

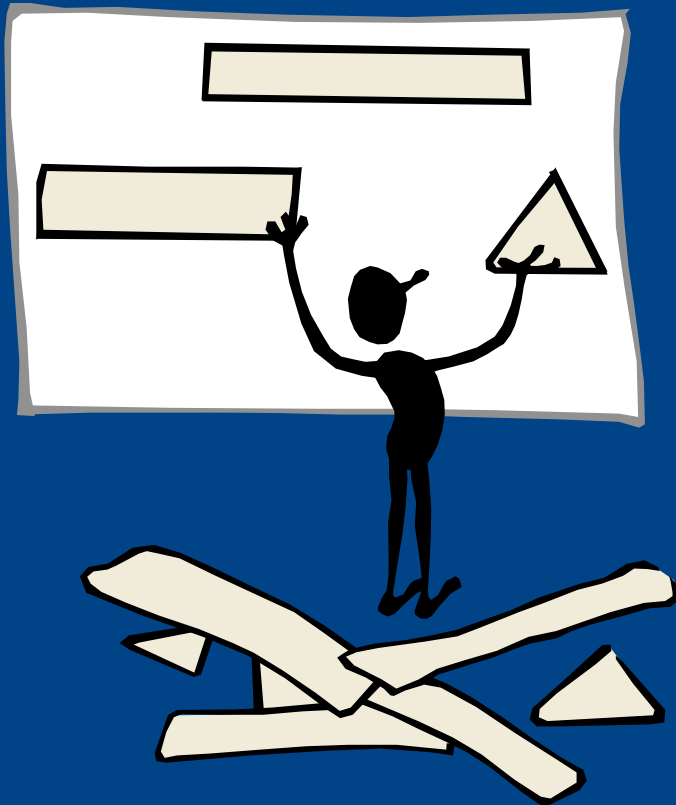
BESIG 2014

Legal English

Devising appropriate content
for teaching German professionals

Patrick Mustu

Overview



- ▣ Developments
- ▣ The problem
- ▣ Approaches
- ▣ Resources

Developments in Professional English Training

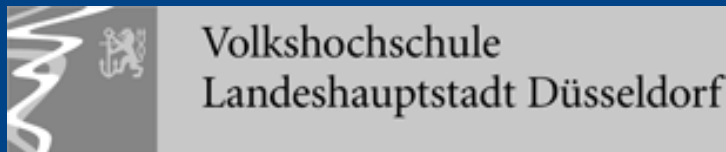


Legal English

Contracting in English



Legal English for Assistants



Business Law

Legal English



Deutsche**Anwalt**Akademie

Managing Liability in Contracts

Contract Law and Contract Drafting in English



Rechtsanwaltskammer
Stuttgart

English for Lawyers and Assistants



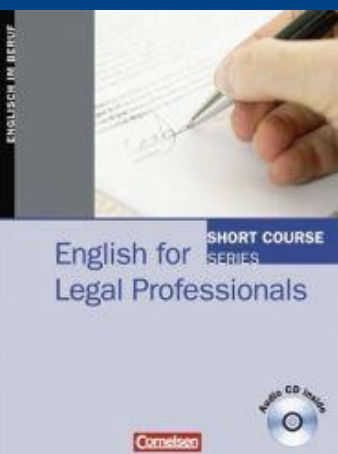
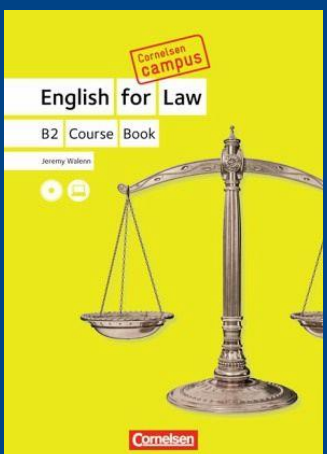
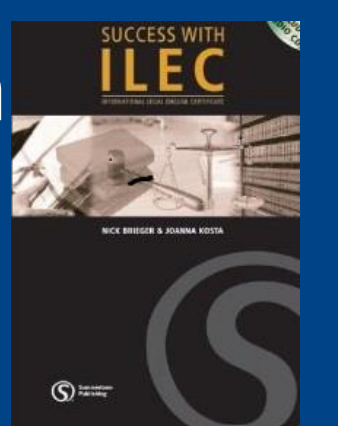
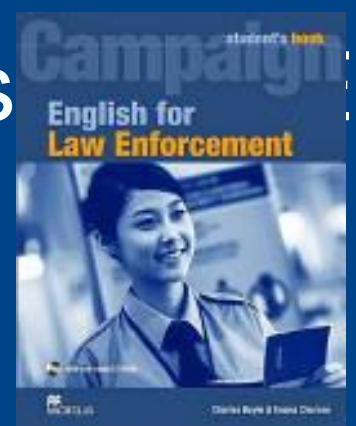
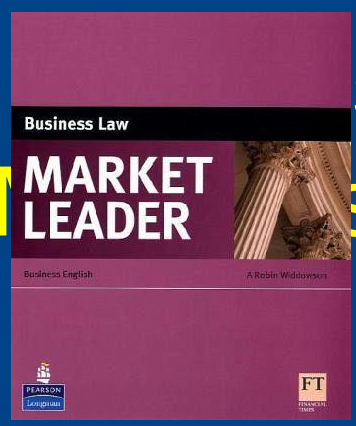
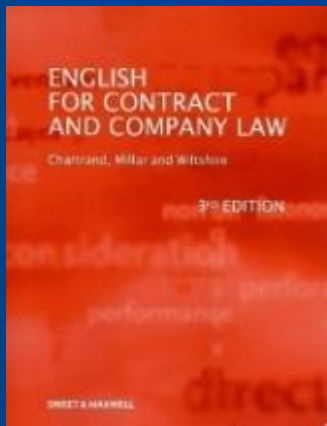
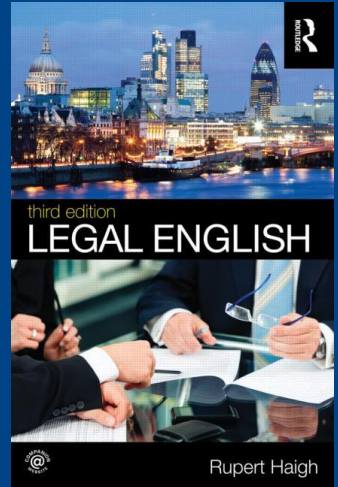
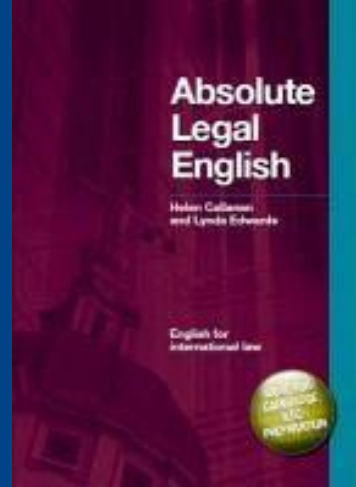
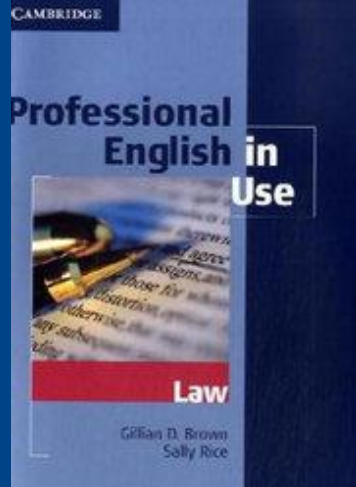
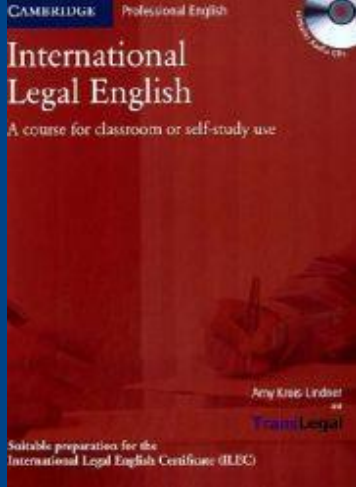
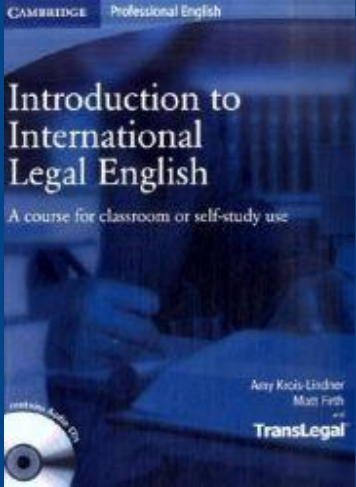
Rechtsanwaltskammer Düsseldorf

Contract Drafting

Developments in Professional English Training

L&L Programs





jurisdiction^{noun}



the power of a court, authority or other official body to decide a legal case or to make an order

The High Court has jurisdiction over criminal cases in this district.



the extent of this power

Title 28 of the United States Code gives the United States district courts exclusive jurisdiction over all matters arising in bankruptcy with few exceptions.



the territory in which this power exists

The jurisdiction of the European Union includes all of the member states.



the area in which a particular legal system operates

Legal concepts in English speaking jurisdictions do not always correspond to legal concepts in other jurisdictions.

the system of law courts that make up a particular legal system

In many jurisdictions, the use of the name veterinarian is restricted by law to persons with specific degrees or licenses.

Phrasebank

- The court dismissed the action for **lack of jurisdiction**
- Diplomats are **exempt from the jurisdiction** of the receiving state
- The civil court found that it had no **jurisdiction over** the matter
- A party doing business in another state is **subject to the jurisdiction** of the courts of that state

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Dictionary Resources

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Legal Word of the Day

LIQUIDATED AND UNLIQUIDATED DAMAGES

The former term is applicable when the amount of the damages has been ascertained by the judgment in the action, or when a specific sum of money has been expressly stipulated by the parties to a bond or other c

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English

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319



Black's Law Dictionary For Mobile



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Available on the iPhone
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The Law Dictionary for Mobile and Tablet



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For the definition of a legal term, enter a word or phrase below.

all words any words phrase

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Startseite

Gesetze / Verordnungen

Aktualitätendienst

Titelsuche

Volltextsuche

Translations

Hinweise

Impressum

Tastenkombinationen

Verwaltungsvorschriften im
Internet

Statutes/Ordinances

[AMG](#)

Medicinal Products Act

Übersetzung durch den Sprachendienst des Bundesministeriums für Gesundheit

Translation provided by the Language Service of the Federal Ministry of Health

[AO](#)

The Fiscal Code of Germany

Übersetzung durch den Sprachendienst des Bundesministeriums der Finanzen.

