

European Entrepreneurship Exchange

**Introduction to
German employment law**

Edinburgh,

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Introduction

- **The aim of German labour law
= protection of the employees**
- **ius cogens
= cogent law (employer is not allowed to
change the sense of labour law rules)**

Overview

German labour law

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graph TD; A[German labour law] --> B[Collective labour law]; A --> C[Individual labour law]
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Collective labour law

Individual labour law

Individual labour law

- Laws concerning the individual relationship between employer and employee
- e.g.
 - Kündigungsschutzgesetz (Act Against Unfair And Wrongful Dismissal and Redundancy);
 - Mutterschutzgesetz (Maternity Protection Act);
 - Teilzeit- und Befristungsgesetz (Part Time Working Act)

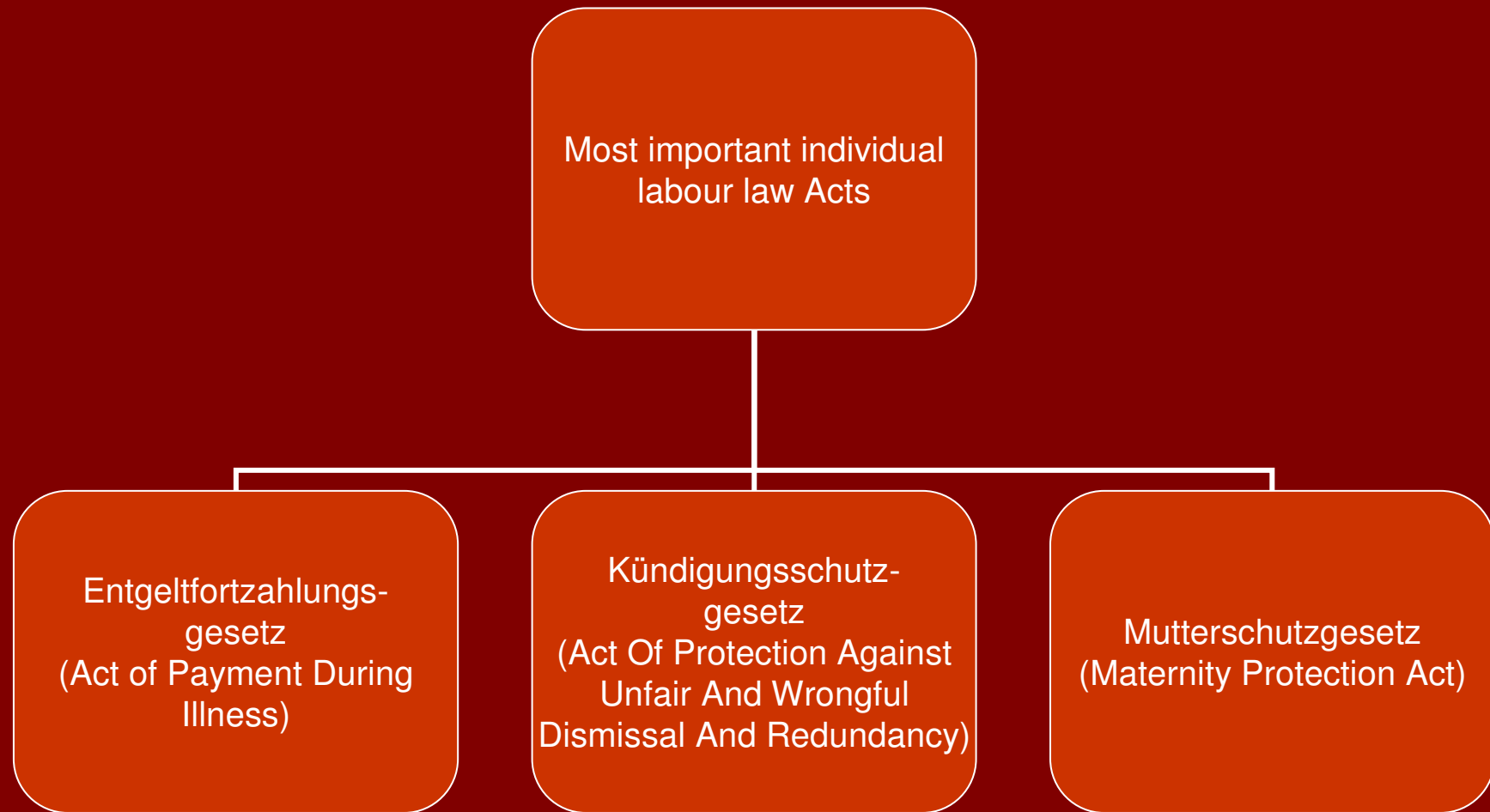
Collective labour law

- Laws concerning the collective relationship between employer and works council
- Laws concerning the right to strike
- e.g.
 - Betriebsverfassungsgesetz (Act of Companies` Collective Law Constitution);
 - Tarifgesetz (Act of Tarifs Rules).

