right of possession of it.

But if the lord denies him the estate, the right of possession to it does not help him. He must prove his right to the fief as if he were lacking in right of possession. The proof shall be established using those who saw and heard the lord bestow the estate upon him in fee. If his lord dies while he is an official in service of the lord, and if the lord leaves heirs to his property, they can bestow the official's fief upon him if they desire. But if the official can prove his right to his fief as mentioned before, he has won possession of his fief.

b. If the lord dies without leaving heirs to his property, and if the official was still in his service, he cannot accompany his fief as it falls to another lord. This lord can bestow the fief upon him or abandon it.

67 Lassberg's text for this sentence, p. 203: "Er lihet im daz guot oder er lat." Heubner, p. 339, explains: "The lord...might 'das Gut lassen' ('abandon' the land), i.e. eliminate himself by conveying all his rights to another..."
The choice is up to the lord. If the official also dies and leaves heirs to his fief, they must prove their right to the fief as if their father had not had right of possession to it.

III. Of enfeoffment of "Ministerialen" according to "hovereht."  

a. Whenever a man is enfeoffed with an estate without an accompanying vow of feudal obligation, this cannot be termed true enfeoffment. All the property that the lord bestows upon his Ministerial according to hovereht shall be tended by the man aside from his duties and rights at court and concerning feudal law. According to hovereht, every official is born with the rank of steward, marshall, treasurer, or cupbearer.  


lord holds court-day or a festival, these four officials shall fulfill the duties of their offices according to law as is the custom of the court. Because of the various customs which bishops and abbots and abesses who are of princely rank and the other princes adhere to at their courts, we can speak no more of such duties except to say that the proper customs should be enforced. But a true fief can only be received when bestowal is accompanied by a vow of feudal obligation.

b. The vassal must swear fealty upon the holy relics.70 Whenever a man's lord refuses to provide him with such relics, the man must procure the relics himself.

112. Where the lord shall have his feudal court.

a. For every offense his vassals commit, the lord shall hold a legal court proceeding for them according to feudal law. If the offense is punishable by a monetary fine, the proceeding shall be held before noon. On court days, the lord can well convene his court in all places except in churches and cemeteries.

Whenever the lord wishes to begin his court proceedings, he shall ask one of his vassals—so that two or more of his men hear the conversation—if he can hold court for one or more of his vassals in regard to the offense which the lord desires the vassal or vassals to answer for. The reply to his question is given him. Then the lord shall grant the accused man a court proceeding with a judgment to be made by the lord's vassals. The proceeding shall take place in the period immediately following fifteen days from the date the lord grants the man said proceeding. The court

70 Waithz, VI, 50-51: "Der Eid wird mit aufgerichteten Händen oder auf Reliquien geleistet..."
proceeding shall occur in a predetermined village or on a predetermined piece of property. The location shall belong to the lord himself or shall be one of his fiefs. If the accused man asks the lord where the property or village to which he has been summoned for the proceeding lies, the lord shall show him. And if the lord gives him the wrong directions, this shall not be detrimental to the man's position, for often one place is called by the same name as another, and one village is frequently named the same as another village. The lord shall designate his court proceedings to be held in a place which his vassals can reach honorably and without fear for their lives or honor or property; or he shall accompany them to the location of the hearing himself. And if the vassal honestly cannot come to that place, he shall send his messenger there. The messenger shall give proof of the vassal's legal impediment. The messenger can be any man whose rights have not been forfeited because of breach of the law. In such a case of valid commitment, the lord shall allot the vassal another date for a court proceeding.

b. If the vassal has property of the empire in fee from the lord, the lord shall give him his court proceeding upon property of the empire or beside the imperial highway. And if the vassal has the lord's own property in fee, the lord shall hold the court on his own property. But if the vassal has land in fee from the lord which is the same land that the lord has in fee from his overlord and which is the personal property of the overlord, the lord can well hold the court upon the property that he has in fee from his overlord if the property is constituted so that a court proceeding can be held upon it. In such a case, the lord should have no qualms about holding the man's trial. The lord can equally well hold the
proceeding upon any property that is the lord's legal fief. The lord has the choice of where he holds his court as has been spoken of previously.

c. Whenever the lord first decides to hold a court proceeding for his vassal, he shall bid those of his men who are present by court order to appear at the feudal law proceeding. Those who are not present shall be summoned to appear by one of the lord's vassals. The messenger shall have in fee from the lord at least a half huobe or land valued at a phunt in coin of the realm. And the lord shall send a messenger, one of his vassals with a ranking of the level of the seventh herschilt; this vassal must have at least a half huobe in fee from him. And if he does not have a vassal whose rank is of the seventh herschilt, let him seek one among those of the sixth herschilt. And let him send from among them to his vassals a messenger who has in fee from him at least a half huobe. If any messenger illegally refuses to do his job, let the lord summon him before his vassals; and let the messenger's fief be legally confiscated because of his refusal if the lord can convict him using six vassals besides himself who heard the lord bid him to be his messenger. But if legal impediment detained him from doing his duty, he shall retain his property as has been spoken of before; and he is exempt from this duty during the period that he is legally detained.

113. At what time the lord shall appear at his feudal law court proceedings.

The lord does not hold his vassal to be liable of punishment if he appears at the lord's enfeoffment proceedings before noon at which time the hearing gets under way. That is when the judgments are rendered.
A vassal who has been summoned to the proceeding three times is liable to produce a pledge for his lord as follows: if the vassal does not come to the court—unless he be detained by legal impediment—the lord shall take a pledge from the property that the vassal has in fee from him.

11h. Of tribute money.

a. Whoever has tribute money in fee from a lord shall not make himself liable to the lord for a pledge of any more than an amount equal to the amount of tribute. The lord shall take as his pledge the estate itself if he does not find property upon it sufficient to meet the amount due in pledge, however valuable the estate may be. The lord shall wait for payment of the pledge a year and a day. And if the vassal does not

begriffen wird..." at this point. Zoepfl, III, 197-198, explains: "Das 'sich anerfinden, [' oder 'sich unterwinden' ist nichts anderes als die Ergreifung der Sache von Seiten des Antworten, wo er dieselbe findet. Dieses Eedufniss, die entwerte Sache zu ergreifen, um sie vor Gericht zu bringen, wurde das Anfangsrecht genannt."

72 It may seem strange for judgments to be rendered at the beginning of the trial. But, according to Zoepfl, III, 355-357: "Die Einleitung zur Urtheilsfélzung, ja sogar in vielen Fällen des prozessualischen Verfahrens überhaupt, geschah durch das 'Urtheil fragen.' Es war dies regelmässig der Vertrag der reinen Rechtsfrage, von welcher die Begründung der Klage und somit die Entscheidung des Prozesses abhing, durch den Klager, meistens ohne Nennung des Beklagten und ohne Geschichtserzählung, d.h. mit vorläufiger Verschweigung des concreten Falls, verbunden mit der Bitte an den Richter, diese Rechtsfrage zur gerichtlichen Entscheidung zu bringen. Hierauf stellte der vorsitzende Richter die Frage an das Gericht, was eben so, wie der Antrag des Klagers auf diese Fragestellung, und in den Spiegeln sogar vorzugsweise 'urtheil fragen'...heisst. Der Richter richtete seine Frage zunächst an eine Person aus den urtheilsberechtigten Anwesenden, und zwar an einigen Gerichten, insbesondere am kaiserlichen Hofgerichte, nach seinen Gutdünken; an anderen Gerichten aber zuerst an seinen Schulteissen oder Fronboten. Der um Urtheil Befragte sprach regelmässig sofort seine rechtliche Meinung aus; dies hiess das Urtheil finden."