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[AsylVfG](#)

Asylum Procedure Act

Übersetzung durch den Übersetzungsdienst des Bundesministeriums des Innern. Laufende Aktualisierung durch Neil Mussett.

Translation provided by the Translation Service of the Federal Ministry of the Interior. Translation regularly updated by Neil Mussett.

[AufenthG](#)

Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory Residence Act

Übersetzung durch den Übersetzungsdienst des Bundesministeriums des Innern. Laufende Aktualisierung der Übersetzung durch Daniel C Smith

Translation provided by the Translation Service of the Federal Ministry of the Interior. Translation updated by Daniel C Smith

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Developments in Professional English Exams

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Virtuelle Wirtschaft

Post 2.0 Service

Japane (H&M) (H&M) (H&M)

Japane (H&M) (H&M)

Japane (H&M) (H&M)

Japane (H&M) (H&M) (H&M)

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Developments in Professional English Politics

Aktuelles

Kommt Englisch als Gerichtssprache?

März 2014: Der Bundesrat hat bei seiner letzten Sitzung am 14. März 2014 erneut den Entwurf eines Gesetzes zur Einführung von Kammern für internationale Handelssachen in den Bundestag eingebracht (BR-Drs. 93/14). Dieses würde den Bundesländern die Möglichkeit eröffnen, an den Landgerichten Kammern für Handelssachen zu schaffen, vor denen auch in englischer Sprache verhandelt werden kann.



England and Wales:
The jurisdiction of choice

Law - Made in Germany

First German court hearing in English Bonn Regional Court, 10 May 2010

None of the parties was a native speaker of English. The case related to a Belgian company which supplied the Cuban government with electronic components, and a German company which supplied such components to the Belgian company. The German company had been taken over by a U.S. corporation, and so problems had been created by the U.S. embargo against Cuba. The court wanted the parties to reach a compromise, in part because a large amount of Belgian documents in French and Cuban documents in Spanish would have needed to be translated (so much for simplifying matters by using English as the court language!).

There were some language problems. For example, it was necessary to spell names, and the judges were not used to spelling in English. The words plaintiff and defendant were confused several times. One had the impression that they would have liked to express themselves in German.

The judges had a tendency to start complex sentences which they could not finish.

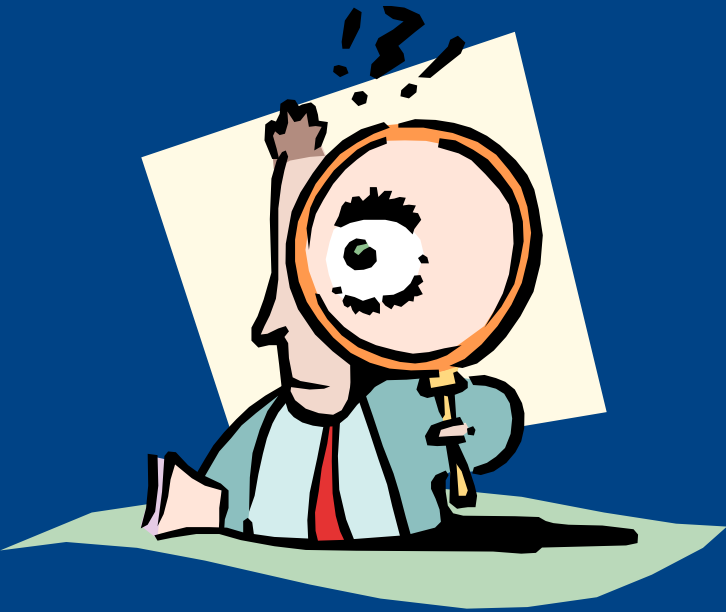
Other language problems: the Federal Court of Justice (Bundesgerichtshof, BGH) was referred to as 'he'.

'Critic' was used instead of 'criticism'.

'Power of attorney' had to be explained to the Belgian.

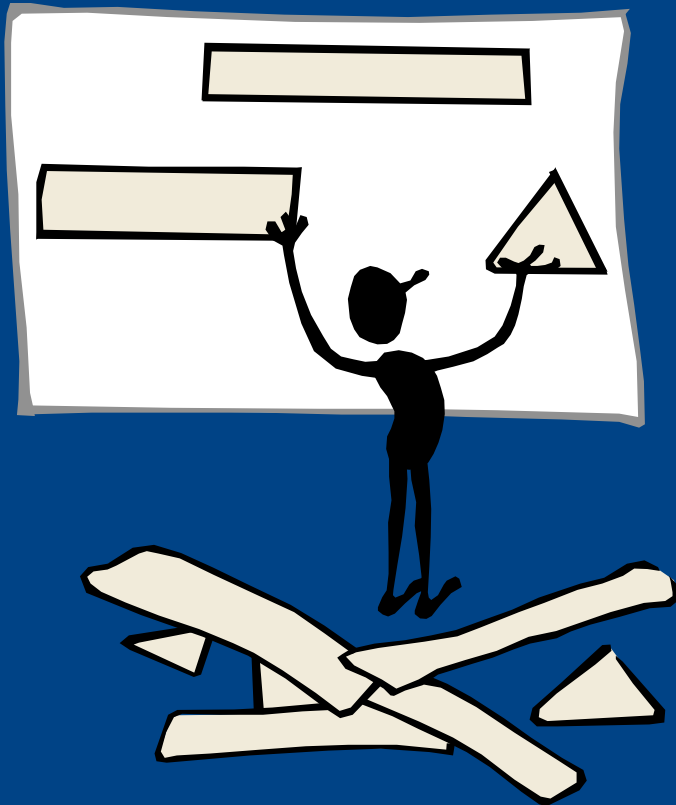
Developments in Professional English

Summary



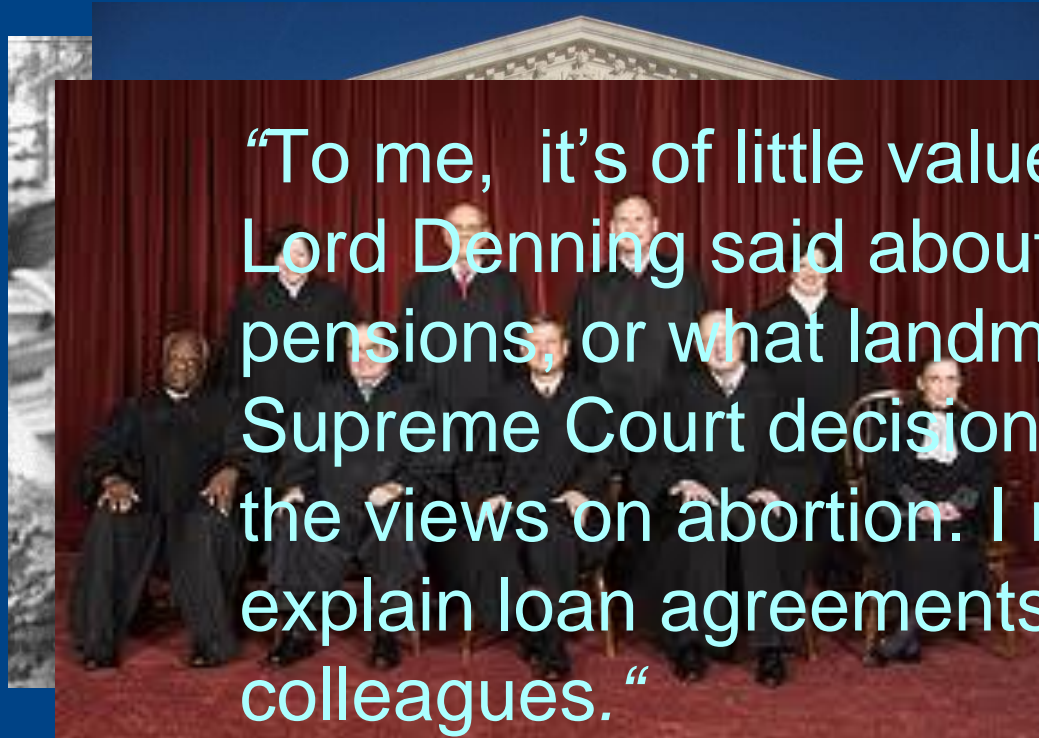
- ▣ Growing demand
- ▣ Growing supply: training, materials, exams
- ▣ Political initiatives

Overview



- ▣ Developments
- ▣ The problem
- ▣ Approaches
- ▣ Resources

The problem



“To me, it’s of little value what Lord Denning said about war pensions, or what landmark US Supreme Court decisions shaped the views on abortion. I need to explain loan agreements to my colleagues.”

(Petra Grundtke, WGZ Bank)

The problem

“I bought one of those legal English books, and now I know what carbolic smoke balls are. But where (or what) is the relevance for my practice?”



Christian Bertram, Noerr LLP

The problem



“It’s always about England, America, Australia. For readers who want to talk about German realities in English, this is of little value.”

(Business Spotlight 4/09, p90)

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Formation of Contract

Offer.....

Acceptance.....

Certainty.....

Consideration.....

Estoppel.....

Intention to Create Legal Relations.....

Third Parties: (1) Privity of Contract.....

Third Parties: (2) Agents - in exam?.....

Contract Interpretation: General Approach.....

Contract Interpretation: Implied Terms.....

Things that Go Wrong

Misrepresentation.....

Mistake.....

Illegal Contracts.....

Frustration.....

Incapacity.....

Duress (common-law).....

Unconscionable Bargains (equity).....

Undue Influence (equity).....

Remedies

AGREED REMEDIES:.....

Cancellation of the Contract:.....

Damages - common law.....

Equitable Remedies.....