Individual labour law

- German labour law does not have only one „Act of Labour Law“
- German labour law is divided into lots of special labour law acts
- 67 different labour law acts
- From „a“ = Altersteilzeitgesetz (= Part Time Working Act For Older Employees)
- to „z“ = Zivilprozessordnung (Act Of Civil Action Procedures)

Individual labour law



Individual labour law



Act of payment during illness

- Employer has to pay the salary of the employee during the illness of the employee for maximum duration of six weeks
- After six weeks the social insurance system has to pay the salary of the employee during his illness

Act of maternity protection

- Working within six weeks prior to childbirth is prohibited
- Hard physical work during pregnancy is prohibited
- Working within eight weeks after childbirth is prohibited

Act Of Maternity Protection

- Giving notice
 - during pregnancy and
 - within four weeks after childbirth is prohibited
- Special protection against unfair dismissal
- Special payment (=Mutterschaftsgeld)

Act Of Protection Against Unfair/Wrongful Dismissal and Wrongful Redundancy

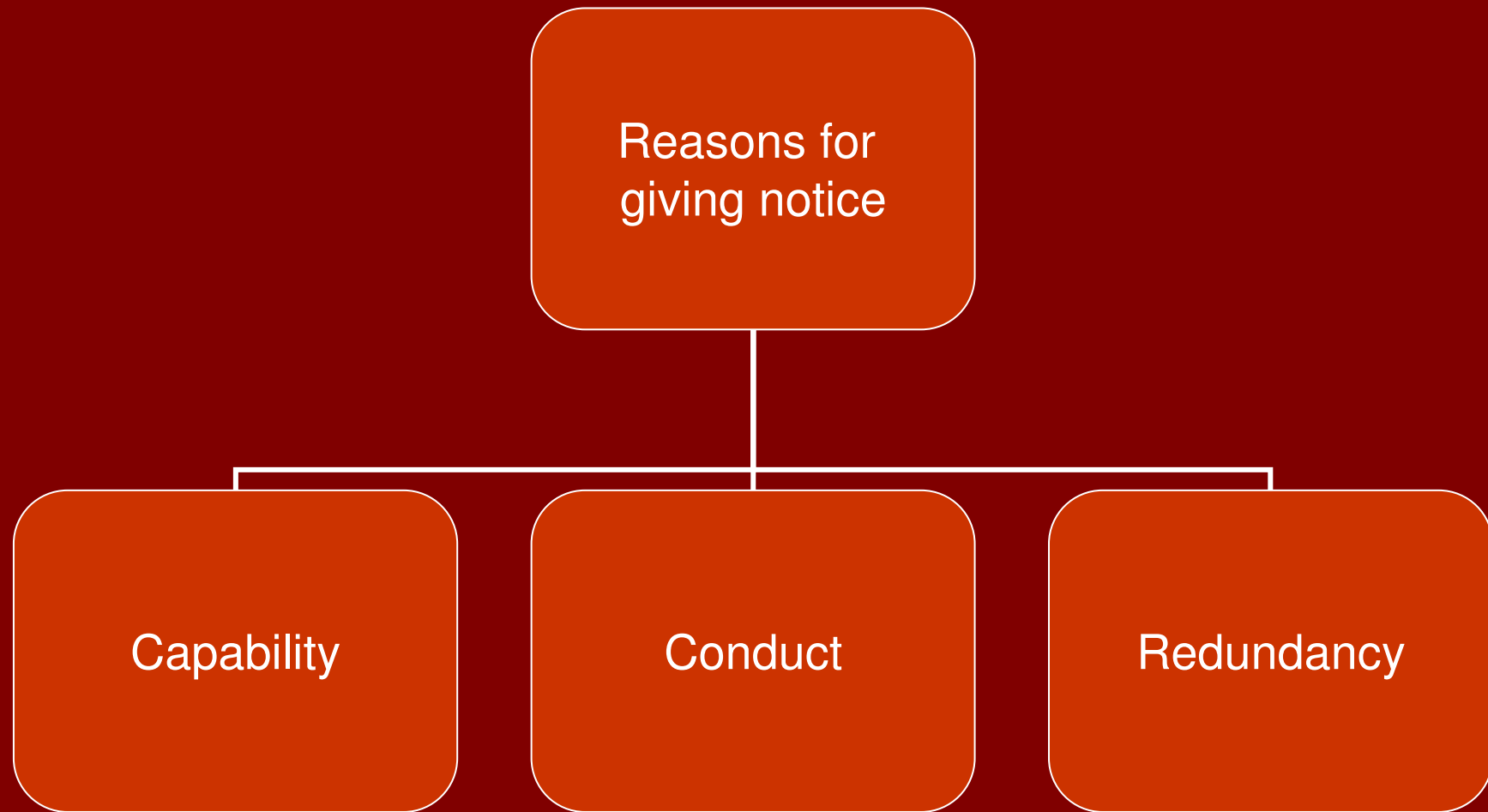
- „Heart“ of the German individual labour law
- Conditions
 1. More than 10 employees in the company are required
(Attention: In the case of working contracts which originated before January 1st, 2004, only 5 employees are required) and
 2. Working contract is more than 6 months old

