

§ 1 Introduction

I. Why studying foreign law?

- for a *better understanding* of one's own legal system, its particularities (and the alternatives), its strong and weak points and the perspectives of its development
- as a *source of inspiration*: legislators, courts and lawyers in different countries often face similar problems in their field of law, and legal solutions developed in one country or their basic ideas may be useful in others too (lawyers do not need to reinvent the wheel...)
 - example: the creation of constitutional courts in numerous countries, inspired by the model of the German Bundesverfassungsgericht, or of Constitutional Councils, inspired by the French Conseil constitutionnel
 - examples: new types of contracts or new types of companies, often inspired by models in other countries
- for a *better critical analysis of the domestic jurisprudence, doctrine and practice*: courts, scholars or practitioners in other countries may have found better solutions or shown a more sophisticated reasoning when dealing with the same problem
 - especially relevant for topic questions concerning human and fundamental rights, general principles of law (e.g. good faith, rule of law) and in some areas (e.g. data protection, consumer protection, special problems of company law)
- *not only the success stories* but also the failures of foreign law are interesting: you must not repeat the mistakes of others...

II. Why studying German law?

- because German law is a particularly highly developed continental legal system, with many interesting, innovative concepts and practical experience with them
- because there is a long history of *legal and jurisprudential reception*, especially in the field of public law: many countries have adopted with great benefit institutions and concepts from German law
 - e.g. reception of elements of the German Civil Code in Switzerland, Greece, Portugal, Japan, Korea and Taiwan
 - e.g. reception of elements of German fundamental rights doctrine in European and Asian countries
 - e.g. reception of elements of general administrative law, especially administrative procedure law, in European countries and also Kazakhstan
- because of its strong *systematic, dogmatic & methodological approach* (see infra, § 2 III)
 - German laws and lawyers systematise and structure everything
 - German courts and scholars have built up and are cultivating a highly developed legal doctrine
 - legal methodology is sophisticated and diverse, and applied not only in theory but also in legal practice
 - the advantages of this approach can be and are often used by foreign lawyers trained in German law to improve the quality of their own legal system
- because German law *can be exaggerated in its complexity and intricacy* and in these cases serve as example of how better not to do
 - intellectual effort and benefit for society do not always correspond appropriately
 - controversial example: the principle of abstraction between obligation and disposal transaction in private law [Abstraktionsprinzip], which has been rejected in almost all other countries, and its complicated consequences

III. The difficulties of studying German law in English

1) The problems of studying law in another language than the official language of the law

- legal terms are often deeply rooted in the traditional national legal culture that developed in the 19th and 20th centuries, when every nation state built up its own legal system and international legal discourse and cooperation were rare

- therefore, the various national legal systems have developed *different legal concepts and terms, which often do not really correspond* to each other and thus cannot be translated correctly at all or without further explanation
 - example: the English legal term "trust", which cannot be translated precisely & correctly into most other languages
 - example: the criminal offences in the various national criminal codes, which often do not correspond in substance
- studying law in another language than its official language therefore inevitably bears a *high risk of misunderstandings*

2) The problems with English as working language in law

- due to its rather simple grammar, English is a very unprecise language
- it is more difficult to express yourself in a precise and differentiated way in English than in other European languages (such as French, German, Spanish or Russian)
 - multilingual texts can be longer in the English version; often, two sentences are necessary instead of one
- English language has a rich vocabulary, but similar words similar in content are usually not used for differentiation but as synonyms
 - example: invalidity, nullity, voidness - no clear difference!

3) Which version of English for studying non-English law in English?

- there are different versions of legal English with often different vocabulary:
 - British, American, Indian, Southeast Asian legal English etc.
 - European legal English (as used in the European Union and its member states)
- this course uses *European legal English*, which developed in the last 20 years in the European Union for the communication among continental-European lawyers in English
 - this often includes a *direct translation of common continental-European legal terms* that most continental-European but not all English or American lawyers will understand
 - strictly speaking, this is a *European legal pidgin English*, since from the perspective of classical English legal terminology many used terms are simply wrong but most European lawyers understand

4) The heterogeneity of the legal terminology used in English translations and publications on German law

- due to the presented problems
 - different English translations of the same German law can read like translations of laws from different countries
 - note that the quality of official translations is not necessarily better!
 - subtle conceptual nuances are lost in translation
 - e.g. when several different German legal terms are translated with the same term in English...
 - different English publications on the same topic in German law can read like publications on the law of different countries
 - often the used English terminology reveals if the author/translater has studied law in the UK, USA or elsewhere...
- special problem: some translators/authors chose to work as closely as possible to the original German term (which even a German student may not always understand) or to the assumed best corresponding special term in English or American law (which readers from third countries will not understand)
- tip: in case of doubts use tools like Google Translate or DeepL to compare the translations of laws!
 - often, very different English texts will read rather similar after translation in other languages
 - for better orientation, you may use in addition direct translations of the German text via DeepL

IV. Access to laws, jurisprudence and literature on German law

- see the **bibliography** and the **links at the special website** for this course
- official translations of German federal laws are available at *Gesetze im Internet*
- court decisions of the federal courts of the last decades are usually available for download in German language at the court's website; English translations are only available for some important decisions of the Federal Constitutional Court at its website
- legal literature (books) on German law available in any library in Germany (or even world-wide) can be easily found via the library metacatalogue *Karlsruhe Virtual Catalog*; books still on sale can easily be identified at the catalogue of *Amazon.de*.