Agreement: Offer and Acceptance

Carlil v Carbolic Smoke Ball Co - 1891 - QB.....
Boulder Consolidated Ltd v Tangaere - 1980 - NZ.....
Leach Nominees Pty Ltd v Walter Wright Pty Ltd - 1986 - WAR.....
Butler Machine Tool Co Ltd v Ex-Cell-O Corp - 1979 - WLR.....
Nunin Holdings Pty Ltd b Tullamarine Estates Pty Ltd - 1994 - Victoria SC.....
UN SoG Convention Act 1994.....
Transpower NZ Ltd v Meridian Energy Ltd - 2001 - HC.....
Electronic Transactions Act 2002 - CM78.....
Transit NZ v Pratt Contractors - 2003 - CA and PC.....
Allbrite Industries Ltd v P & C Gill Contractors Ltd - 2002 - CA.....

Certainty

Nelson v Cooks McWilliams Wines Ltd - 1986 - NZ.....
Biotechnology Aust Pty Ltd v Pace - 1988 - NSW.....
Fletcher Challenge Ltd v ECNZ - 2002 - NZ.....
Wellington CC v Body Corporate 51702 - 2002 - CA.....

Consideration

Williams v Roffey Bros Ltd - 1991 - QB.....
Re Selectmove Ltd - 1995 - WLR.....
Rothmans of Pall Mall v AG - NZ.....
Antons Trawling v Smith - 2003 - NZ.....
AG for England and Wales v R - 2004 - CA and PC.....

Equitable Estoppel

Burbery Mortgage Finance v Hinsbank Holdings Ltd - 1989 - CA.....
Welch v Fraser - 2003 - HC.....

Intention to Create Legal Relations

Fleming v Beevers - 1994 - CA.....

Third Parties (1): Privity of Contract

Contracts (Privity) Act 1982.....
Rattrays Wholesale Ltd v Meredyth-Young - 1997 - HC.....

Third Parties (2): Agents

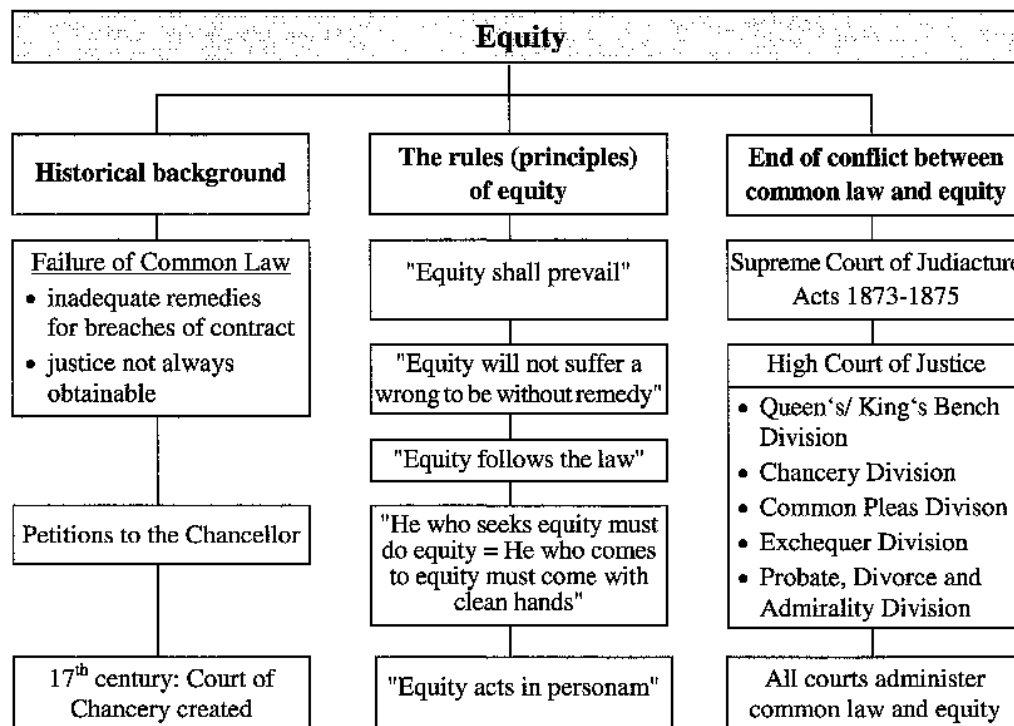
Lim v Ward McCulloch Solicitors - 1999 - CA.....

Contract Interpretation: General Principles

Boatpark v Hutchinson - 1999 -
Yoshimoto v Canterbury Golf International - 2001 - CA and PC.....
Ansley v Prospectus Nominees Unlimited - 2004 - CA.....

Contract Interpretation: Implied Terms

Dovey v BNZ - 2000 -



II. The modern organisation of the Royal Courts

First of all I have to point out that the English law of judicature uses (as you should have noticed already) the terms inferior court and superior court.

Although in English law, as is the case in German law, the competence of a civil court is determined by the extent of the value in dispute, there is a general presumption that the superior courts have the local jurisdiction as well as the subject-matter jurisdiction.

So it is admissible, and in this respect different from German procedural law, to start a procedure in front of a superior court, although, due to the value in dispute, an inferior court would have been the court of first instance. The superior court in such a case can, however, relegate the litigation to the competent inferior court.

Gerichtsverfassungsrecht

Untergeicht – Obergericht

Ausmaß/Höhe

Streitwert – Vermutung

örtliche Zuständigkeit

sachliche Zuständigkeit

zulässig – in dieser Beziehung

Prozessrecht

verweisen

Rechtsstreit/Prozess

Common law in the UK

Penny Arkwright practises in the High Court. She is speaking at an international convention for young lawyers.



'The legal system in many countries, including Australia, Canada (except Quebec), Ghana, Hong Kong, India, Jamaica, Malaysia, New Zealand, Pakistan, Tanzania, the USA (except Louisiana), the Bahamas, and Zambia, is based on **common law**. The common law consists of the substantive law and procedural rules that are created by the **judicial decisions** made in the courts. Although legislation may **override** such decisions, the legislation itself is **subject to interpretation** and refinement in the courts.

Essential to the common law is the **hierarchy of the courts** in all of the UK jurisdictions and the **principle of binding precedent**. In practice, this means that the decision of a higher court is **binding on** a lower court, that is, the decision must be followed, and in the course of a trial the judges must refer to existing precedents. They'll also **consider** decisions made in a lower court, although they're not **bound to follow** them. However, a rule set by a court of greater or equal status must be **applied** if it's **to the point** – relevant or pertinent.

During a trial, **counsel** will **cite cases** and either attempt to **distinguish the case** at trial from those referred to or, alternatively, argue that the **rule at law** reasoned and established in a previous case is **applicable** and should be followed. Hence the term case law. A case will inevitably involve many facts and issues of evidence. The eventual decision itself doesn't actually **set the precedent**. The precedent is the rule of law which the first instance judge **relied on** in determining the case's outcome.

Judges in a case may make other **statements of law**. Whilst not constituting binding precedents, these may be considered in subsequent cases and may be cited as **persuasive authority**, if appropriate. Since the Human Rights Act of 1988, all courts in the United Kingdom must now refer to the ultimate authority of the European Court of Human Rights, including all previous decisions made by that court.'

Note: practises - qualified to work professionally

Law reports

'The development and **application of the common law system** pivots upon the existence of a comprehensive system of reporting cases. The Law Reports, published annually by the Council of Law Reporting, are perhaps the most authoritative and frequently cited set of reports, differing from other series of law reports, such as Butterworth's All England Law Reports [All ER] or specialist reports like Lloyds Law Reports, in that they contain summaries of counsel's arguments and are revised by the judge sitting in each respective case before publication. Cases aren't always reported in the year that they are decided so a case citation will refer to the volume and year in which the case was published, for example *Meah v Roberts*, [1978] 1 All ER 97. Developments in electronic databases have increased public access to recent cases.'

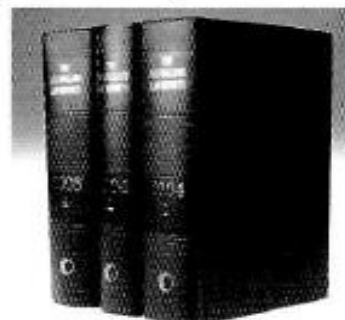
Note: Latin terms used for the legal principles outlined in the above texts are:

stare decisis - principles of binding precedent

ratio decidendi - the rule at law reasoned

obiter dictum - persuasive authority

In a civil case citation, for example *Meah v Roberts*, [1978] 1 All ER 97, *v* (Latin for *versus*) is said 'and'.



Butterworth's All England Law Reports

1 Law and order

Topics | branches of law • key features of law

Vocabulary focus | words from general English with a special meaning in law • prefixes and suffixes

2 Landmarks in law

Topics | historical landmarks in the development of law • Lord Denning and 20th century English law • judicial precedent

Vocabulary focus | English–English dictionaries: headwords • definitions • parts of speech • phonemes • stress markers • countable/uncountable • transitive/intransitive

3 Crimes and civil wrongs

Topics | tort v crime • criminal and civil courts • trespass to the person

Vocabulary focus | stress patterns in multi-syllable words • prefixes

4 Theft 1: the Theft Act

Topics | definition of theft • components of theft • important case law

Vocabulary focus | word sets: synonyms, antonyms, etc. • common lecture language

5 Theft 2: appropriation

Topics | taking without owner's consent • differences between: burglary, aggravated burglary and robbery

Vocabulary focus | synonyms, replacement subjects, etc. for sentence-level paraphrasing

6 Contract law 1: consideration

Topics | definition of a contract • doctrine of consideration • judicial interpretation

Vocabulary focus | compound nouns • fixed phrases from legal English • fixed phrases from academic English • common lecture language



Our Employment Law Department is a specialist team. We advise on relevant law, employment policy and procedure, and the **formation of employment contracts**. We assist in the negotiation and **settlement of disputes**, and take or defend proceedings before an **Employment Tribunal** or in a civil court.

Employment law usually involves a mixture of **contractual provisions** and legislation regulating the relationship between **employer and employee**, and governing **labour relations** between employers and **trade unions**, for example with regard to **collective agreements** and **collective bargaining** about conditions of work. Developments in case law and changes to legislation, for example from the implementation of European Community **directives**, affect employers and employees alike. The practice of living and working in different jurisdictions means that lawyers also have to refer to international conventions to establish legal requirements.