73 See footnote 1h.
redeem the estate within a year and a day, it goes to the lord, unless
the vassal be hindered in its redemption by legal impediment.

b. If the vassal is present and near enough to hear when the lord
grants him a legal proceeding, and if this vassal arranges matters so he
cannot hear—no matter how he impedes his hearing—he cannot refuse to
attend his lord's legal proceeding which the lord granted him when he was
present.

115. How a judgment shall be disputed and postponed.

a. When the lord's messenger informs his vassals of the legal pro-
ceeding, he shall inform them as follows: The messenger shall announce
the proceeding to the vassal orally if he finds him. And if he does not
find him, he shall seek to inform someone at the vassal's home or at his
court where his goings and comings occur. If he is not to be found in
these places, the messenger shall try to inform him of the legal proceed-
ing on the estate that he has in fee from the lord. If the vassal has
neither a house nor a court, he shall be summoned on the estate that he
has from the lord. The messenger shall always have two of the lord's men
with him who will substantiate his word if the vassal wishes to deny that
he was summoned.

b. When the lord arrives at the court, he shall first ask one of his
vassals if, by his grace, it be time for the court proceeding. After this
has been ascertained, the lord shall ask if he shall take one of his
vassals to act as his advocate according to feudal law. He receives the
answer. Afterwards, whatever the lord may ask, he shall direct the ques-
tion to each of his men by his grace. If a man is not able to render his
judgment when he is asked for it, and if those present do not believe he
is telling the truth, he shall swear an oath that he has spoken the truth. When the vassal does this, the lord shall grant him another legal hearing to take place in two weeks from the present hearing. This is so that he can come to a decision. If that happens, this proceeding of the feudal law court is recessed for these two weeks. After this time the vassal shall render a judgment. The lord cannot grant any postponement without a consenting decision of his vassals and without the plaintiff's consent and without the assent of the accused. But if the lord desires to accuse a vassal of another crime when the settlement of the first offense has been postponed by a decision of the vassals, the vassal need not lawfully answer to the lord for the new transgression for as long as the first offense has not been settled. When the sun sets, the vassal is no longer obligated to his lord to defend himself against a charge of feudal law or to render a judgment. However, if the first offense of the vassal against the lord has been settled, the lord shall grant his vassal who is accused of another offense a legal hearing by decision of his vassals, which will take place in a fortnight. The lord shall legally begin his court proceeding before noon of the day which has been assigned to the vassal as the time of the hearing. And after he has assigned advocates, he shall ask if he legally shall request one of his vassals to call those who have been summoned to court to come forward. His question is answered. The bailiff shall call aloud three times—so that the lord's vassals hear him—the following: "I demand in the name of

74 Zoepfl, III, 357: "[Das Urtheil finden] galt als eine Pflicht des Befragten, von der er sich nur dadurch befreien konnte, dass er schwur, nicht zu wissen was Rechens sei..."
my lord Friederich, or whatever his name may be, "I demand in the name of my lord that—vassal's name—"come forward concerning the offense that he has been accused of here. I do so once, twice, three times." If the vassal in question is not present, the bailiff shall come back to the lord and speak: "Lord, he is not here, nor is there any messenger from him to prove his legal impediment." When the bailiff says this, the lord shall ask his vassals what is now legally to be done. They shall legally answer him that the presence of the vassal in question should be demanded and that this should be done three times as before. Then the demand shall be made for the second time that the vassal come forward, and then for the third time. These three formal requests shall be made by three different vassals of the lord. If he still does not come forward after he has been called to present himself three times, let the lord ask what is legally to be done. The lord's vassals shall tell him to wait for the vassal until the sun sets. After the sun has set, the lord shall ask if he has correctly waited for the vassal according to feudal law. He is informed. Then the lord shall grant the vassal a second legal hearing. In this manner, the lord shall grant him three legal hearings and shall wait for his appearance as explained above. If the lord neglects to grant one of the hearings or does not treat the vassal according to feudal law, the lord has lost all three hearings and must begin again to grant hearings as if nothing had yet

75 Lessberg's footnote 82, p. 106, explains, "Der Faesch. C. fol. 107. a und andere haben 'Cunraden'! was andeutet möchte, dass die ersten Handschriften unter Friedrich II, die später unter Conrad IV geschrieben wurden, weil leicht jeder Schreiber bei der Stelle an den damaligen obersten Lehensherren, d.h. den König, gedacht hat. Eon. C. hat Chunraden oder Heinrich oder sul etc....Einsidl. C. hat: Cunraden."
A lord is not to ask anyone for judgment concerning feudal law except his own vassals.

c. The lord shall hold no feudal law court in an enclosed court or building or under any roof or in a castle. When the lord has waited until the setting of the sun on the day of the third legal hearing, he shall then ask his men what is legally to be done. He shall be told to prove by witnesses that he has granted all three court proceedings and that he must give evidence of each proceeding separately using two of his vassals for witnesses. The witnesses shall speak as follows: "Lord, by your grace, I affirm that the vassal Friederich"—or whatever he is named—"has been granted a court hearing according to law." There shall be two such witnesses who are vassals of the lord, and the existence of each court hearing shall be proven separately using two vassals. The witnesses shall speak thus: "This we saw and heard."; and the vassals shall speak only by the lord's grace. After the testimony of each witness, the lord shall ask if the witness is blameless and unrestricted in regard to his rights; this is done in order to enhance the validity of the lord's proof. He shall be informed regarding this matter. If the lord asks one of his vassals what he knows about the matter, and if the vassal answers by the lord's grace that he knows nothing, he shall not be questioned further. The lord shall indeed ask as many of his men as he wishes until he obtains a sufficient number of witnesses. At the third court hearing, the lord shall produce seven witnesses: for whenever the vassal is to lose his fief

76 At this point, Lassberg's text, p. 207, uses the word lantreht. But his footnote 83: "Soll heissen: 'Lehenrecht,' wie in Faesch. und Ebn. CC."

77 Zoepfl, III, 351-352: "Als Zeugen durften überhaupt...nur ehrbare, d.h. in ihren Rechte vollkommenen oder unversprochenen, unbescholtenen Männer zugelassen werden..."
to his lord, the lord must win the case with seven witnesses who are the lord's vassals. Then the vassal has legally lost the estate. Whenever the lord has proved his case in such a manner, he shall then ask what is lawfully to be done. Then the estate which the vassal had in fee from the lord shall be confiscated from him. The lord shall ask for the concurring judgment of all his vassals who are present. There shall be at least seven of these who are twenty five years of age. When concurring judgment is rendered, the lord is to ask who shall speak the sentence with which the estate is taken from the vassal. Then one of the lord's vassals answers this question. Unless it is not to the lord's advantage, one of his vassals shall speak the sentence. And if the passing of the sentence by a vassal would not be to the advantage of said vassal, the lord himself shall speak the sentence. Otherwise, the lord shall bid one of his vassals to speak the sentence. He is legally to do so. He shall speak as follows: "Since the court has decided in favor of my lord, I therefore confiscate from "—name of vassal—" the estate in question which he has had in fee from my lord until this time." Then the lord shall ask what he is to do with the estate which has been taken from his vassal. Then the court shall legally conclude that he shall take possession of the estate which has been confiscated from the vassal.

d. If any vassal comes on his own behalf to see his lord—doing so within his year's period of eligibility—in order to defend his right to his estate as is legal, and if the lord conceals himself or locks himself in a castle or elsewhere, and if the vassal has two of his servants78 with

78Lassberg's text, p. 207, uses the word hüszenô. Zoepfl, II, 174: "Selbstverständlich hatten die Dienstleute geringerer Herren nicht das Ansehen wie die Dienstleute der Bischöfe und größeren weltlichen Fürsten;
him as witnesses to the fact that he has been to see his lord in all the places where he is legally to seek him and who will witness that he came of his own free will to the lord, the vassal has done his part. In such a manner, the vassal shall come to see his lord three times, having with him each time at least two of his servants. If he has more than two of them with him, his trip is all the more worthy; for, if one dies, he has another witness to serve in his place. When the vassal has attempted his three visits, let him call his servants as witnesses and legally take possession of his estate. But if the vassal comes before his lord, he shall ask the lord to give him an advocate. And if the lord denies him this and other rights, the vassal shall obtain holy relics and swear an oath upon them before his lord so that his estate is neither presently legally confiscated nor will be confiscated in a manner such that harm would befall the vassal. When he has done this, let the vassal right¬fully take possession of the estate. But if the lord wants to grant the vassal justice, he shall grant him a court hearing before his vassals. Then the vassal shall appear at the hearing in the presence of his lord. There it falls to the lord to prove by witnesses that the estate has been legally confiscated from the vassal. But if the vassal, using two witnesses besides himself, can prove that he was out of the country before any legal hearing was granted him, he shall thus clear himself. Or if he can prove that he was in prison or elsewhere such that he could not obtain or send messengers to the court hearings, he has legally won his estate.

