

§ 1 Introduction

I. Why studying land law with a comparative approach?

- for a *better understanding* of the own land law, its particularities (and the alternatives), its strong and weak points and possible perspectives for its development
- as a *source of inspiration*: solutions for common problems developed in one country may be useful in others too
 - a long history of *legal reception*: many countries have successfully adopted legal concepts and institutions from others
- for a *mutual exchange of experience and ideas* to better cope with the profound changes and challenges of the more and more developed and technologised urban and agricultural life in the globalised world of the 21st century
- however, there are *limits*, due to different historical and cultural backgrounds and economic, social, climatic and geographical conditions

II. Backgrounds of land law in Germany

1) Historical background

- in the feudalistic system of the Middle Ages, peasants did not own the land they farmed but had the right to use it within the *feudal relationship* with their feudal lord (a noble)
- today's German land law was introduced with the adoption of the *German Civil Code* [*Bürgerliches Gesetzbuch* (= BGB)] in 1896, which entered into force in 1900

2) Economic and social background

- farmers not a significant part of the population in modern Germany
- many farmers have been abandoning farming for many decades
- the remaining farms became larger and larger through land acquisition and farm lease
- *modern farmers are entrepreneurs* who run their farm as a business
 - many have studied agriculture at university
 - their highly technologized farms are more like industrial enterprises than traditional farms

3) Constitutional background

- a *fundamental right of property* (art. 14 Basic Law [= BL])
 - but property entails obligations: its use shall also serve the public good (art. 14(2) BL)
 - expropriation for the public good against compensation (art. 14(3) BL)
- farmers enjoy *freedom of occupation* (of profession) (art. 12 BL)
- *improvement of the agrarian structure* a mission of the Länder (cf. art. 91a(1) no. 2 BL)

III. The concept of land law and the position of land law in the spectrum of German law

- land law [Grundstücksrecht] not a separate but a *cross-sectional field of law* that includes small parts of various fields of private law (esp. of property law, contract law) and is closely related to several sub-fields of administrative law (esp. environmental law, public construction law)
- see **diagram on the spectrum of German law** (from my course "Introduction to the German Legal System")