1. **Introduction**

The German government is trying to use their land in a sustainable way and reduce the use of land. They try to achieve their goal by making use of Land and regional planning. The plans that are being made up will contain various information about specific regions in Germany and will then be used by the government to see where the land could be used in a better way.

Land grabbing, namely when land is dubiously distributed to large companies and corporations, making it exceedingly difficult for small farmers to get into the agriculture sector.

In Germany, land governance is characterized by the federal nature of the country. Private law matters, and contract law issues, are regulated by the German Civil Code (Bürgerliches Gesetzbuch) on the federal level. In addition, there is the regulation of the land register. The current land governance system of Germany is guided by 4 principles, namely: the meaning of property in a market economy, the rule of law and human rights, legal certainty, and the participation of the population in political processes.

A new cadastre system is trying to be established, which will use a new software system in combination with a new official topographic information system. A replacement is needed as the current cadastre system is now too obsolete and not precise in geographical matters.

Recent news stories on land governance in Germany are mainly concerned with the ‘Federal Rent Control Act’, introduced in 2015 to prohibit landlords from increasing rent prices by more than 10 percent. However, in 2017, this act was ruled unconstitutional by Berlin’s district court. However, it has to be kept in mind that in German law, rent law is merely contractual (i.e. it does not form part of property law and a rent contract will not have in rem consequences…).

1. **Overview of Important Land Legislation and Regulations**

In the German Basic Law Article 14 outlines the right to property, ensuring that the right of property and inheritance will be guaranteed. Art. 14 (2) provides that property entails obligations and that its use should serve private as well as public needs. Art. 14 (3) mentions that expropriation is only possible for the public interest, and if compensation is awarded.

The constitutional provision is implemented by national level legislation. The Basic Law lays down the protection of property, while the details about property law and land law are codified in the BGB (the rules about immovables can be found in §§ 873 et seq.). Furthermore, the Land Register provides documentation of the owner, any existing third person rights, restrictions and liabilities for each property in the country, thereby ensuring that any change of ownership or rights is documented. Moreover, it also allows for the possibility of good faith acquisition based on the register entries.

Section 903 of the BGB holds that the owner of an object, or in this case property, may use it at his discretion, in so far as the use is lawful and not in violation of another party’s rights. This includes the right to do with his property as he pleases, including the right to immunity from outside influence.

As national-level legislation, and in the field of public law, Germany has created the Federal Building Code “Baugesetzbuch”, which is one of the several laws dealing with land use and planning. This is complemented by State legislation. The major aim of this act is thus to control the urban-land use planning of a municipality for the use of public needs. Municipalities are required to plan land-use in advance as plans are generally a requirement for the regional policy planning and therefore the main requirement receiving a building permit.

The national legislation provides definitions of the most important terms of property law. It also sets the procedure on how property can be acquired. For example, it sets out when and how land and the ownership are transferred, when the right of ownership becomes effective against third parties or that if an individual finds an object it becomes his after a certain amount of time has lapsed.

1. **Land Transfer, Allocation, and Lease**

Land transfer is regulated by §§ 873-902 Bürgerliches Gesetzbuch (BGB).

In Germany formal expropriation is used, justified through article 14(3) of the German Basic Law. The power to expropriate land into public ownership is carried by the Federation, by public authorities on the State and on the municipal level. Firstly, the authority determines the goal and purpose that the land will have, during this phase the interests are weighted. Then, the authority will decide whether or not to proceed with the expropriation on the basis of various factors.

The process of selling property (§§ 873-925 BGB) includes 3 parts: a sale and purchase agreement (SPA), the conveyance of the title and the registration of the new owner. The transfer of ownership of land in Germany is regulated by the abstraction principle. A sale and purchase agreement (SPA) states the most important elements of the transaction and must be notarized by a public notary. However, this ‘merely’ obliges the buyer to pay the agreed price and the seller to transfer the property. The conveyance of the title then has to be declared in the presence of the notary (this is usually included in the SPA). Finally, the transfer of ownership must be registered in the Land Registry, which first examines whether the formal requirements have been met.

German rental law is very complex and dealt with in the BGB in great detail (§§ 535-580a GCC). In case of a leasehold agreement, which is laid-down in Section 581 until Section 597 GCC, the beneficiary is entitled both to use the leased property and to benefit from it. However, it is worth noting that this is part of contractual law, with a focus on residential rent contracts, which is a field under constant development.

According to German law the registration of a transfer of property can take up to several months while the Land Registry examines the application, which might be problematic for the purchaser. That is why in Germany there is the ‘Vormerkung’, also known as priority notice. The content of the Land Registry System does not present a concern since it is usually accurate, and even in the case of a mistake, good faith acquisition is still possible.

1. **Land tenure classifications**

In the German civil code there is no mention of the terms of freehold, leasehold or customary tenure. The terms that can be found in the civil code are ownership, usufruct, servitude, and lease.

German law recognizes the absolute right of ownership by paragraph 903 of the BGB and co- ownership within paragraph 1008 of the BGB. Ownership is the most extensive right that exists, and it is exclusive against everyone.

Tenancy, prescribed by § 535 BGB, and lease for agricultural purposes, §585 BGB.

Usufruct (“Nießbrauch”) is regulated in §§ 1030-1067 (Book 3, division 4, title 2).

Servitude. The important provisions regarding the servitude can be found in the German civil code under the division 4 of the third book.

§ 3 Abs. 1 GBO provides how private property is to be treated, while you can find the corresponding provision for public property under § 3 (2) GBO. The authorities will inscribe private property into the land register, this is different for public property. Public property as such may be inscribed into the land register, but one does not have to.

Land and property registration is regulated in Germany by the Civil Code mostly in the provisions §§ 873-902 and the GBO (Grundbuchordnung) which provides for the organisation and procedure of the land register. This process is subject to strict rules based on principles such as the party initiative principle (GBO § 13), the authorisation principle (GBO § 19, § 20 & § 29), the priority principle (§ 879) and the sequency principle (GBO § 39).

For the land registering a notary is obliged to update the content of the land register when property is transferred by sale, gift or inheritance. The registration into the land register is compulsory. Germany follows the positive registration system: the state actively checks the registration of a transfer of property.