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auch hatten diese letzteren selbst ebenfalls zahlreiche Dienstleute niedereren Ranges. Die Dienstleute dieser niedereren Clases wurden ebenso, wie die geringeren Dienstleute des Reiches, im Allgemeinen als Hausgenossen (familiares) bezeichnet."
The witnesses may or may not be vassals of the lord.

116. **On what days the vassal can refuse to serve his lord in feudal law cases.**

On whatever day the vassal holds the stirrup for his lord or serves him with gifts which the lord receives or serves him with other things, the vassal is not obligated to serve the lord in cases of feudal law for the whole day. The lord can indeed legally refuse to accept the gifts or service of the vassal. But, if two of the lord's vassals are disputing with one another concerning a fief, and the lord is to settle the argument, and if the lord has also received service and gifts from both of them, he shall nevertheless serve as arbiter of the dispute. That is because no advantage from the fact they bestowed these gifts is due either vassal.

117. **How the vassal shall appear before a court of feudal law.**

a. When the lord grants his vassals a court hearing, the lord shall bring no one to the hearing except his own vassals. The vassals shall do likewise. And if one of the vassals brings anyone except a servant to the hearing without the lord's permission, the vassal must pay the lord a sum of money as restitution. And if the lord brings anyone else to court, the man can well be exempted from the proceedings so that he cannot render the lord any service in feudal law cases while they are in court. The lord has the same right against his vassal.

b. Before the vassal comes before his lord, he shall remove all his armament. All those with him shall do the same. Also, the lord shall do likewise. The vassal shall remove his spurs and knife, cap and helmet, gloves and cloak, hood and all hand weapons.
118. If the vassal commits an offense against the lord.

a. A vassal is not obligated to his lord—nor is the lord to the vassal—to answer charges in cases of feudal law concerning offenses which one has committed against the other before the man became vassal of the lord. And if the lord proposes an agreement to the vassal that the lord will bestow a fief upon the vassal if the vassal will forgive the lord's offense, the vassal shall legally agree. Also, if a man makes such an agreement to absolve himself before he becomes the lord's vassal, the lord shall in like manner forgive him his offense. Whichever one of two agrees to forget an offense shall not legally accuse the offender. But if one of the two shall make amends to the other one for the offense—whether they make an oral agreement or not—this shall serve as an atonement between the two.

119. How the vassal shall answer charges.

When the lord has convened his court of feudal law and has appointed advocates, let the lord ask the vassal who has been summoned to court to answer charges if he has come prepared to defend himself against his lord's charges concerning feudal law. The vassal shall consider whether he wishes to or not. And if he wishes to consider at length the harm that can befall him in such proceedings, he shall leave the court and make no answer to the lord. But if he takes an advocate, he must give an answer; if he leaves anyway and makes no answer, the lord shall pass judgment concerning the vassal as if he were present and standing before the lord. But if the vassal does come before the lord, he shall speak as follows: "Lord, I have come here to do and receive justice to the utmost
extent the law requires. Then the lord shall make the accusations separately for each matter and shall do so with advocates. The vassal is also to request an advocate and a consultation with him. In cases of feudal law an advocate is assigned to him who is answering without an advocate the charges which are made against him. The vassal is also to answer his lord's questions during the period which he does not have an advocate. The lord shall ask the vassal if he wishes to put his trust in the words of his advocate in regard to all the testimony. If the vassal answers in the negative, the lord rightfully does not grant him an advocate. But if the vassal says yes, the lord grants him an advocate. The vassal also has this right against his lord. And if the advocate speaks falsely, both the lord and the vassal reap the harm done. Whatever the advocate says must remain unchanged, and neither the lord nor the vassal can change an advocate's testimony. This applies only in cases of feudal law.

b. When the lord wishes to engage in a court proceeding according to feudal law with his vassal, the lord shall appoint in his place one of his vassals who does not arouse suspicion in the mind of the vassal involved. If the man chosen does seem undesirable to the vassal, he can well refuse to accept him as judge. As to what is to be considered suspicious in a man, the Book of Territorial Law has already stated when one fulfilling the duties of an office shall be termed undesirable. And

79(This footnote has two references.) Lassberg's text, p. 209, uses the words *Lehenrecht tun*. Schröder, p. 632: "Pflicht des Herrn war es, seinen Knecht 'Lehenrecht zu tun,' d.h. Lehngericht zu gewähren und sich seinem Spruche zu unterwerfen...Richter [des Lehngerichts] war der Herr oder, wenn er Partei war, gewöhnlich einer der Knecht an seiner Statt."
if the lord does have one of his vassals who is acceptable to both the
lord and the vassal involved, let them—after joint consultation—choose
a worthy man who will act for both of them as their judge according to
law. Whoever the judge may be, he shall conduct the questioning in the
following manner: First he shall hear the plaintiff and afterwards the
accused. Then he shall ask his questions after both have spoken. If he
questions only as he himself desires and contrary to law, this does not
harm the case of the vassal. The advocate shall state that the judge is
questioning contrary to law. The judge shall ask a second time, direc¬
ting his questions to a man who is not prejudiced for either side in the
case. He shall ask this man concerning all aspects of the case so that
there is no deception or fraud in the trial.

c. When the vassal has accepted an advocate, he shall not publicly
speak of the case—formally or otherwise. He shall whisper to his advo¬
cate whatever he wishes to say. Whenever the vassal returns from having
a consultation, the advocate shall present the defense to the court con¬
cerning the complaint which has been lodged against the vassal. If the
vassal bids his servants to take part in his consultation, the lord shall
indeed permit this. The lord shall keep at least three of his vassals at
hand. The purpose of this is so that—if the participants in the trial
want to consult too long—the lord can call them back to their seats by
court decision, for one of the three vassals shall announce the decision.
It is not up to the lord which three vassals he chooses—it is up to the
vassal involved in the case.

d. The vassal shall make monetary atonement to his lord for an
offense only once. If the vassal says anything about his lord which
causes the lord disgrace or harm, he must make amends for it. It is possible for the vassal to cause his lord disgrace for which he does not need to atone. Such a case is as follows: If the vassal himself is engaged in litigation with the lord concerning an estate, and if one of the vassal's friends is helping him in the controversy, the statements of the vassal in court against the lord shall not be held against him as offenses against his lord.

120. How the vassal becomes liable of monetary atonement to his lord.

If a vassal has an estate taken from him which he has in fee from a lord, and if he does not inform his lord of it within a year from the time it was taken, the estate does not fall to the vassal as the law states. The vassal must make monetary atonement to his lord for it. And if he loses the estate by his own fault in such way that it does not fall to him as the law indicates and as it rightfully should, he must make amends to the lord for it. The lord shall help his vassal keep and protect his estate as best he can, as this book states.