The main **statutory rights** of employees include **entitlement to:**

- a national minimum **wage**;
- equal pay for **like work**, that is, broadly similar work;
- a written statement of **employment particulars**;
- an **itemised pay statement**;
- **time off** and holidays;
- statutory **sick pay**;
- a healthy and safe working environment;
- family and parental **leave**;
- protected rights on **transfer of business** to another employer (see the Transfer of Undertakings [Protection of Employment] Regulations 2006);
- **notice of termination of employment**;
- not to have **unlawful deductions** from wages;
- not to be **discriminated against** on grounds of sex, race, sexual orientation, disability, religion, age, **part-time** or **fixed term** employment, or trade union membership.

BrE: labour; AmE: labor

BrE: trade union; AmE: labor union

Contract of employment

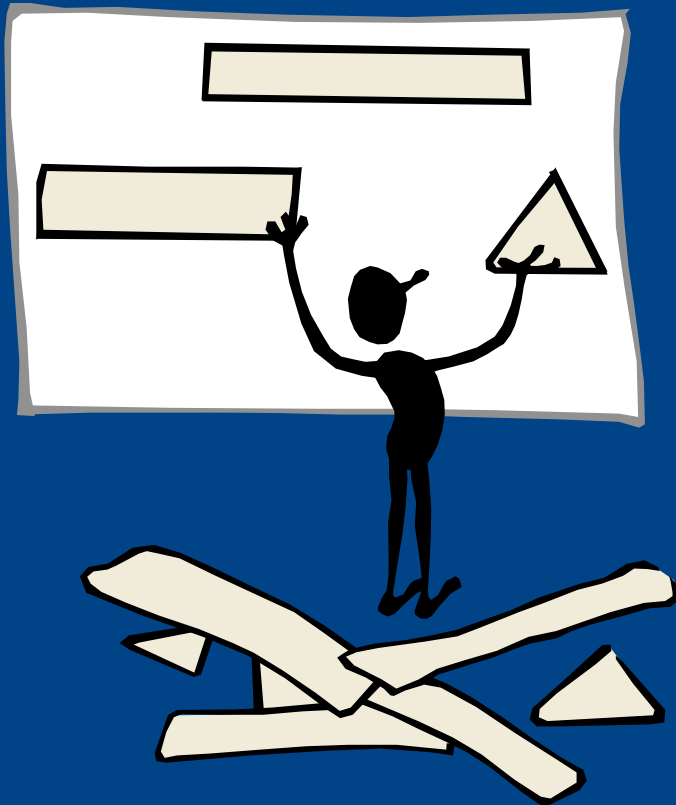
It is usual practice for employers and employees to enter into a written agreement which sets out their respective obligations and rights, and which constitutes a **contract of employment**, either at the **commencement** of employment or shortly before. Clauses in the contract generally deal with pay, deductions, hours of work, time off and leave, place of work, absence, confidentiality, restrictions on the actions of an employee once employment is ended (known as a **restrictive covenant**), **giving notice**, the **grievance procedures** in the event of job loss, and **variation of contract** (meaning parties may agree to vary terms of the contract but terms cannot be **unilaterally varied**, that is, by one party without agreement).

Employers are bound by the employment contract and statutory regulation as to how

they may deal with employees, particularly in relation to the termination of employment. Failure to observe such obligations and regulations may **give rise to a claim for wrongful dismissal** (where the employer is in **breach of contract**), **unfair dismissal** (where the employer has not followed a fair dismissal and disciplinary procedure before terminating the contract), or **constructive dismissal** (where an employee **resigns** because of the conduct of his employer). **Gross misconduct** by the employee, for example theft from the employer, may result in **summary**, that is, immediate, **dismissal**. In other circumstances, the employee may be **made redundant**, for example if the employer has ceased to carry on business.

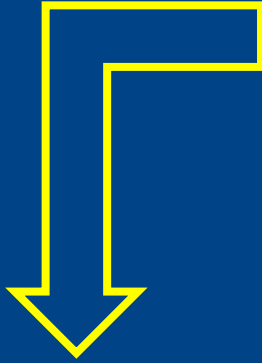
BrE: made redundant; AmE: laid off

Overview

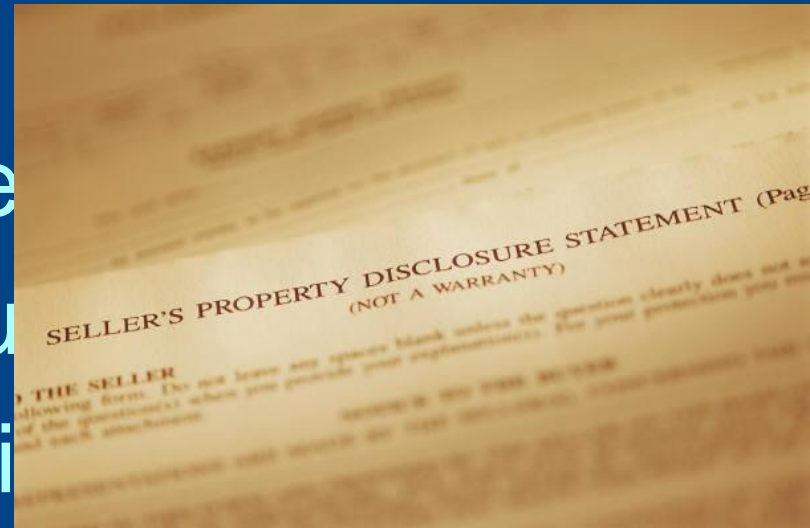


- ▣ Developments
- ▣ The problem
- ▣ Approaches
- ▣ Resources

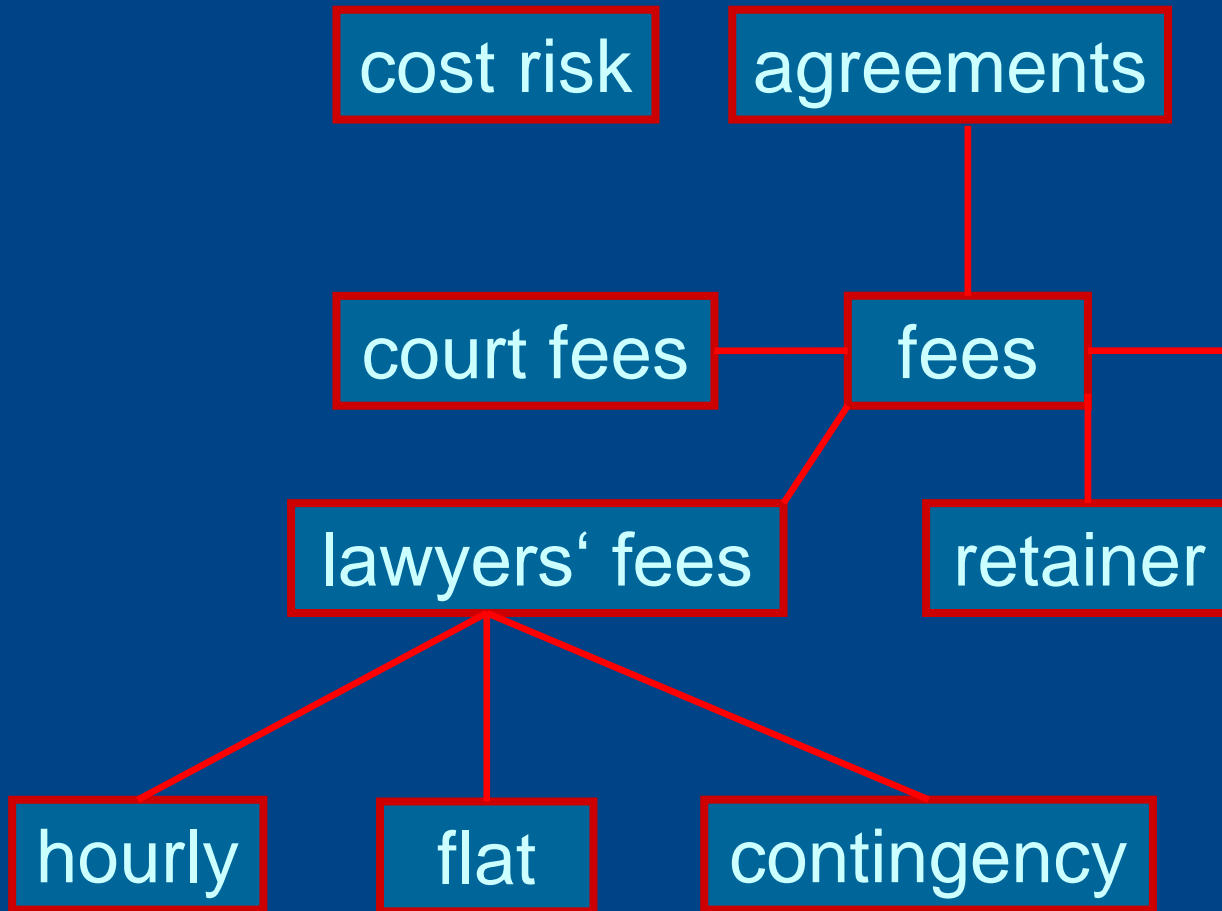
Approaches



- ▣ what
- ▣ office
- ▣ dispu
- ▣ speci



Approaches: Scrutinize!



Approaches: Connect!

Situation

You are Christopher Smith from England. **You have just moved to Germany** to work in the export department of a local company. You will start next month and earn €2,000 gross for 30 hours/week. Since this does not seem enough, you consider working freelance as an English teacher. After all, it is your mother tongue!

Consult your lawyer. You would like to know

- first of all, what your net income from your work in the export department will be. Ask about **deductions for social security** including health insurance and pension scheme, income tax, etc.
- what you have to do with regards to your proposed work as freelance teacher, in particular whether you need your employer's approval
- whether you have to make **pension contributions** on top of your employment contributions
- anything else you might have to pay attention to

You can add points that seem relevant to you.

Approaches: Connect!

Situation

You are about to advise a new client, Christopher Hills from England.

