

Course Information	
Course Title	The Legal System in Germany – Codification or judge made law?
Teaching Language	German
Teaching Methods	Giving information and provoking questions
Type of Class Arrangement (A–H)	A2
Course Description	<p>Unlike the anglo-saxon law, German law has the reputation that nearly everything is regulated by the legislator. This is not true. There is much judge-made law in all parts of the legal order. The prevailing opinion in the scientific discussion plays a very important role, too. In some fields, one can find collective agreements established by the organisations of citizens. There are two characteristics which shall become clearer during the course: The legislator and the other institutions creating law have to respect the general capitalist framework. The margin for decision may be quite small. Law and reality are two different things. Reality is often much behind the law. I prefer the method to give facts to the students; it is up to them to find conclusions.</p>
Course Syllabus	<p>As I do not know the time-table, I can only describe the contents of 8 units with 4 hours (= 32 hours). 1. Constitutional Law: Its concrete content is defined by the Federal Constitutional Court composed of 16 judges in two panels. How are the judges selected? For the citizen, the fundamental rights are of high interest, but there are limits. Democracy is identified with elections every four years and a free press (dominated by a few persons in no way democratically elected). Constitutional law is a kind of "roof" for the other fields of law; the whole legal order has to be interpreted in a way that there is no contradiction to the Constitution. 2. Contract Law and tort law are codified in the Civil Code. In its original version of 1900, the Civil Code (BGB) was based on a liberal concept of society; the autonomous individual prevailed. Nowadays, there are many rules protecting the weaker part; the concept has changed. As the rules of the civil code are quite abstract they can be used in different societies; even the GDR used it during 25 years. 3. Labour law gives a protection to workers in two forms: There are minimum standards fixed by law and there is the possibility of self-help: workers can create unions and works councils in order to improve their wages and their working conditions. Social Security Law protects against certain risks (old age, invalidity, accident, illness, unemployment); it is considered as a special field of law. 4. Family law deals with marriage and divorce and with the relationship between parents and children. A growing number of couples live together without being married; if they have children this brings about a lot of additional problems. Since about 20 years, people of the same sex can form a so-called partnership for life which is very similar to the marriage. For many couples the main problem is that the woman is considered to be responsible for the household whereas the man has the better job opportunities. 5. Administrative Law deals with the relationship between the state and the citizen which is regulated in a very comprehensive way. The interest of many people is concentrated on environmental law (which is part of it) and on the supervision whether the rules of data protection are</p>

	<p>observed. Some functions in the state administration as well as in enterprises can only be exercised by "reliable" people; there is a special, partially clandestine procedure in order to verify the reliability of the persons concerned. 6. Criminal law follows specific rules like <i>nulla poena sine lege</i>. Besides a broad field of consensus, two things seem not to be solved: To put people into prison should in theory improve their character and their integration into society but in reality does not. On the other hand, certain opinions are in danger to be considered as a criminal act. To justify the Russian position towards Ukraina, is e.g. a quite dangerous behaviour. 7. Which is the applicable law if there is a relationship to a foreign country? A Chinese citizen is working in Germany for a Chinese firm, a Chinese women wants to marry an American guy. 8. Public International Law comprised in its traditional form only the rules between sovereign states. Nowadays, human rights have reached an important position in international law. Different concepts of human rights may lead to difficult relations between states.</p>
Course Assessment	<p>Each participant should write a paper and present it in the course; this will normally lead to discussions. Only if this is not possible, one should find another solution. The evaluation of the papers has to bear in mind that the papers are written in a foreign language and that the participants have never been in contact with German law.</p>
Course Books and Recommended Reading	<p>Robbers, Introduction into German Law, seventh edition, 2019 (Nomos-Verlag) Robbers, Einführung in das deutsche Recht, 7. Auflage, 2019 (Nomos-Verlag) Simon/Funk-Baker, Einführung in das deutsche Recht und die deutsche rechtssprache, Introduction to German Law & Language, 5. Auflage, 2013 (Beck-Verlag) https://www.daeubler.de: Various publications in German, Chinese and English.</p>