121. He who puts his fief in pledge.

It is unlawful for a vassal to put his fief in pledge without his lord's knowing and without the permission of the lord from whom he has the estate in fee. The lord can well legally bid the vassal or one of the vassal's men—in the presence of two or more of the lord's vassals who hear the command—to redeem the estate within six weeks. If the vassal does not so, he owes the lord monetary atonement. The lord shall bid him redeem the estate three different times, waiting six weeks between
each time. And if the vassal does not redeem the estate from the man to whom he pledged it either within the time allotments or afterwards, let the lord rightfully take possession of the estate and give the one to whom it is pledged no redemption. If force or other illegal procedure is used against the vassal concerning the estate, let him make complaint of it to the magistrate in whose jurisdiction the estate is located. Whatever the vassal does with the estate to the disadvantage of the lord—if the action can be termed treachery—the vassal has thereby forfeited the fief to the lord.

122. He who does not have heirs to his fief and who desires to take the fief away from the lord.

If a vassal who has no heirs to his fief has said fief from a lord, and if he wishes to legally try to arrange matters so that the fief can never become free to revert back to the lord, the vassal shall bestow the fief upon one of equal rank to him or upon one of higher standing. The vassal shall then grant the person upon whom he bestowed the fief the profit and possession of it. When the new owner has had it in his possession for a year and a day, he can then assign ownership of it to the original vassal's wife or to whomever he wishes. The man to whom the original vassal assigned the fief can also bestow it upon anyone he desires in an enfeoffment by contract. This is legal because he has rightful possession of the fief. He cannot do so, however, if he has unsuccessfully asked his lord's permission to do so. He could well do it before his lord.

refused. A vassal can indeed assign or grant with an enfeoffment by contract his fief which he has from the lord to whomever he wishes as long as he has his lord's consent.

123. Of atonement and monetary compensation.

If a vassal unlawfully takes possession of an estate belonging to a man of rank equal to that of the said vassal, or if he abuses the man or does anything to him which unlawfully causes him disgrace or harm, and if both men are vassals of the same lord, the offender must make monetary atonement for the offense to the lord when he arrives. And the vassal must also make atonement to the offended man as is proper.

124. How the lord shall not answer charges of his vassal before the overlord.

The lord shall not answer the charges of his vassal before the overlord unless the lord has acted unlawfully in respect to the vassal and unless the vassal can prove it using two of the lord's vassals as witnesses. If he cannot prove it, he must make atonement to his lord.

125. How the lord shall make judgments concerning "zinslēhen."

a. If the lord bestows zinslēhen upon many men—I mean upon twelve or more—and if the lord and the men, or the men among themselves, begin to dispute concerning the zinslēhen, the lord shall summon the men before him and shall settle the case as one would settle a case concerning a true fief. For we do make this exception: Any man can well help another in cases concerning zinslēhen as long as the rights of the one helping are not restricted. Sometimes the rent is determined to be due on a certain day with the stipulation that—if people neglect to pay it on that day—the estate will be forfeited. Sometimes the arrangements are made
differently. However the lord determines concerning the rent, if the man accepts the terms of his own free will, he must make payment to the lord in the manner agreed upon. No one shall render the lord any services on account of the zinslèhen, except as the man and the lord have contracted. Clergymen and ladies can legally have zinslèhen as well as people in all other walks of life who can lawfully have worldly possessions.

b. Any man who has property and who is worthy of holding such property and who has the use and right of possession of the property can bestow it as zinslèhen. However, if he has heirs who eventually expect to have the property themselves, he must also have their permission to bestow the property. Without their consent he cannot do it. If he has a castle or a church on his property, and if he desires to bestow the property as zinslèhen, the lord of the church or any other lord cannot prevent him from bestowing the property and cannot force matters so that the property would remain in the possession of the lord wishing to bestow it.

126. Of various kinds of atonement in cases of feudal law.

a. If a man who has appeared at court wipes his mouth or blows his nose or spits or coughs or hiccups or sneezes, or if he does not stand correctly before the bench, or if he swats at flies or gnats, or if he strikes at gadflies in cases of feudal law; he need not make atonement to the lord for his actions. Yet many bumpkins think he is to make amends for so doing. That is not the point at all.

b. These are the monetary atonements which the vassal can become obligated to pay to his lord. Two phunt are due the vassal’s lord in

cases of feudal law.

However, any prince who has a flag-fief in fee from the king shall give the king as payment a hundred phunt in coins minted in the customary manner of the region in which the atonement is to be paid. Let anyone wishing to dispute further concerning the coins as to what type of coins shall be paid look in the Book of Territorial Law. There he will find the answer clearly spelled out.

c. And if a lord other than a prince receives a flag-fief, he shall make atonement to his lord of fifty phunt. And if a lord receives other fiefs than flag-fiefs from the king or from another prince, he shall give the lord ten phunt as atonement. And whatever manner of enfeoffment the lord and his vassal decide upon, if the vassal becomes obligated in the process to atone to the lord, he shall legally make compensation to him.

d. The atonement of those having no possessions is only two phunt in matters of feudal law. Monetary compensation and other types of atonement shall both be rendered within two weeks in cases of feudal law. The object of atonement shall be brought to the nearest dwelling of the lord to whom the monetary or other type compensation falls due.

e. The lord's messenger shall demand the compensation. Whoever he may be, he is acceptable for this task. And if the vassal refuses to give the lord money or a pledge for security, the lord shall collect twice the amount of the atonement from the property which the vassal has in fee from him.
the lord's permission. But if affliction or exertion will not permit him to stand any longer, let him sit down without the lord's permission. If the lord takes him to task for being seated, let him swear upon holy relics that he can stand no longer. Or let him make known his distress and why he is not capable of standing. The vassal shall not be required to make restitution to his lord more than three times in a day.

b. The vassal shall duly have three consultations in cases of feudal law. He can remain in conference until he has been recalled to the scene of the court proceedings three times by judicial decision. The vassal shall be able to hear the summons for this reason: he shall be close enough to the people in court to be able to hear the recall well.

128. **Who can render judgment in cases of feudal law.**

a. Whoever has property in fee from a lord which brings in a yearly income valued at a *phunt* or who has an estate a half *huobe* in size can indeed render judgments and contest them and serve as a witness in a court of feudal law. He who does not have this much property but who has less in fee from a lord—if such a person wishes to also perform the above duties in cases of feudal law—must appoint one of his men as guarantor to the lord. The guarantor will make payment if the vassal becomes obligated to make atonement.

b. Whichever man renders a court decision in his lord's service which is not sustained by any other vassal shall be requested by the lord to render another judgment. Whoever renders a decision which is supported by the majority has handed down an acceptable judgment. But the man whose decision is contested has not necessarily lost yet. For any man who contests a decision—if he is incriminated of making his protest on grounds
contrary to law—must absolve himself of guilt by swearing upon holy relics or must make atonement for his action.

c. The vassal shall speak as follows when he wishes to reject a judgment: "If you are called Friederich"—or whatever he is named—"or if you are Friederich, you have rendered an unlawful judgment for your lord and mine in respect to feudal law. I reject it and appeal it to him to whom I am legally to appeal." Then the lord shall ask if the vassal can legally go over his head to appeal the decision. The answer shall be given that the vassal shall make his appeal before the overlord. Then both the men in the dispute shall request the lord to give them as messengers before the overlord two of their lord's vassals to see and hear whether the appeal is successful or not and to be witnesses of that fact. The lord shall make compensation for the messengers' expenses. Ample wine and bread shall be given them along with three courses of good food. And each man shall be given a measure of good wine for each course. The squire shall be given two courses of food and two goblets of wine for each course. And the horses of the messengers shall be adorned in front but not behind. Each horse shall be given five garments to be used for day and for night and as many measures of oats as is necessary for the trip. There shall be six horses and they shall be ridden by the two messengers and four squires. Two squires shall go on foot. Within three days the messengers shall have been equipped. He who rendered the judgment and he who rejected it shall travel with the messengers and shall come back with the overlord's judgment within six weeks. But if he to whom the decision is appealed is out of the country, they shall go to him when he comes back to the German realm or to his castle or whenever they first find out that he has returned; and they
shall bring back the results of his judgment within six weeks of the day that the lord returned to the country. When the messengers have returned, they shall tell the lord they are back. And he shall grant them both a legal proceeding in his presence and shall bid his men come to the hearing. The man whose judgment was questioned shall come to this hearing, as well as the one who opposed the judgment. The messengers shall state by their lord's grace which of the two men was upheld by the overlord. Or, if the messengers have brought a letter from the overlord with his seal affixed thereto, the lord and his men shall accept and believe it. He who was upheld by the overlord has retained his property from his opponent to whatever extent it was placed in jeopardy by the dispute. And he who has lost in the judgment has also lost his estate to the winner or to someone else. He must suffer the misfortune. And if, in like manner, the case is appealed to the king himself and is settled by the king, this is because the king is judge over personal possessions and property bestowed in fee and over each human being and over all of which complaint is made to him except matters which God judges. This is also because the king has the highest herschilt, above and before all lords.

