

# § 6 The general structure of German law

## I. Detailed systematic organisation into fields and sub-fields of law

- German law clearly structured into 3 main fields of law, each with several sub-fields and "sub-sub-fields" of law
- tendency to form new sub-sub-fields of law within the various sub-fields of law, requiring a higher degree of specialisation
  - esp. rise of important new fields of administrative law in the 1960s to 1980s

## II. The legal fields of private/civil law [Privatrecht/Zivilrecht]

### 1) Distinction from public law

- as in most continental legal systems, private and public law are strictly separated
  - delimitation can be delicate (see Slide 8 from the course German Public Law)
- private law (= civil law) is the law that regulates the relationships between legal subjects (individuals or legal persons) that are legally equal and act (theoretically) self-determined, while public law regulates the relationship of the citizen to the state and other holders of public authority as well as the relationships between public institutions and bodies
- CAUTION: in common law countries, the term "civil law" is also used as a synonym for continental law!

### 2) The individual fields of private law

- "Bürgerliches Recht"** [≈ general private law, literally translated "citizens' law"]
  - the part of private law that *affects everyone in everyday life in their private relationships* with others and is mainly regulated in the German Civil Code [Bürgerliches Gesetzbuch]
    - general part
    - law of obligations
    - property law
    - family law
    - law of succession
- Special private law** [Sonderprivatrecht]
  - important parts of private law that apply only to certain persons or areas of life, mainly business life, and are regulated in special legislation
  - commercial law
  - company law
  - labour law (→ special courts)
  - competition law
  - intellectual property law
  - securities law
  - capital market law
  - other special fields of private law
- Civil procedural law** [Zivilprozessrecht]
  - the law governing the court proceedings in private law matters
- International private law** [Internationales Privatrecht]
  - the law on conflicts of laws

### III. The legal fields of criminal law [Strafrecht]

#### 1) A part of public law considered a separate main field of law

- logically a part of public law, but with so special characteristics that it is treated as a separate main field of law

#### 2) The individual fields of criminal law

##### a) General part of criminal law [Strafrecht - Allgemeiner Teil]

- the general rules about crime and punishment, regulated in the general part of the German Criminal Code [Strafgesetzbuch]

##### b) Special part of criminal law [Strafrecht - Besonderer Teil]

- the individual criminal offences, regulated in the special part of the German Criminal Code

##### c) Criminal procedural law [Strafprozessrecht]

##### d) Penitentiary law [Strafvollzugsrecht]

##### e) Juvenile criminal law [Jugendstrafrecht]

### IV. The legal fields of public law [öffentliches Recht]

#### 1) Distinction from private law

- public law is the law that regulates the relationship of the citizen to the state and other holders of public authority as well as the relationships between public institutions and bodies, while private law regulates the relationships between legal subjects that are legally equal and act self-determined, (see above, II.1)

#### 2) The individual fields of public law

- note that there are *special courts* for each field of public law (→ slide 4, IV.)

##### a) Constitutional law [Verfassungsrecht]

- state organisation law
- fundamental constitutional principles
- fundamental rights
- other constitutional law
  - e.g. on state-church relations
- see also ordinary (non-constitutional) state law
  - esp. ordinary state organisation law, constitutional court procedure law

##### b) Administrative law [Verwaltungsrecht]

###### aa) General administrative law [Allgemeines Verwaltungsrecht]

- general principles of administrative law
- administrative procedure law
- state liability law
- law of public property (e.g. road law)
- regulatory offences law (on administrative offences)
- other general administrative law

###### bb) Special administrative law [Besonderes Verwaltungsrecht]

- local government law
- general police and public security and order law
- special public security and order law and related fields of law
  - e.g. law on public assemblies, immigration law, industrial law, environmental law

- public construction and planning law
  - civil servants law
  - school law and higher education law
  - other fields of special administrative law
- cc) Administrative court procedure law [Verwaltungsprozessrecht]
- c) **Social law** [Sozialrecht]
- law concerning social security
- d) **Tax law** [Steuerrecht]

## V. The role of European Union law and international law in the German legal system

- European Union law is not part of German law but *directly applicable* like German law and enjoys primacy of application in case of conflict (see above, slide 2.V.)
  - exception: EU directives (need to be transposed into domestic law)
- the general rules of public international law (customary law & general principles, esp. *ius cogens*) apply directly as part of federal law, with primacy over statutory law (art. 25 BL)
- international treaties do not apply directly but must first be transposed into domestic law, which then will be applied (→ dualism)
  - however, this is often done explicitly or implicitly with the law ratifying the treaty