In preparation for the meeting, he has written the following e-mail:

From: christopher.hills@mail.com
To: lawyer@orthkluth.com
Subject: Brief

Dear Sirs

I moved to Germany four years ago and got married to my German girl-friend.

After watching boring daily talk shows for a year, I decided to get a job.

For the last three years, I have worked for Pizzeria Giorgio. I am a driver, deliver food with our "Pizza Taxi". I work about 30 hours a week. My schedule is determined on a monthly basis and displayed on a board inside the Pizzeria. Once a month, I fill in a form provided by my boss. It is called "Honorarabrechnung". I get 15 € per hour. I pay health insurance myself. I do not have any pension insurance.

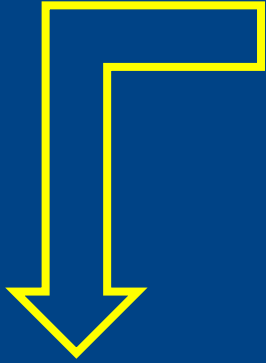
Am I entitled to employment? What would be the advantages?

I look forward to discussing this with you.

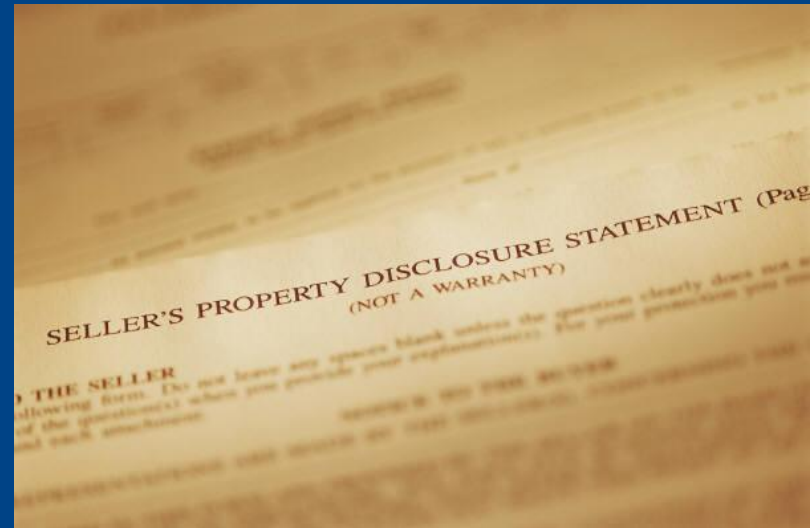
Kind regards
Christopher Hills

Advise the client.

Approaches: Be authentic!



- ▣ contract/GTC
- ▣ legislation
- ▣ case law



Situation

You are meeting Jennifer Croud, who has just started out as a translator. A friend of hers, who also works as a freelance translator, recommended using general terms & conditions for her business, and provided Ms Croud a copy of her own. Ms Croud is uncertain about their meaning and validity. She is therefore seeking your advice. Prepare the meeting, in which you will be expected to explain the contents of the following articles. Advise her on the quality, identify questionable or missing points if appropriate.

ALLGEMEINE GESCHÄFTSBEDINGUNGEN

1. Geltungsbereich

- (1) Diese Auftragsbedingungen gelten für Verträge zwischen Jennifer Croud, nachfolgend Übersetzerin genannt, und dem Auftraggeber, sofern nicht etwas anderes ausdrücklich vereinbart oder gesetzlich vorgeschrieben ist.
- (2) Allgemeine Geschäftsbedingungen des Auftraggebers sind für die Übersetzerin nur verbindlich, wenn die Übersetzerin sie ausdrücklich anerkannt hat.

2. Umfang des Übersetzungsauftrags

Die Übersetzung wird nach den Grundsätzen ordnungsgemäßer Berufsausübung sorgfältig ausgeführt. Der Auftraggeber erhält die vertraglich vereinbarte Ausfertigung der Übersetzung.

3. Mitwirkungs- und Aufklärungspflicht des Auftraggebers

- (1) Der Auftraggeber hat die Übersetzerin rechtzeitig über besondere Ausführungsformen der Übersetzung zu unterrichten (Übersetzungen auf Datenträgern, Anzahl der Ausfertigungen, Druckreife, äußere Form der Übersetzung etc.). Ist die Übersetzung für den Druck bestimmt, hat der Auftraggeber der Übersetzerin einen Korrekturabzug zu überlassen.
- (2) Informationen und Unterlagen, die zur Erstellung der Übersetzung notwendig sind, hat der Auftraggeber unaufgefordert und rechtzeitig der Übersetzerin zur Verfügung zu stellen (Glossare des Auftraggebers, Zeichnungen, Tabellen, Abkürzungen, etc.).
- (3) Fehler, die sich aus der Nichteinhaltung dieser Obliegenheiten ergeben, gehen nicht zulasten der Übersetzerin.

Situation

Sie sind Vorstandsmitglied der ABC Bank und möchten einen Kunden auf Schadenersatz aus missbräuchlicher Kartenverfügung in Anspruch nehmen. Mittels einer ihm überlassenen Kreditkarte und der dazugehörigen Geheimzahl (PIN) wurden an verschiedenen Geldautomaten über einen Zeitraum von drei Tagen € 3.000 abgehoben. Sie sind der Meinung, dass der Kunde die Karte missbraucht hat und Sie haben die Karte gesperrt. Sie behaupten, dass der Kunde die Karte nicht an Sie übergeben hat und Sie die Karte nicht an ihn abgegeben haben. Sie sind der Meinung, dass der Kunde die Karte missbraucht hat und Sie haben die Karte gesperrt. Sie behaupten, dass der Kunde die Karte nicht an Sie übergeben hat und Sie die Karte nicht an ihn abgegeben haben.

von €
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Auszug aus den AGB der ABC Bank

Verwendungsmöglichkeiten der Kreditkarte

Mit der von der ABC Bank ausgegebenen Kreditkarte kann der Kunde im Inland, und als weitere Dienstleistung auch im Ausland, bei Waren und Dienstleistungen bargeldlos bezahlen und darüber hinaus als weitere Dienstleistung an Geldautomaten Bargeld beziehen.

Persönliche Geheimzahl (PIN)

Für die Nutzung von Geldautomaten und von automatisierten Kassen stellt die Bank dem Kunden ohne Anforderung eine persönliche Geheimzahl (PIN) zur Verfügung.

Nutzung der Kreditkarte

Bei Nutzung der Kreditkarte ist entweder ein Beleg zu unterschreiben, auf den die Kartendaten übertragen sind, oder an Geldautomaten und bestimmten automatisierten Kassen die PIN einzugeben.

Finanzielle Nutzungsgrenze

Der Kunde darf die Kreditkarte nur innerhalb des ihm von der Bank bekannt gegebenen Verfügungsrahmens nutzen. Es gilt der Rahmen des Kreditkarten-Kontos und die dafür vereinbarten Regelungen: Bargeldabhebungen max. 500 EUR pro Tag, 1.500 EUR pro Woche; Einkaufslimit pro Woche gesamt 3.000 EUR.

Sorgfalts- und Mitwirkungspflichten des Kunden

Der Kunde hat die Kreditkarte mit besonderer Sorgfalt aufzubewahren, um sie vor missbräuchlicher Nutzung zu schützen. Der Kunde hat auch dafür Sorge zu tragen, dass keine andere Person Kenntnis von seiner PIN erlangt. Die PIN darf insbesondere nicht auf der Kreditkarte vermerkt oder in anderer Weise zusammen mit dieser aufbewahrt werden. Jede Person, die im Besitz der Kreditkarte ist und die PIN kennt, hat die Möglichkeit, auch zusammen mit PIN und Kreditkarte Verfügungen zu tätigen (z. B. Geld am Geldautomaten abzuheben). Stellt der Kunde den Verlust der Kreditkarte oder missbräuchliche Verfügungen mit der Kreditkarte fest, so ist die Bank unverzüglich zu unterrichten.

Zahlungsverpflichtung des Kunden

Die Bank wird die bei der Benutzung der Kreditkarte entstandenen sofort fälligen Forderungen der Vertragsunternehmen gegen den Kunden erwerben. Der Forderungsbetrag wird dem Verfügungsrahmen des Kreditkarten-Kontos belastet.

Haftung für Schäden aus missbräuchlichen Verfügungen

Sobald der Verlust oder Missbrauch der Kreditkarte gemeldet worden ist, hat der Kunde für weitere missbräuchliche Verfügungen, die mit der Kreditkarte nach diesem Zeitpunkt getätigt werden, nicht mehr einzustehen. Für Schäden, die durch missbräuchliche Verfügungen vor Eingang der Verlustmeldung entstehen, beschränkt sich die Haftung des Kunden auf einen Höchstbetrag von 50,- EUR je Kreditkarte. Die Geltendmachung eines etwaigen Mitverschuldens bei grobem Verschulden des Kunden, insbesondere wegen Verletzung von Sorgfalts- und Mitwirkungspflichten, wird dadurch nicht ausgeschlossen.

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- Wurde die

Situation

Sie werden von Herrn Frank Booth aufgesucht. Er ist Geschäftsführer der Fa. ABC Construction Ltd. mit Sitz in London.

Die Firma hat
Herr Booth

Ihr neuer Mann
die ihn vertreten
ihnen das Geld
im Verfahren

Bereiten Sie
des beigefügten



LANDGERICHT DÜSSELDORF
IM NAMEN DES VOLKES
URTEIL

15 O 183/08

Verkündet am 28.04.2009
Ried, JS.
als Urkundsbeamter der Geschäftsstelle

In dem Rechtsstreit

der ABC Construction Ltd., vertreten durch den Geschäftsführer Frank Booth, 30 Talfourd Road, London, SE15 5NY, England,

Klägerin,

- Prozessbevollmächtigte: Rechtsanwälte Kapellmann & Partner,
Mönchengladbach -

g e g e n

Herrn Stefan Schmidt, Rathausufer 18, 40213 Düsseldorf,

Beklagter,

- Prozessbevollmächtigte: Rechtsanwälte Leinemann & Partner, Berlin -

hat die 15. Zivilkammer des Landgerichts Düsseldorf
[...]

für R e c h t erkannt:

Die Klage wird abgewiesen.

