

FDUL – Curso Intensivo:

“Construction contracts in the system of German Civil law – Archetype or special case for the attribution of risks? An introduction with special regard to the amendment of the German Civil Code relating to the law of construction contracts of 2018”

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Syllabus

April 1	<ul style="list-style-type: none"> • Historical development from ancient Roman law to the recent amendments of the German Civil Code (GCC) • Construction contracts in legal practice: <ul style="list-style-type: none"> ○ established types of construction contracts (secs. 650a, 650p, 650u GCC) ○ “players” ○ hardware of institutions: Construction law Senate at Supreme Court; new Construction law chambers and senates at Regional Courts and Courts-of-Appeals • Construction contracts and public policy issues • Protection of competition and consumers (secs. 650i-o GCC)
April 2	<p>Qualification of construction contracts</p> <ul style="list-style-type: none"> • Construction contracts as contracts for a work; special problems of architects’ contracts and developers’ contracts • main differences in comparison with sales contracts and service contracts • Structure of the new provisions in force since January 1st, 2018 • Overview of the new provisions in force since January 1st, 2018
April 3	<p>The risk of completion – What does the contractor owe?</p> <ul style="list-style-type: none"> • Interpretation of the contract; obligation to achieve result (sec. 631 GCC) • Scope of defence of impossibility, disproportionality (secs. 275 (2), 635 (3) GCC) • Role of the employer with regard to the contractor’s performance (sec. 645 GCC) • Remedies for material defects (sec. 634 – 639 GCC)
April 4	<p>The risk arising from the lapse of time – Construction contracts as contracts with an extended period of performance:</p> <ul style="list-style-type: none"> • Relationship between production and acceptance of work produced (secs. 640, 644, 650g GCC) • Flow of remuneration (sec. 641, 632a GCC) • Employer’s right to terminate (secs. 648, 648a, 650h GCC) • Employer’s right to amend the object of contract (sec. 650b-d GCC) • Contractor’s and employer’s securities (sec. 650e, 650f GCC)
April 5	<p>The risk arising from the need of co-ordination – Construction contracts as contracts involving performances of multiple parties:</p> <ul style="list-style-type: none"> • Types of relations (linear, parallel, circular) • Privity of contract and interdependent contracts; the need for co-ordination • Distinction between duty and mere obligo (secs. 642, 643 GCC) • Legal instruments of co-ordination (secs. 278, 421 ff., 650r GCC)

The lecture will be taught in English language. A text version of the German Civil Code in English language (<https://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.pdf>) should be available for the students in the classroom either in print or in electronic form, even if it only reflects the state of the law as of October 1st, 2013. – If an updated English version is published prior to the course, it will be made available for the students. – As for the recent amendments there is no English version available yet.

For the courtesy of those participants wishing to work on their German language skills an excerpt of the German Civil Code relating to the subject-matter of the course is available.

Recommended preparatory reading: *Robbers*, An Introduction to German Law, 6th ed., 2017, parts A., D.I.-III.); *Schulte-Nölke*, The New German Law of Obligations: an Introduction, 2002, <<http://germanlawarchive.iuscomp.org/?p=357>>