129. **If an estate belongs to the lord himself.**

If a vassal has an estate in fee from a lord that is the lord's own property, and if the lord is summoned to the service of the empire, the vassal shall follow the lord in service for the sake of his fief just as if the estate were held in fee from the empire. Just as no one should presume to be more qualified than the king to mete out justice in cases concerning privately owned fiefs and non-private fiefs, no man who is enfeoffed with private property is qualified to render a judgment over one
who has property of the empire in fee and vice-versa. From whomever a vassal may have a fief, if the fief is the lord's own property or if it is non-private property, the vassal is obligated because of said fief to serve his lord in the manner that this book states if the lord is summoned to the service of the empire. How and when the lords are to serve the king is duly stated in this book.

130. If a judgment is rejected.

If a judgment is rejected in the legal hearing of a vassal who has been summoned to court to plead his case, and if he has estates in fee from two lords or from three lords, the controversy over the decision shall be settled before whichever overlord from whom the largest portion of the property is held in fee. If the fact that it is the period of limited legal transactions prevents the dispute from being settled immediately, the case should be presented again six weeks after the period of limited transactions has ended.

131. This service is poorly rendered.

If a vassal contests a judgment, and if he is not able to establish the legal validity of his objection, he must make restitution to him who rendered the judgment to which the vassal was opposed; and he must also make amends to all those who supported the decision against him. The lord however, obtains only one atonement in the matter, for it is not right that someone win two or three atonements from a man in one legal action.

132. He who has the office of judge bestowed upon him.

a. All that has been mentioned before has been concerned with the common gemeine lehen and the right of bestowing true fiefs. Now I shall

81 Zöpfl, II, 109, footnote 19, defines gemeine lehen: "...gemeine
explain three other types of enfeoffment and shall state what distinguishes them from true fiefs.

b. Whoever has the office of judge bestowed upon him in fee from the king cannot let the office be further bestowed beyond the third time. True fiefs can legally be bestowed on up to seven people. This is because there are seven herschilde, and all those bearing one of them have the right to bestow property in fee.

133. Of flag-fiefs.

And if an earldom is included in a flag-fief, whoever has said fief shall bestow the earldom upon someone within a year. And if the office of judge originates at the fief, the possessor of the fief shall also bestow this office. If he does not do so, those who are to have the earldom or the office of judge bestowed upon them in fee shall come to the king; and the king shall legally bestow their position upon them.

134. Of bestowal of the office of judge.

a. No two men can possess in common the right to hold a judgship in fee. This is because only one man can act as judge. However, one man can

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82 (This footnote has two references.) Eichhorn, II, 357-358, "...es gab...Grafschaften, die in ein Fahnlehen gehörten, und andere, welche einem solchen nicht untergeordnet waren...Alle Grafen, welche von einem geistlichen oder weltlichen Fürsten ihre Grafschaft zu Lehen tragen, sind...Vicegraf en im Sinn der carolingischen Verfassung. Die Stellvertreter der letzteren, da diese in der Regel auch nicht mehr persönlich zu Gericht sassen, konnen unter dem Namen der Richter vor, und wurden für die einzelnen Gerichtsstätten der Grafschaft besonders bestellt. Wahrscheinlich wurden sie im dreizehnten Jahrhundert...mit dem Königsbann, unter welchen sie richteten, noch förmlich belehnt."
contract with another to assign the second man the office of judge which the first man had bestowed upon him.

b. Anyone whom the king or another judge has outlawed cannot hold the office of judge. The Book of Territorial Law duly states who can legally hold the office of judge.

c. No one shall come to seek justice before anyone who has been removed from the office of judge because he has failed to properly mete out justice or because of another offense. Nor can such a person who has had his office taken from him summon anyone to court. No minor can legally mete out justice before reaching the age of eighteen. And if such a child has the office of judge bestowed upon him in fee, he shall have a guardian to render justice in his place. Said guardian shall be a vassal of the lord from whom the child has the judgeship in fee. This applies if the child is fourteen years old.

135. He who is enfeoffed with private property.

If a fief of private property becomes the property of the empire in such a manner that, because of a death, it devolves upon the empire; or if it is given to a church; the vassal who had the property in fee before its status changed does not lose anything as a result of the change. He shall come to the lord now in charge of the fief and request his fief as this book has previously stated.

136. Of fortress-fiefs.83

Enfeoffments by contract and monetary atonements are valid in regard

to fortress-fiefs as well as with other fiefs. No one who is enfeoffed with a fortress-fief can bestow it upon anyone else in fee. But if a vassal enfeoffed with such a fief bestows the fief upon another man, the lord—whenever he hears of the transaction—can, by court decision, duly bid the original vassal to take back his property and fortress-fief within six weeks. And if the vassal does not do so, the lord can, with a court decision, legally take his fortress-fief away from his as the feudal law has earlier stated. If the original vassal enfeoffed with the fortress-fief dies before taking back his property; and if the man whom the vassal enfeoffed has kept the estate in his legal possession according to feudal law without lawful protest for a year and a day, let him revert with the fief as its possessor with year's period of eligibility to the lord ranking above the original vassal's lord. This is legal as long as he can prove he has had proper possession according to feudal law, in case the lower ranking lord wishes to deny him his right to the fief. The man must also swear that he did not know that the fief had the status of a fortress-fief when he received it.

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137. **Fortress-fiefs cannot be fiefs which are inherited by a vassal's male posterity.**

Nor can the lord give up his fiefs which the male descendants of the vassals possessing them can inherit, and receive said fiefs back again from his lord in the status of fortress-fiefs. If he does so anyway, let his vassals request their rightful fiefs of the overlord. For no lord can legally raise or lower the status of his vassal's fief. If the estate is the lord's private property, and if a vassal has it in fee, and if the lord desires to change its status to that of a fortress-fief, he cannot legally do so. The vassal still retains his estate as a normal fief. And if the lord does the vassal any injustice in the matter, let him request justice as the Book of Feudal Law has earlier stated.

138. **How one who has entered into an enfeoffment by contract in regard to his fief can break the agreement.**

    a. If a man dies while his wife is pregnant, and if he has contracted his fief to another man with the lord's consent, and if the widow has not yet been delivered of the child, the man to whom the fief was contracted shall legally take possession of the property until she does give birth. And if the child is a son and is born alive, the contract is broken.

    b. If a man contracts his estate to another man, and if he afterwards becomes the father of a son during his lifetime, the contract is rendered invalid. If people will not believe the child is a boy or that it was born alive, this shall be proven by witnesses as the Book of Territorial Law has already stated.