Die Kosten des Rechtsstreits trägt die Klägerin.

Das Urteil ist gegen Sicherheitsleistung von € 30.000,00
vorläufig vollstreckbar. [...]

unterlegen ist.
gegeben ist.

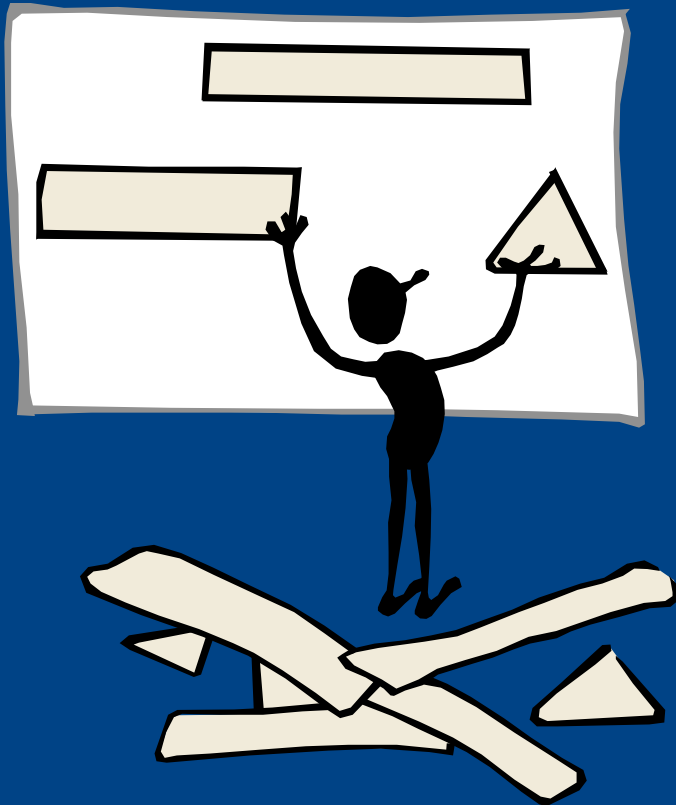
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Anwälte, die ihn

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Approaches: Be precise!

Amtsgericht	Local Court
Landgericht	Regional Court
Oberlandesgericht/ Kammergericht	Higher Regional Court
Bundesgerichtshof	Federal Court of Justice
Bundesverfassungsgericht	Federal Constitutional Court
Verwaltungsgericht	Administrative Court
Oberverwaltungsgericht/ Verwaltungsgerichtshof	Higher Administrative Court
Bundesverwaltungsgericht	Federal Administrative Court
Finanzgericht	Finance Court
Bundesfinanzhof	Federal Finance Court
Arbeitsgericht	Labour Court
Landesarbeitsgericht	Higher Labour Court
Bundesarbeitsgericht	Federal Labour Court
Sozialgericht	Social Court
Landessozialgericht	Higher Social Court
Bundessozialgericht	Federal Social Court
Bundespatentgericht	Federal Patent Court

Overview



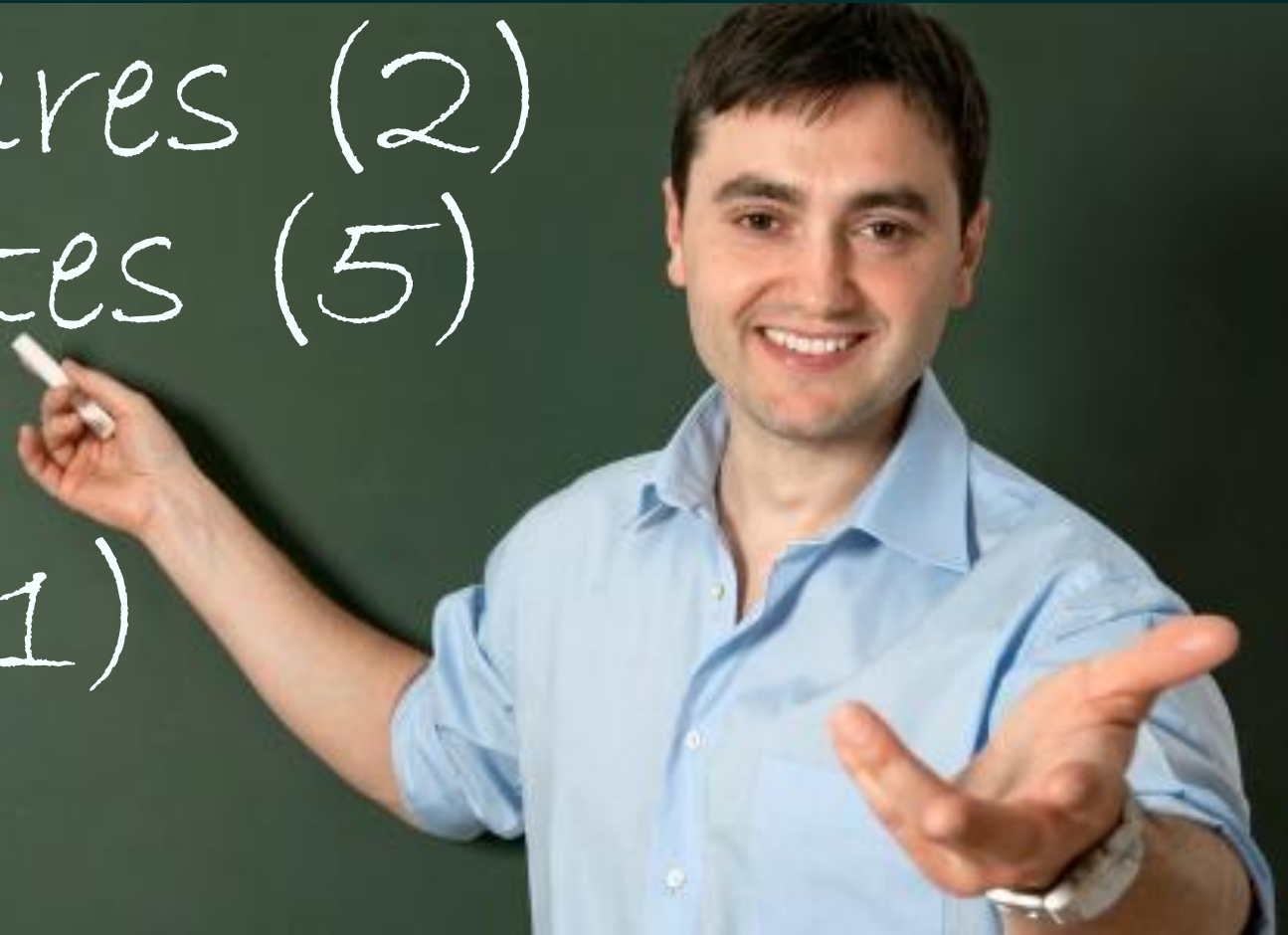
- ▣ Developments
- ▣ The problem
- ▣ Approaches
- ▣ Resources

brochures (2)

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course

book (1)





Law - Made in Germany

Contract law – customised solutions on a case-by-case basis

Contract law in particular benefits from the division of functions between legislator and the users of the law. As opposed to jurisdictions based on case law, codification provides reliable guidelines when drafting and interpreting contracts.

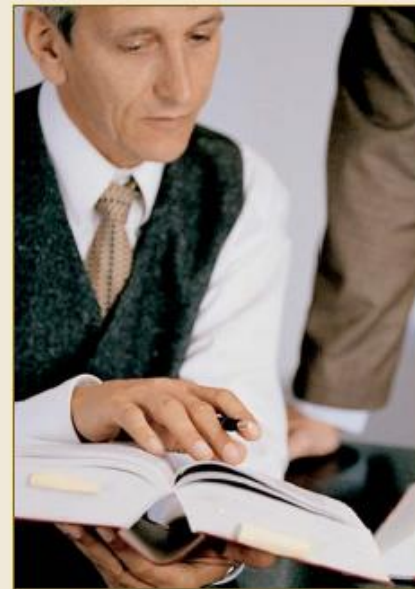
The basic structures of **contracts of sale** are prescribed by law. However, in keeping with the principle of contractual freedom, the parties are of course free to agree on different provisions. In contrast to English law, a contract under German law requires no detailed provisions and definitions on issues such as right of retention, set-off or assignment. Unless the contract expressly stipulates otherwise, the statutory provisions will apply. German contracts of sale are therefore considerably more concise than comparable contracts under English law, saving both parties **valuable time and substantial legal fees**.

The United Nations Convention on Contracts for the International Sale of Goods (CISG), which has been ratified by almost all major industrial and commercial nations, applies to international **contracts for the sale of goods**. The UN Sales Convention is strongly influenced by continental European legal principles and therefore meshes particularly well with German law. No other member state of the UN Sales Convention has passed more court decisions on matters under this Convention than Germany. These decisions are often cited by other countries.

The German law on sales is contemporary, dependably fulfilling the needs of international trade.

Example: NRR MedTech Ltd. intends to set up a production facility abroad for its German subsidiary. The contracting parties agree on the applicability of German law.

The **contract of manufacture**, which is regulated in great detail in the **Civil Code**, provides clear rules for the contract drafter, taking into account the interests of both parties. These rules span the entire contractual process, from order placement through to



German lawyers: experts in drafting contracts.

acceptance of the completed work, to any defects that may subsequently emerge. Accordingly, a valid contract of manufacture under German law does not need to be lengthy in order to provide stipulations for all relevant issues. Legal advisory services can therefore focus on the material points. Time and cost savings are a welcome side effect.

Example: NRR MedTech Ltd. wishes to set up a distribution network in Germany in order to offer its medical devices to hospitals and doctors.

NRR MedTech Ltd. can commission one or more **commercial agents** to sell its devices. Commercial agents are independent entrepreneurs who act in the name and for the account of their principal. Their responsibilities are set forth in detail in the **Commercial Code**. Indeed, in view of its efficiency, the German Commercial Code served as the template for the pan-European standardisation in this field of law. Accordingly, NRR MedTech Ltd.'s commercial agency contracts can be limited to the essentials. In fact, a 2-3 page contract may be all that's needed, ensuring the efficient and cost-effective drafting of contracts.

