

FDUL – Curso Intensivo 2020/21

“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”

Prof. Dr. *Jochen Glöckner*, LL.M. (USA), University Konstanz, Chair for German and European Private and Business Law; Judge at the Higher Regional Court Karlsruhe

Syllabus

April 19	<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 20	<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 21	<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 22	<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 23	<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 full text version of the German Civil Code in English language is available (<https://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.pdf>), even if it only reflects the state of the law as of October 1st, 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, 7th ed., 2019, 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.law.ox.ac.uk/the-german-civil-code-and-the-development-of-private-law-in-germany/>>.

For more specific information it is recommended to use Dannemann/Schulze (eds.), German Civil Code Volume I = Bürgerliches Gesetzbuch (BGB), Books 1-3: §§ 1-1296, 2020.