139. If the lord bestows the fortress in fee.

If a lord bestows his entire fortress in fee, and if the bestowal is upon one who is of lower social rank from the lord, the vassals who have fortress-fiefs at this fortress are not obligated to receive their fiefs from the new would-be lord. This is because this lord is not of the same rank as their old lord nor of superior rank to the vassals holding fiefs at the fortress. But if the new lord is of the same rank as their old lord, the vassals shall receive their fortress-fiefs from the new lord. And if the new lord is of lower rank than their old lord, the inhabitants can legally leave the fortress and can hold their fiefs henceforth in the status of normal fiefs. And if they have buildings within the fortress walls—houses or other dwellings—they shall tear them down and leave the premises, going to wherever they think fitting. But if the lord wishes to pay them for the buildings whatever they are worth, they shall give them to him at whatever cost they estimate the value of the dwellings to be.

Regarding fortress-fiefs: reversion of the estate, monetary atonements to the lord, and enfeoffments by contract are fully valid—just as with other fiefs.

140. If a vassal enfeoffed with a fortress-fief bestows his fief upon someone else.

If a vassal enfeoffed with a fortress-fief bestows his fief upon another man, the transaction is not legal. Whoever has a fortress-fief bestowed upon him cannot in turn bestow it again. If the fortress-fief reverts to another lord, the man upon whom it was bestowed reverts duly with the fief. He also can still legally bequeath the fief to his son. If any lord over both the fortress and the fortress-fiefs dies during the
period before his children and heirs have received their shares of the
property according to feudal law, the vassals enfeoffed with the individual
fortress-fiefs are obligated to pledge their loyalty and favor to all the
heirs in an oath and to act as vassals with fortress-fiefs should act
toward the lord of the fortress. If the person to whom loyalty is due is
a lady, they shall likewise swear to her. The vassals with fortress-fiefs
shall defend the fortress against all attacks as is their duty. Each such
vassal shall help with the defense as long as he desires to remain in his
present status.

141. Of services required of one holding a fortress-fief.

Every vassal receives his fortress-fief from only one lord or one lady,
if he so desires. Vassals with a fortress-fief shall not be obligated to
go on military expeditions nor to perform other services. The vassal shall
live within the fortress and shall have the care of its upkeep and shall
defend it if necessary. He shall render court judgments for his lord in
cases concerning fortress-fiefs but not concerning other fiefs. But if the
vassal also has normal fiefs from the lord, he can also well render court
decisions in cases concerning ordinary fiefs.

142. Where cases concerning fortress-fiefs shall be tried.

The lord cannot try cases concerning fortress-fiefs except within the
stronghold of the fortress and only with men who have fortress-fiefs at
the fortress. No one shall act as advocate or render court judgments or
contest them or serve as witness in cases concerning fortress-fiefs except
those who have fortress-fiefs from the lord. No one shall legally summon
anyone before the court in cases concerning fortress-fiefs except the gate-
keeper.
114. Of flag-fiefs.

a. In cases of feudal law, no one can render court judgments nor act as advocate concerning princes and other lords who have flag-fiefs except those who are princes and who have such flag-fiefs or those who have flag-fiefs and who are not princes. And if a lord has a flag-fief, he can duly serve as a witness in cases of feudal law.

b. The prince is so named because the king himself has bestowed the office of prince upon him. If the king bestows the title of prince upon a man, and if this new prince then bestows upon still another man the same princely title and office which the king had bestowed upon him and from which he is legally entitled to be a prince and be called a prince, he can no longer derive princely calling or authority from this title when he bestows it upon another man. This is because he is no longer the primary recipient of the title.

115. Of the rights of princes concerning enfeoffment.

a. Anyone who is a prince and who has a flag-fief shall have no layman except the king as his lord. If his lord is any other layman, the man cannot hold the title of prince.

b. In cases of feudal law concerning the fiefs of princes which are not connected with the duties of the princely office itself and concerning the fiefs of lords which are not a portion of a flag-fief, any man who is enfeoffed by the prince can duly have the right to speak. In cases of feudal law, no one can refuse to render court judgments, to serve as witness, or to be an advocate: not the lord for the sake of his vassal, not the vassal for his lord, not kinsman for kinsman.
145. Of the king's feudal law court.

The king shall legally summon a prince to appear in court after six weeks have passed for a case of feudal law. The king shall summon the prince with a letter to which his seal is affixed. The prince shall be summoned to appear upon a stipulated date. The king is to designate no place nor court nor legal assembly as the place to which the prince shall come. For wherever the king is, at that place the court hearing can duly be held concerning a case of feudal law. It can be held on days when certain court proceedings are normally restricted and can take place anywhere except in churches and cemeteries. Except for these places, the king can well try his feudal law cases wherever he wishes.

146. Fortress law.

The gates of the fortress shall stand open in whatever fortress in which any lord is trying a case of feudal law concerning a fortress-fief. No one shall hold a court proceeding or render court judgments in cases of feudal law inside a building or behind closed doors.

147. What the count of the Palatinate on the Rhine shall bestow in fee.

a. If the Emperor of the Holy Roman Empire dies, and if another Emperor is not crowned within a year—whether it be that the electors have neglected their duty; or that, through neglect and mistake, two Emperors are elected; or that no one is elected—such happenings shall cause no hardship to the princes and other men who have fiefs from the empire. And if matters are not settled in regard to an Emperor within a year's period, all those who have fiefs from the empire shall receive their fiefs from the count of the Palatinate on the Rhine except for the princes. The princes shall
not receive their princely office from him. All those who have flag-
fiefs from the empire and who are not of the princely office shall receive
their fiefs from the count of the Palatinate on the Rhine. In so doing,
they do not become vassals of the count of the Palatinate, however. They
become vassals of the empire, for the count is not bestowing his property
upon them in fee; he is enfeoffing them with property of the empire. There¬
fore they are vassals of the empire.

b. Whoever is negligent of claiming his fief from the count of the
Palatinate on the Rhine during his year's period of eligibility must see
his estate revert back to the empire free to be bestowed elsewhere. And
if anyone neglects to claim his fief from the count of the Palatinate
during the year's period of eligibility, the count shall take possession
of the estate for the benefit of the empire. The count shall be accountable
to the Emperor for the estate he has taken when an Emperor is crowned. The
princes shall legally keep their offices. But, whatever else has been bestowed
upon them in fee from the empire—until another Emperor has been chosen without
discord—they shall receive such fiefs from the count of the Palatinate on
the Rhine. Whoever is opposed to so doing loses the lord's favor. The
mighty count of the Palatinate on the Rhine has this distinction since he is
empowered to act as judge concerning any offense of the Emperor himself.

148. How a vassal who has a fortress-fief shall protect the
fortress.

a. The lord shall bring charges against his vassal enfeoffed with a
fortress-fief in only three cases: if he shows himself to be disloyal to
his lord, or if he does not defend the fortress as he is lawfully to do,
so that he does the lord an injustice in regard to his fortress-fief. If
the lord summons his vassal enfeoffed with a fortress-fief to be tried in a case dealing with the laws of fortresses because of at least one of the above-mentioned offenses, the lord shall announce this to the vassal in person in the vassal's house. This announcement shall be made according to the fortress laws: the lord shall inform the vassal of the charge so that two of his vassals hear it. After this, the accused vassal shall be tried according to fortress law. No special day need be appointed, as the Book of Feudal Law has earlier stated.

b. If a vassal has his fortress-fief taken from him, and if he is not present at the proceeding, he shall attempt to defend his right to the fief within six weeks, or he will not be allowed to speak at all concerning it.