German courts - independent, fast and cost-effective

Germany is justifiably proud of its courts. For many years now, international studies and empirical data have attested that Germany offers an efficient court system committed to due process and the rule of law. This system has set world-wide standards. Thus, the German judiciary as the third power of the state provides an excellent framework for doing business.

German courts – independent in their rulings

Everyone litigating in Germany can rely on the independence of German courts. Corruption within the judicial authorities is not an issue in Germany. This was also confirmed by the Global Competitiveness Report 2011-2012 of the World Economic Forum that lists Germany among the top five nations in the 'Efficiency of legal framework' category.

As is the case with substantive law, German procedural law is also systematically and clearly structured in the form of codes. The **Code of Civil Procedure** (*Zivilprozessordnung*, abbreviated as ZPO) governs civil proceedings and therefore provides the foundation for the work of both judges and lawyers.

Germany uses its **judicial resources very efficiently**. In most cases, litigation is not necessary, as the contract drafting stage acts as a form of legal control. German lawyers and civil law notaries, who provide competent and pro-active advisory services, significantly contribute to relieving the courts of some of their burden and thus to the proper functioning of the courts. As a consequence, Germany has the **lowest number of lawsuits within Europe**, both on a per capita basis as well as in relation to its GNP.

A further factor contributing to the predictability of German civil suits is **German liability law**. As opposed to US courts, German courts do not award extremely high damages. Similarly, the concept of punitive damages is alien to German law, which instead strives to compensate for any actual damage incurred. As a result, the **risk involved in any litigation** is, to a large degree, both **predictable and quantifiable** for you as a business.

The role of the court – active supervision of the proceedings

In the German civil trial system the judge actively steers the proceedings. This facilitates the efficient conduct of the proceedings, while maintaining a focus on decisive issues.

Access to justice as a hallmark of a functioning state governed by the rule of law

The Rule of Law Index 2011 published by the World Justice Project, which has been examining the implementation of the rule of law in 66 countries since 2008, ranks Germany second in the category 'Access to civil justice'. Accessibility to the courts, their efficiency and effectiveness and the absence of undue influence characterise the German rule of law. In contrast, the UK is ranked no. 10, while the US came in at no. 21.

The court is responsible for the **structure and organisation of the proceedings**, including the service of the statement of claim, written pleadings and court decisions. The court also summons ordinary witnesses as well as expert witnesses. If and when required, the court can enforce the attendance of witnesses by subpoena. Compared to other jurisdictions where counsels of the parties are required to perform all of these costly and time-consuming organisational tasks, the German approach significantly accelerates court proceedings.

Company law – finding the most favourable legal form for your company

Similarly, German company law offers a suitable legal structure for every type of business. As a rule, German company law distinguishes between **partnerships and corporations limited by shares**. As an entrepreneur, you can select the most suitable legal form, depending on the object of the company, the intended role of your shareholders, the flexibility required for the structuring of the articles of association and, to a certain extent, tax-related criteria.

The German **Commercial Code** (HGB) contains rules regarding commercial partnerships, of which the **limited partnership** (*Kommanditgesellschaft*, abbreviated as KG) is the most common in trade and commerce. It is particularly small and medium-sized enterprises that opt for this legal form. Limited partnerships have at least one partner with unlimited liability, who may also be a corporation, as well as one or more limited partners whose liability is limited by their contribution.

The most important corporate forms under German law are the private limited company (*Gesellschaft mit beschränkter Haftung*, abbreviated as GmbH) and the public limited company (*Aktiengesellschaft*, abbreviated as AG).

The **GmbH** is specifically designed to meet the requirements of small and medium-sized enterprises. The shareholders are largely free in their choice of articles of association, so that a customised solution can be designed, tailor-made to meet the individual needs and requirements. The articles of association do not need to set out every single detail, as the **Private Limited Companies Act** contains catch-all provisions. Therefore, in straightforward cases, the articles of association are no longer than one or two pages.

Companies based in Germany and their legal form

More than one million companies in Germany have opted for the legal form of a private limited company (GmbH). This is followed by the legal form of a limited partnership (KG) chosen by 240,000 businesses. More than 170,000 entrepreneurs are registered as sole traders. Approximately 17,000 companies opted for the legal structure of a public limited company (AG).

As the incorporation of a GmbH and any changes in its shareholder structure always require the involvement of a civil law notary, the shareholders can be identified at all times, as their names are listed on the commercial register (*Handelsregister*). Thanks to the commercial register, time-consuming research as to who the actual shareholders are is not necessary, and the transaction costs for the transfer of GmbH shares are low by international standards.

German company law is continuously being adapted to the needs and requirements of business, industry and trade. In 2008, for example, the German law on private limited companies was completely updated. It is now even easier and more straightforward to form and run a GmbH. GmbHs incorporated in Germany can also operate abroad, as with the uniformly structured European sales subsidiaries of a group based in Germany. In addition to GmbHs, German law provides for the *Unternehmersgesellschaft* (UG), an entrepreneurial company with limited liability, which can be formed with a nominal capital of only one euro. These 'mini GmbHs' have proven a successful innovation: In particular business start-ups with limited seed capital who, before the introduction of UGs, often fell back on the British 'private company limited by shares' (Ltd.) as their chosen legal form, now largely opt for the *Unternehmersgesellschaft*.

In contrast, the statutory requirements for **public limited companies**, the large corporations, are more stringent, particularly if the relevant company is exchange-listed. This means that the capital markets can count on reliable transparent structures. The powers and competencies of the executive bodies and shareholders are largely prescribed by statute. Any deviations in the articles of association from the Public Limited Companies Act can be examined via the commercial register. The legal form of a public limited company (AG) is designed for large capital market-oriented companies. German law places great importance on the accuracy and transparency of shareholder resolutions. As a consequence, these resolutions often require notarial recording. In court, these recordings are irrefutable proof of the precise order of events at shareholder meetings, as the courts are bound by the determinations made by the civil law notary. Similarly, the notorially recorded minutes serve as the basis for entry in the commercial register.

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Legal, Financial & Tax Advice for

DOING BUSINESS IN GERMANY



Welcome

to the Centre for German Legal Information (CGerLI) - the gateway to German law in English.

This website offers you a comprehensive and freely accessible database of electronic materials on German law. It brings together English translations of court decisions, legislation, articles and other law-related documents scattered over the internet and adds them to our own collection of German legal information.

As the database is being continuously expanded, we welcome contributions and suggestions. Please send your comments or new materials to [new\(at\)cgerli.org](mailto:new(at)cgerli.org).

This website was made possible with the generous support and cooperation of the German Federal Foreign Office.

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Related Links

This section contains links to other websites offering information about German law in English. You will also find links to English websites of German governmental institutions. Please select a category on the left or choose from one of the recently added sites listed below.

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Free [subscription service](#)! And, exclusive to the German Law Archive, the first English translation of the new [German Law of Obligations](#).

NEW November 2011: [New statutes added](#)

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The German Law Archive also hosts discussion groups to which you are welcome to contribute.

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Literature on German law

On this page, you will find:

1. A collection of short to medium sized articles on German law in English language available on this website.
2. Bibliographies of literature on German law in English language.

Literature

- [*The German Unternehmergeellschaft: Entering Regulatory Competition*, by Marcus Oehlich](#)
- [*A Comparison of German Moveable Property Law and English Personal Property Law*, by Andreas Rahmatian](#)
- [*The German order for payment procedure \(Mahnverfahren\)*, by Grozdana Šijanski and Jimmy Barber](#)
- [*Critical remarks on the "Killing Without Obvious Reason" Case \(Federal Court of Justice, Decision of 13 July 2005\)*, by Sascha Ziemann](#)
- [*The New German Act Against Unfair Competition*, by Jan Peter Heidenreich](#)
- [*The New German Law of Obligations: an Introduction*, by Hans Schulte-Nölke](#)
- [*The Treatment of the Voluntarily Intoxicated Offender in England and Germany* , by Brian Foley](#)
- [*The Federal Constitutional Court: an Introduction*, by Gotthard Wöhrmann](#)
- [*Instructions on lodging a constitutional complaint with the Federal Constitutional Court*](#)

ICLG

INTERNATIONAL
COMPARATIVE
LEGAL GUIDES

International Comparative Legal Guides

Practical Insights into Cross-Border Law

The International Comparative Legal Guides provide current and practical comparative legal information on a range of practice areas, following a Q&A format to ensure thorough coverage of each topic within different legal systems worldwide.

Practice Areas

- ▶ Alternative Investment Funds
- ▶ Aviation Law
- ▶ Business Crime
- ▶ Cartels & Leniency
- ▶ Class and Group Actions
- ▶ Commodities & Trade Law
- ▶ Competition Litigation
- ▶ Construction & Engineering Law
- ▶ Copyright
- ▶ Corporate Governance
- ▶ Corporate Immigration
- ▶ Corporate Recovery & Insolvency
- ▶ Corporate Tax
- ▶ Data Protection
- ▶ Employment & Labour Law
- ▶ Enforcement of Competition Law
- ▶ Environment & Climate Change Law
- ▶ Insurance & Reinsurance
- ▶ International Arbitration
- ▶ Lending and Secured Finance
- ▶ Litigation & Dispute Resolution
- ▶ Merger Control
- ▶ Mergers & Acquisitions
- ▶ Mining Law
- ▶ Oil & Gas Regulation
- ▶ Patents
- ▶ Pharmaceutical Advertising
- ▶ Private Client
- ▶ Product Liability
- ▶ Project Finance
- ▶ Public Procurement
- ▶ Real Estate
- ▶ Securitisation
- ▶ Shipping Law
- ▶ Telecoms, Media and Internet
- ▶ Trade Marks

