

## FDUL – Curso Intensivo 2019/20

“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 new provisions in the German Civil Code governing construction contracts”

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### Syllabus

March 23	<ul style="list-style-type: none"><li>• Historical development from ancient Roman law to the recent amendments of the German Civil Code (GCC)</li><li>• Construction contracts in legal practice:<ul style="list-style-type: none"><li>◦ established types of construction contracts (secs. 650a, 650p, 650u GCC)</li><li>◦ “players”</li><li>◦ hardware of institutions: Construction law Senate at Supreme Court; new Construction law chambers and senates at Regional Courts and Courts-of-Appeals</li></ul></li><li>• Construction contracts and public policy issues</li><li>• Protection of competition and consumers (secs. 650i-o GCC)</li></ul>
March 24	<p>Qualification of construction contracts</p> <ul style="list-style-type: none"><li>• Construction contracts as contracts for a work; special problems of architects’ contracts and developers’ contracts</li><li>• main differences in comparison with sales contracts and service contracts</li><li>• Structure of the new provisions in force since January 1<sup>st</sup>, 2018</li><li>• Overview of the new provisions in force since January 1<sup>st</sup>, 2018</li></ul>
March 25	<p>The risk of completion – What does the contractor owe?</p> <ul style="list-style-type: none"><li>• Interpretation of the contract; obligation to achieve result (sec. 631 GCC)</li><li>• Scope of defence of impossibility, disproportionality (secs. 275 (2), 635 (3) GCC)</li><li>• Role of the employer with regard to the contractor’s performance (sec. 645 GCC)</li><li>• Remedies for material defects (sec. 634 – 639 GCC)</li></ul>
March 26	<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"><li>• Relationship between production and acceptance of work produced (secs. 640, 644, 650g GCC)</li><li>• Flow of remuneration (sec. 641, 632a GCC)</li><li>• Employer’s right to terminate (secs. 648, 648a, 650h GCC)</li><li>• Employer’s right to amend the object of contract (sec. 650b-d GCC)</li><li>• Contractor’s and employer’s securities (sec. 650e, 650f GCC)</li></ul>
March 27	<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"><li>• Types of relations (linear, parallel, circular)</li><li>• Privity of contract and interdependent contracts; the need for co-ordination</li><li>• Distinction between duty and mere obligo (secs. 642, 643 GCC)</li><li>• Legal instruments of co-ordination (secs. 278, 421 ff., 650r GCC)</li></ul>

The lecture will be taught in English language. A full text version of the German Civil Code in English language is available (<[https://www.gesetze-im-internet.de/englisch\\_bgb/englisch\\_bgb.pdf](https://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.pdf)>), even if it only reflects the state of the law as of October 1<sup>st</sup>, 2013.

As for the recent amendments there is no (semi-)official translation available yet. For the courtesy of the participants I made up an excerpt of the German Civil Code relating to the subject-matter of the course containing also a translation of the new provisions.

Recommended preparatory reading:

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

*Zimmermann*, The New German Law of Obligations. Historical and Comparative Perspectives, 2005, available on Oxford Scholarship Online, DOI:10.1093/acprof:oso/9780199291373.001.0001;

*Zimmermann*, The German Civil Code and the Development of Private Law in Germany, (2006) Oxford U Comparative L Forum 1, <<https://ouclf.iuscomp.org/the-german-civil-code-and-the-development-of-private-law-in-germany/>>;