149. If a vassal enfeoffed with a fortress-fief leaves the fortress.

a. If a vassal holding a fortress-fief and his retinue leave the fortress, and if the lord bids him to return, and if this message is delivered to the vassal in person in his lodging or at his court or to his person wherever he may be walking or riding on the highway, or if the message is delivered to his home or court while he himself is not present but two of those who live with him in the fortress do hear it, the man's fortress-fief shall be taken away from him if he does not return to the fortress within six weeks—unless he is detained by legal impediment. But if this vassal having a fortress-fief does return to the fortress within six weeks, and if he and his retinue remain within it for one night, his fortress-fief cannot be taken from him. But if the lord so compels him by court decision, the resident must make a monetary atonement to the lord.
b. A normal fief and a fortress-fief can be bestowed upon a vassal with a joint-enfeoffment as long as he has witnesses of the double transaction who can establish each enfeoffment separately.

150. If a fortress is laid waste.

a. If a fortress is destroyed by real force in a criminal attack of which a vassal holding a fortress-fief is innocent, such destruction shall not be grounds for the vassal to lose his fortress-fief. During the period before the fortress has been reconstructed, his fortress-fief is still his legal fief. After the fortress has been rebuilt with a palisade or stockade and a gate has been hung, every vassal with a fortress-fief shall return within eight days.

b. No one can rebuild a fortress legally which has been razed by court order unless the Emperor's permission is obtained. And if, for the time being, there is no Emperor, or if the Emperor is out of the German realm; permission must be obtained from the chief magistrate of the provincial court in whose jurisdiction the fortress is located.

151. If a fortress and a fortress-fief which accompanies the fortress are separated.

a. If a fortress and a fortress-fief which accompanies the fortress cease being in the power of the same lord by—at the old lord's death—reverting to separate lords to be bestowed again, and if the fortress thus becomes disassociated from the fortress-fief, let the holder of the fief keep possession of it from its new lord. He shall legally have it in fee from the successor to the lord from whom he had it previously in fee, and he shall have the fief which formerly accompanied the fortress as a normal fief. If a position at the fortress becomes available to the holder of
the fief, it is up to him whether he wishes to have residence in the fortress while being enfeoffed by the lord of the fortress as well as by the old lord from whom he now has his normal fief in fee. But if the fortress and the fortress-fief which formerly accompanied it become reunited again, the holder of such a fief must by all that is legal maintain his residence within the fortress; otherwise he loses his fortress-fief.

b. And if the vassal wishes to have his lord take back his fortress-fief from him, the lord cannot refuse to do so. The lord must receive the fief back from the vassal unless the vassal has already forfeited it as has been explained earlier.

152. Of fiefs requiring rental payments.

If a lord bestows an estate subject to rent upon a man in fee, and if the man owes the lord other services besides the rent, the lord can excuse the man of any obligation beyond that of paying rent when he bestows the estate upon him in fee. But if the fief is a free estate upon which no one has the right to levy a rent, and if the estate for which no one pays rent is bestowed upon a man, and if a rent is then demanded of the new vassal, he shall report the demand to his lord; and the lord shall defend the man and his fief. But if the estate is the lord's personal property or it belongs to a church and cannot be released, and if the vassal cannot find any better fief, he shall keep the estate without rendering any service as a legal fief. And if the fief reverts to a church, let the vassal travel to the church and request his fief. If the vassal dies in the midst of such an undertaking, and if he is survived by heirs to the fief, let them succeed to the fief as this book has stated earlier.
153. How the vassal and the lord shall renounce one another.

a. Whoever gives his estate back to his lord or has the estate taken away from him legally shall not renounce his lord's service—nor shall the lord renounce him as vassal—except by word of mouth while they confront one another. Afterward, they shall not do one another any harm for a day and a night. However, if the lord summons the man to come to an assembly, or if the vassal bids his lord to come to a meeting, and if the vassal has not previously renounced the lord's service and does so for the very first time when the meeting is assembled, the vassal is thereby guilty of being disloyal to his lord. For when a vassal swears fealty to his lord, he swears to serve him with loyalty and honorable behavior in words and deeds. Thus the vassal has not maintained his loyalty well in such a denunciation. The vassal has the same right against his lord if the lord does him an injustice, as has been previously mentioned.

b. If the vassal asks the lord for an escort for the trip to see the lord and for the return trip whenever the vassal desires to renounce his service, the lord shall grant him the escort. If the lord unlawfully denies this request, the vassal shall renounce the lord's service at the nearest residence of the lord and shall do so quite loud enough so that those who are within can hear him. Or the vassal shall renounce his lord's service at the place where the lord wishes to conduct his civil court, and he shall immediately release his estate to the lord free to bestow elsewhere. For this renunciation, the vassal shall have two of the lord's vassals as witnesses on his side against the lord in case it should be necessary to have their testimony. But if the vassal wishes to deny that he renounced his lord, the lord must establish proof of the renunciation by
using two of his men who know the truth. If the lord cannot produce two such men, the vassal is free of fault.

154. **Enfeoffment with the office of chief town official.**

Enfeoffments of the office of chief town official are inherited by the official's son. However, if the son is lacking a herschilt, and if he succeeds to his office and property under another lord, the son cannot bestow any of his estate in fee upon another man; nor can he enter into any agreements with any lord, no matter how low the lord's rank may be. This is because the son is lacking a herschilt. Whoever has no herschilt has no rights in matters of feudal law except the rights which have been previously discussed. Whether it be man or woman, if they do not meet all the requirements to have a herschilt, they cannot serve as a witness in cases of feudal law or render court judgments or reject them as this book has already stated.

155. **When the lord can summon his vassal to a court proceeding.**

a. Whenever a lord has summoned his vassal to appear in a court case of feudal law, and when the other vassals have been summoned to appear by a court decision, the lord cannot bid the vassal to serve at any other court proceeding while the original case is being tried. During the time before the original case is to be tried, no other lord can summon the vassal to a court proceeding which is to take place on the same day as the original proceeding. When a lord summons his vassal to come to a court proceeding, the vassal shall do so if he is summoned as the Book of Feudal Law has previously stated. Whichever lord's messenger first speaks to him and informs him of his call to the court hearing, to this lord the vassal shall first render his services. And if the vassals are in the service of
the empire when their lord bids them serve at a court proceeding of feudal law, they are legally exempt from the summons. But if the summons is given to the vassals in person, and if they are detained by being needed in the empire's service or by other valid commitment, they shall send their messengers to the court proceeding and bid them to establish proof of the vassals' valid commitment. But if—at the proper time and by court decision—a military expedition or trip to court in the service of the empire is commanded, this postpones all court proceedings which the lords and their men were to hold for the sake of the feudal rights of both sides.

b. The vassal is not exempt from court duty if he is summoned to serve at court while he is at home and if he is not already engaged in the same kind of service which he is summoned to perform.

156. From whom the vassal refuses to accept his fief.

a. If any man approaches his overlord for enfeoffment or to have his property granted to him, and if the lord refers him to a man not of the same rank as his immediate lord, the vassal can legally refuse to accept the fief from the new man. If a lord gives a fief into the keeping of a man who is not of the same rank as he is and if the lord specifies to the new man that the vassals who have possession of the fief shall now receive their fief from him, this does not adversely affect the rights of the vassals as long as their old lord has not told them of the change. When the old lord or his messenger who is also his vassal has told the vassals of the transaction, they shall receive their fief from the new lord one year from the day they were informed of the change if the new lord is of equal rank as their old lord or is at least of higher rank than the vassals. And if the old lord wishes, he can summon his vassals before him and then
bid them to receive their fief from the new lord. If they do not do so, they must prove against the new lord that he is of lower birth than their old lord, or that the new lord has made his social position lower than that of the old lord by swearing fealty to a man of lower rank than himself, or that he has ignobly and dishonorably let his property go to waste, or that he has forfeited his rights through shameful behavior and that such a charge has been proven against him in court as the Book of Territorial Law states. If the vassals can prove one of these charges against the new lord, they then become legally exempt from becoming vassals of the new lord. They therefore remain vassals of the old lord. The vassals shall attempt to prove their case against the new lord using seven witnesses, in which number they are included. All witnesses shall be honorable men whose rights have not been taken from them, whether they be vassals of the lord or not. And if the lord against whom the vassals are to prove their case is not present, this shall not be detrimental to the rights of those vassals. But if the new lord is present, and if he presents testimony to the effect that he is of birth equal to that of the old lord and that he has not in the least forfeited any of his rights and that he is fully qualified to have the appropriate herschilt, the choice is left to the vassals whether they want to accept the testimony or not. If the new lord shall give proof of the above facts using six witnesses in addition to himself—when such testimony is presented, the vassals can indeed honorably hold their fief from the new lord. For such proof establishes him as the old lord's equal.

b. Whoever wishes to reject a man by court judgment but without proof is not acting lawfully. The man must be rejected by testimony of witnesses
or shall be permitted to establish by witnesses cause that he should not be rejected, as has already been discussed.