Act of protection against unfair/wrongful dismissal and wrongful redundancy

- Excursion

- number of employees as one condition of the protection against wrongful dismissal and redundancy was the reason for a political discussion in Germany
- having a „date line“ is now a compromise between social aspects and economic necessities

Act of protection against unfair/wrongful dismissal and wrongful redundancy



Act of protection against unfair/wrongful dismissal and wrongful redundancy

- **capability** = reasons concerning personal aspects of the employee
- **conduct** = reasons concerning the behaviour of the employee
- **redundancy** = reasons concerning the economic situation of the employer

Act of protection against unfair/wrongful dismissal and wrongful redundancy

- Advice:
- Normally, this strict act is not so important for an entrepreneur in the first start up phase
- But if the company expands, the entrepreneur has to regard this regulation

Act of works`duration

- Working time per day: maximum 8 hours
- Breaks
- Nightshift
- Special conditions in tarif contracts

Act of vacancy rights

- Minimum duration of vacation: 24 working days
- Regulations concerning the time of vacation
- Payment during vacation

Childrens`work protection Act

- Childrens` work is prohibited
- Definition: child ->under 15 years
- Special regulations between 15 and 18:
- Maximum duration of work per day: 8 hours
- (advice: similar to the regular situation, but no other regulation by an individual contract is allowed)

Excursion

- Advice: § 7 IV Social Law Act Nr. III
- Very important for entrepreneurs !
- Typical (personnel) situation during the start up phase:
- Entrepreneur needs personnel help
- But he does not want to pay the social insurance fee for his employee

Excursion

- Solution: entrepreneur works with freelancers
- Advice:
- this construction could cause a dangerous situation !

Excursion

- Why ?
- If the free-lancer is embedded in the organisation of the employer, the free-lancer is not self-employed
- The free-lancer is an employee !

Excursion

- Consequences
 1. Employer and employee has to pay the social insurance fee for the whole time of working
 2. The tax declarations of the employer and the employee are wrong.

Discussion point 1

- GmbH (German limited company) -> contract between H&A (as directors) and the company
- BGB – Gesellschaft („partnership“) -> Written employment contract is not necessary

Discussion point 3

- Childrens`Work Protection Act
- No minimum wage for young and older people
- The wage depends on individual agreements or tarif contracts

Discussion point 3

- Act Of Works Duration
- Specific rules for young people in the Childrens`Work Protection Act
- § 7 IV Social Law Act III

Discussion Point 4

- Act Of Protection Against Unfair Dismissals And Redundancy
- Giving notice is possible, but H has to look for the termination period (e.g. § 622 German Civil Law Act -> Duration of the employment agreement up to two years = termination period 1 month)
- After 6 month and more than 10 employees

Discussion Point 5

- No

Discussion Point 8

- Under German law, there were necessity to pay an amount of 5000, 00 EUR
- The company has no more than 10 employees -> regular termination is possible (problem: period of notice)
- But: termination without a period of notice is possible ->reason: illegal behaviour

Discussion point 10

- Maternity protection Act
- Duration of the working contract is not important for the special protection against unfair dismissal
- No responsibility by the company

Discussion point 10

- EU – guidelines against discrimination
- Germany does not have an Act against discrimination
- Germany has to transform the EU-guidelines in national right

Discussion point 11

- The buyer will become the new employer (§ 613a)
- Working unit has to be brought