

Grundlagen Handels- und Gesellschaftsrecht:

Kaufmannseigenschaft (§§ 1 -7 HGB):

Gewerbebetrieb:

- ➔ Offene, planmäßige, erlaubte (str.), nicht notwendig auf Gewinnerzielung gerichtete (str.) selbstständige Tätigkeit mit Ausnahme der freien Berufe (str.) und der künstlerischen und wissenschaftlichen Tätigkeiten
- ➔ Offen:
 - H.M.: Anbietende und/oder nachfragende Tätigkeit am Markt, d.h. nicht im Privatbereich
 - Innere Absicht alleine reicht nicht aus
 - (P) Spekulation an der Börse
 - (P) Vermögensverwaltung?
 - (P) Grundstücksverwaltung?
- ➔ Planmäßig auf Dauer angelegt
 - Wille des Handelnden muss sich von vornherein auf eine Vielzahl von Geschäften als Ganzes richten
 - Nicht gegeben beim gelegentlichen geschäftlichen Handeln (z.B. Flohmarkt, Verkauf des Jahreswagens durch AN)
 - Zeitraum grds. unerheblich (z.B. Eisdielen, Kiosk im Fußballstadion)
- ➔ Erlaubt (str.)
 - Nach h.M. unerheblich (arg. § 7 HGB)
 - Nach a.A. insofern erheblich, als der Betreffende den Lasten der Kaufmannseigenschaft unterliegt, nicht aber die Vorteile genießt
- ➔ Auf Gewinnerzielung gerichtet (str.)
 - Ist bisher nach h.M. erforderlich (Gewinn = Überschuss der Einnahmen über die Ausgaben; tatsächliche Realisierung von Gewinn ist grds. unerheblich)
 - A.A.: Entgeltlichkeit genügt
 - (P) karitative Unternehmen (Krankenhaus, Essen-auf-Rädern)?
 - (P) § 105 II 1 Alt. 2 HGB?
- ➔ Selbstständig
 - Kein Arbeitnehmer (§ 84 I 2 HGB)
 - Kein Beamter
- ➔ Keine freien Berufe (str.)
 - H.M.: Architekten, Ärzte, Notare, RA, Steuerberater, Wirtschaftsprüfer (vgl. § 1 II PartGG) sind keine Kaufleute, wohl aber Apotheker
 - Grund für diese historische Bereichsausnahme: höchstpersönliche Tätigkeit „höherer Art“, kaum Einsatz von Produktionsmitteln
 - (P) Mischformen, z.B. Arzt führt Kurbetrieb oder Wellnesshotel?

Handels Gesellschaftsrecht Rechtsstand 02 12 2015

Landesrecht

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Deutsche Bibliographie ,1966 *Handels- und Gesellschaftsrecht, Rechtsstand 02. 12. 2015, Bundes- und Landesrecht*
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