157. He who gives his lord notice of renouncing his fief during severe illness.

Suppose that a vassal who has a fief from a lord and who does not have any heirs to the fief becomes quite sick. One of his friends asks him to send his lord notice of renouncing the fief by one of the lord's vassals. The sick vassal does so. The messenger gives up the sick man's fief to the lord, and the lord bestows the fief upon the sick vassal's friend. His friend takes possession of the fief with the help of the lord's messenger and therefore has the right of possession immediately. But the sick man gets well and requests his friend to give the estate back to the lord and to ask the lord to bestow it again upon the vassal who has recovered from the illness. The friend can legally deny such a request. If, indeed, the friend agrees to comply with the recovered vassal's wish, and if both come before the lord and make the request known to him, he can legally deny them both; or, if he wishes to grant the request, he can also legally do what the men wish. The choice rests with the lord. But suppose the sick man dies after he has given notice of renouncing the fief, and the lord bestows the fief upon the friend and assigns it to him as has been previously mentioned. And afterwards another man comes to the lord and requests him to bestow the fief upon him. The lord does so and gives the new man a messenger and grants him control over the property. The friend of the vassal who was sick comes before his lord and makes complaint against the new man to the effect that the new man has taken illegal possession of his estate. The new vassal also comes before the lord and
says to him: "Lord, I am in the right. You bestowed this property upon me in fee." The lord recognizes both complaints and grants them a court hearing before his vassals. If the friend of the sick man can prove that the vassal who was sick gave notice of renouncing the fief and that he did so using one of the lord's vassals as a messenger, and if he can prove that the lord then bestowed the estate upon him in fee and gave him control over the property with one of the lord's messengers, and if he can present such proof using two of the lord's vassals as witnesses, the sick man's friend wins control of the estate over the new man. But if the lord had not granted the sick man's friend control of the estate, the new vassal would have won the estate.

158. **He who receives the right to a new fief.**

Whoever receives a new fief which was not handed down from the father or which was not bestowed upon the receiver by an enfeoffment by contract shall request his lord to grant him control of the fief. When this is done, the receiver immediately has right of possession to the fief.

I. **Concerning fiefs bestowed in return for ground-rent,** note the following:

Enfeoffments in return for ground-rent terminate when the vassal is no longer able to manage the cultivation of the fields. This is legal, for the man shall have for himself whatever fief the lord bestows upon him in return for ground-rent according to the law governing such fiefs, provided he can properly manage the fief. Whoever infringes upon the rights of a man who holds such a fief does so contrary to God's will. And if the holder

\[85\text{See footnote 64.}\]
of a ground-rent fief dies and leaves a wife and children—whether the
children be sons or daughters—the lord shall let them have possession
of the fief, as did their father. No ground-rent fief shall be bestowed
upon a man except for a rent of one half the grain yield.

II. How the vassal cannot continue in possession under another lord.

If a man is fully qualified to have a herschilt, and if he is
enfeoffed by a clergyman or woman or by someone lacking qualifications to
have a herschilt, he cannot continue in possession of the fief if it falls
under the supervision of another lord. Be it a clergyman or a woman who
wishes to bestow the fief upon the man, either party must obtain the per¬
mission of the empire and have the right to have a herschilt from the
empire. Then the clergyman or woman can bestow the fief, and it is
possible for its owner to continue in possession of it under another lord.
Fortress-fiefs and church-fiefs and all fiefs for which a vassal is not
required to render the empire any services can be bestowed by clergymen
and women. And if the clergymen and women do not have the particular
herschilt of another prospective lord, it is still possible for the owner
of such fiefs to continue in possession of the fief under another lord.

159. Here ends the "Book of Feudal Law." 86

Here this Book of Feudal Law comes to an end, and I have finished
enumerating all those laws which are a part of feudal law. You should
rest assured that feudal law would be quite easy to administer if there
weren't so many people who strive to break the law, and who devise injus-

86 All sections up to this point have had headings. Since section 159
did not, a heading has been given it.
tices to the harm of other people, and who also desire to do wrong for the sake of their own gain, and—after they have broken the law—legalize the offense with smooth words for their own profit and gain. If they are later questioned concerning such an offense, they alter the circumstances and speak otherwise. No one who does not consider it against all reason if one should do him an injustice could be more wrong. Therefore, men are in need of intelligent answers and proper knowledge as to how lawbreakers can be brought to justice and how the offense can be rectified. If there were only by some stroke of good luck a multitude of people who really knew how to speak and would gladly stand up for their rights! Whoever stands up for his rights at all times will gain many an enemy. But the honorable man can well take heart for the sake of God and his honor that he has his enemies for the law's sake. For be assured: God helps anyone who constantly seeks to be in the right. This has been proven time after time in the cases of many men who have been involved in numerous disputes because they were standing by the law. It is good to read this book aloud to people who are intelligent and who know what is proper, for they can understand it and will not alter its meaning. It is not so good to read it to foolish and ignorant people; for they do not comprehend that which is written within, they do not understand how to speak concerning the laws, and they also do not correctly understand the laws themselves. And be assured: The soul and body of anyone who reads this book to such people are condemned before God. For the sake of His goodness, may God give us the grace that we can act as we rightfully should in our legal obligations so that we can enjoy His presence there where body and soul part company. Amen.
The book is ended. Let the reader be exempt from the criminal charge.87

87 The last two sentences appear as a Latin postscript: "Explicit iste liber. Sit lector crimen liber." (Lassberg's edition, p. 224.)
Glossary

The numbers are references to pages on which the term appears. Those numbers which are underlined indicate the page where a definition and/or explanation of the term can be found.

alodium: 25 (footnote 25), 41.

benanntes or unbenanntes Gedinge: 9 (footnote 12), 10, 43, 59 (footnote 53), 65.


flag-fief: 26 (footnote 26), 99 (footnote 82), 105.

fluhtsal: 69, 70.

gemeinem leben: 98 (footnote 81).

gewaerde: 69.


hoveschit: 75 (footnote 68).

huobe: 16, 17 (footnote 21), 78, 95.

hüsgenôz: 84 (footnote 78).

jârzal (period of eligibility): 31 (footnote 34), 35 (footnote 38).

kanerlêhen: 65 (footnote 59).

marke: 66 (footnote 60).

Ministerialen: 1, 2 (footnote 5), 6, 75.

Mittel vriëns: 1, 2 (footnote 4).

pheminc: 16 (footnote 20).

phunt: 7, 11, 16 (footnote 20), 59, 73, 93, 94, 95.
schillinc: 16 (footnotes 19, 20).

semper: 2 (footnote 6), 3.

sempere liute: 1, 2 (footnote 6).

unbenanntes Gadinge: see benanntes Gadinge.

vrien herren: 1, (footnote 3).

zinslêhen: 72 (footnote 64), 92, 93 (perhaps the best English approximation would be "tributary fief").
List of Works Consulted

A. Editions of the Schwabenspiegel


B. Reference Works


C. Secondary Works


Thompson, James Westfall. Feudal Germany. Chicago, 1928.