Jurisdictions

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z


 Albania

 Algeria


 Andorra


 Angola

 Argentina

 Australia

 Austria

 Bangladesh

 Belarus

 Belgium

Germany

- ▶ **Aviation Law**
Arnecke Siebold Rechtsanwälte Partnerschaftsgesellschaft
- ▶ **Bribery & Corruption**
Simmons & Simmons
- ▶ **Business Crime**
Knierim | Huber Rechtsanwälte
- ▶ **Cartels & Leniency**
King & Wood Mallesons SJ Berwin
- ▶ **Commodities & Trade Law**
Osterwald & Wegner
- ▶ **Corporate Governance**
Beiten Burkhardt
- ▶ **Corporate Recovery & Insolvency**
Hengeler Mueller
- ▶ **Corporate Tax**
P+P Pöllath + Partners
- ▶ **Data Protection**
Hunton & Williams
- ▶ **Employment**
Willkie Farr & Gallagher
- ▶ **Employment & Labour Law**
Willkie Farr & Gallagher
- ▶ **Environment & Climate Change Law**
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- ▶ **International Arbitration**
DLA Piper LLP
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- ▶ **Mergers & Acquisitions**
SZA Schilling, Zutt & Anschütz
- ▶ **Oil & Gas Regulation**
Linklaters
- ▶ **Pharmaceutical Advertising**
Clifford Chance
- ▶ **Private Client**
P+P Pöllath + Partners
- ▶ **Product Liability**
Taylor Wessing
- ▶ **Project Finance**
Heuking Kühn Lüer Wojtek
- ▶ **Public Procurement**
Goerg Partnerschaft
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Cleary Gottlieb Steen & Hamilton
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Lebuhn & Puchta
- ▶ **Telecoms, Media and Internet**
Heuking Kühn Lüer Wojtek
- ▶ **Trade Marks**
Hengeler Mueller

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| 2 | Employee Representation and Industrial Relations |
| 3 | Discrimination |
| 4 | Maternity and Family Leave Rights |
| 5 | Business Sales |
| 6 | Termination of Employment |
| 7 | Protecting Business Interests Following Termination |
| 8 | Court Practice and Procedure |

Chapter Content

- | | |
|---|---|
| 1 | Introduction: New challenges for the upcoming Grand Coalition |
| 2 | Case law development |
| 3 | Outlook |



COMING TO GERMANY

Get an overview about Germany's entry regulations and find out what documents are needed for certain business activities.

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TRADE EXPORT & FOREIGN MARKETS

Business Location Germany



ESTABLISHING A COMPANY

Establishing a business in Germany requires a sequence of several specific steps. Find all information you need to start your business in Germany here.

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Establishing a Company

Incentive Programs

The Tax System

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The Legal Framework



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investors.
lable,



Silvia Obajdin

Four Different Forms of Corporations

Legal Form	Minimum Number of Partners	Minimum Share Capital	Legal Liability
GmbH – Limited Liability Company	One partner	EUR 25,000	Liability limited to share capital
'Mini GmbH' – Limited Liability Entrepreneurial Company	One partner	EUR 1.00	Liability limited to share capital
AG – Stock Corporation	One partner	EUR 50,000	Liability limited to stock capital
KGaA – Partnership Limited by Share	Two partners: general partner and limited shareholder	EUR 50,000	General partner: personal unlimited liability Limited shareholder: limited share liability

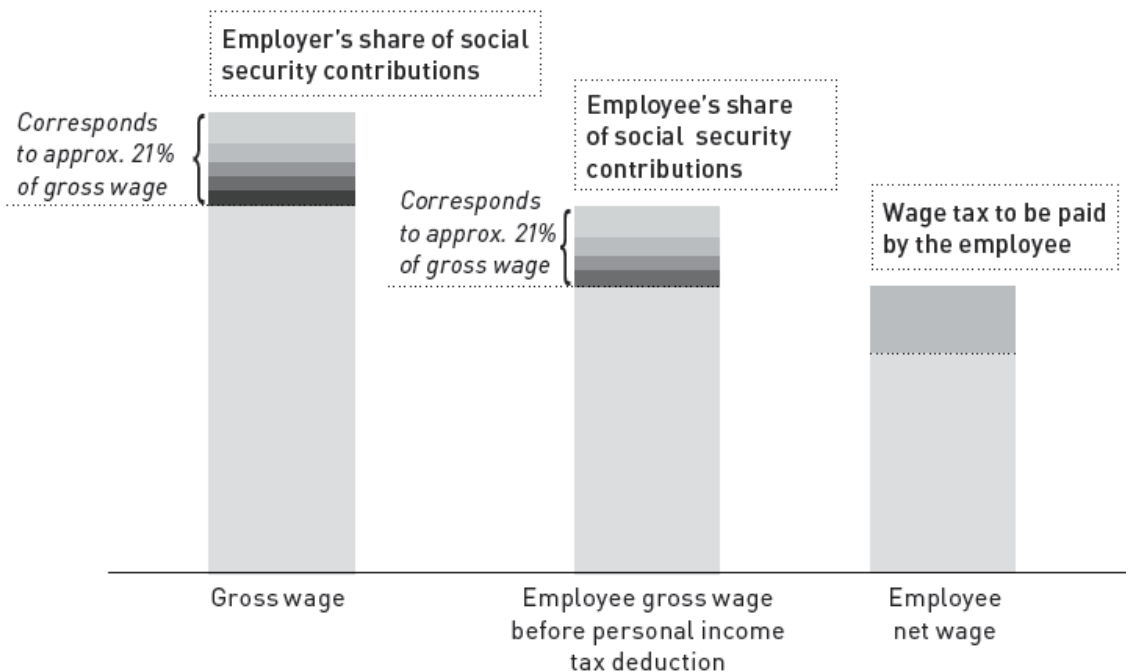
Four Different Forms of Partnerships

Legal Form	Minimum Number of Partners	Minimum Share Capital	Legal Liability
GbR – Civil Partnership	Two partners	Not required	Personal unlimited liability
oHG – General Commercial Partnership	Two partners	Not required	Personal unlimited liability
KG – Limited Partnership	Two partners: general partner and limited partner	Not required	General partner: personal unlimited liability Limited partner: limited share liability
GmbH & Co. KG	Two partners: general partner (GmbH) and limited partner (the general partner is typically the limited partner of the KG)	Not required	General partner (GmbH): personal unlimited liability Limited partner: limited share liability

Chronological Steps Needed to Set Up a GmbH

Step 1	Drafting of articles of association
Step 2	Notarization of articles of association
Step 3	Payment of share capital
Step 4	Registration in the commercial register
Step 5	Trade office registration

Allocation of Social Security Contributions



Components of social security insurance in Germany:

- Pension insurance
- Health insurance
- Unemployment insurance
- Nursing care insurance
- Accident insurance

Social security contributions are more or less shared equally by employer and employee. They correspond to approximately 21% of the employee's gross wage. Only the costs for accident insurance are exclusively borne by the employer.

Investment Guide to Germany

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Downloads

Checklists and overviews help you plan your new business.

Checklist no. 1

Need for advice

» **Interactive PDF version**

Checklist no. 4

Capital requirements: personal expenditure

» **Interactive PDF version**

Checklist no. 5

Capital requirements: financing the start-up and the initial operating phase

» **Interactive PDF version**

Checklist no. 6

Profitability outlook

» **Interactive PDF version**

The six most frequent tax errors made by new entrepreneurs

1. Wrong legal structure

2. Excessively low advance tax payments

3. A lack of contracts

4. Wrong timing of turnover tax

5. Errors in turnover tax

6. Bookkeeping deficiencies

The six most frequent tax errors made by new entrepreneurs

1. Wrong legal structure

Many young companies start out as a GmbH.

Disadvantage: the company is liable to pay wage tax for the director's salary, although the young company may not yet be making a profit.

2. Excessively low advance tax payments

Following the establishment of the company, it usually takes two years before the first income tax assessment is produced by the tax office. If the advance tax payments have been too low, the back payments of income tax for two to three years can place the company in serious financial difficulties. It therefore makes sense to make a voluntary upward adjustment of the advance tax payments.

3. A lack of contracts

The whole family often works hard to support the new venture. If this is done without an employment contract and salary, the family is giving taxes away. This is because each family member, from the great-grandfather to the newborn baby, has a whole range of personal income tax allowances which are often left unused. Also, family members often lend money or provide space. It generally makes sense in terms of taxation to conclude loan or rental agreements in such cases.

4. Wrong timing of turnover tax

In the initial phase, many new entrepreneurs keep applying for an extension to the deadline for the prepayment of turnover tax. The reimbursement of prepaid turnover tax which is possible at the same time then only comes a month later.

5. Errors in turnover tax

The deduction of prepaid turnover tax is not accepted by the tax office due to a failure to keep proper documentation (e.g. value-added tax is not listed separately on invoices for purchased goods). This is equivalent to giving away cash.

6. Bookkeeping deficiencies

Bookkeeping deficiencies (false allocation to accounts, entry in accounts of erroneous invoices lacking value-added tax, time delays in bookkeeping, etc.) mean that in many cases too little turnover tax is paid, or the tax is paid too late. And many firms are unable to provide the tax office with meaningful documentation in the case of applications to reduce advance tax payments.

Legal structures: the most important criteria for the selection

Einzelunternehmen (sole proprietorship): full control, full liability

- good for making a start (e.g. for craftsmen, micro-enterprises, services)
- happens automatically when business is launched
- only one owner, no conflicts with partners
- no minimum capital
- full liability with private assets

Gesellschaft bürgerlichen Rechts (GbR – civil law association): simple association of partners/professionals

- appropriate for any type of business partnership (micro-enterprises, professional services, special partnership)
- possibility for larger degree of freedom for the individual
- no formalities, but written contract useful
- no minimum capital
- partners liable with business assets and private assets

Offene Handelsgesellschaft (OHG – general commercial partnership): high reputation, but liability risk

- for commercial operation with partners
- not for very small businesses
- no minimum capital
- partners liable with business assets and private assets
- high reputation due to willingness to assume personal liability

Partnerschaftsgesellschaft (PartnG – partnership company): individual responsibility despite having partners

- only for professional services (Freie Berufe) if law governing the respective profession allows
- for companies co-operating with partners but wishing to retain individual responsibility
- company liable with company assets, partners liable with private assets in case of erroneous acts

Kommanditgesellschaft (KG – limited commercial partnership): easier launch capital, greater independence for entrepreneur

- for entrepreneurs seeking additional launch capital but wishing to retain responsibility.
Team: full partner(s) (one or several entrepreneurs) and limited partners
- full partner manages company alone
- limited partners are financially involved in company
- entrepreneur liable with entire private assets, limited partners only with own stake

Gesellschaft mit beschränkter Haftung (GmbH – limited liability company)

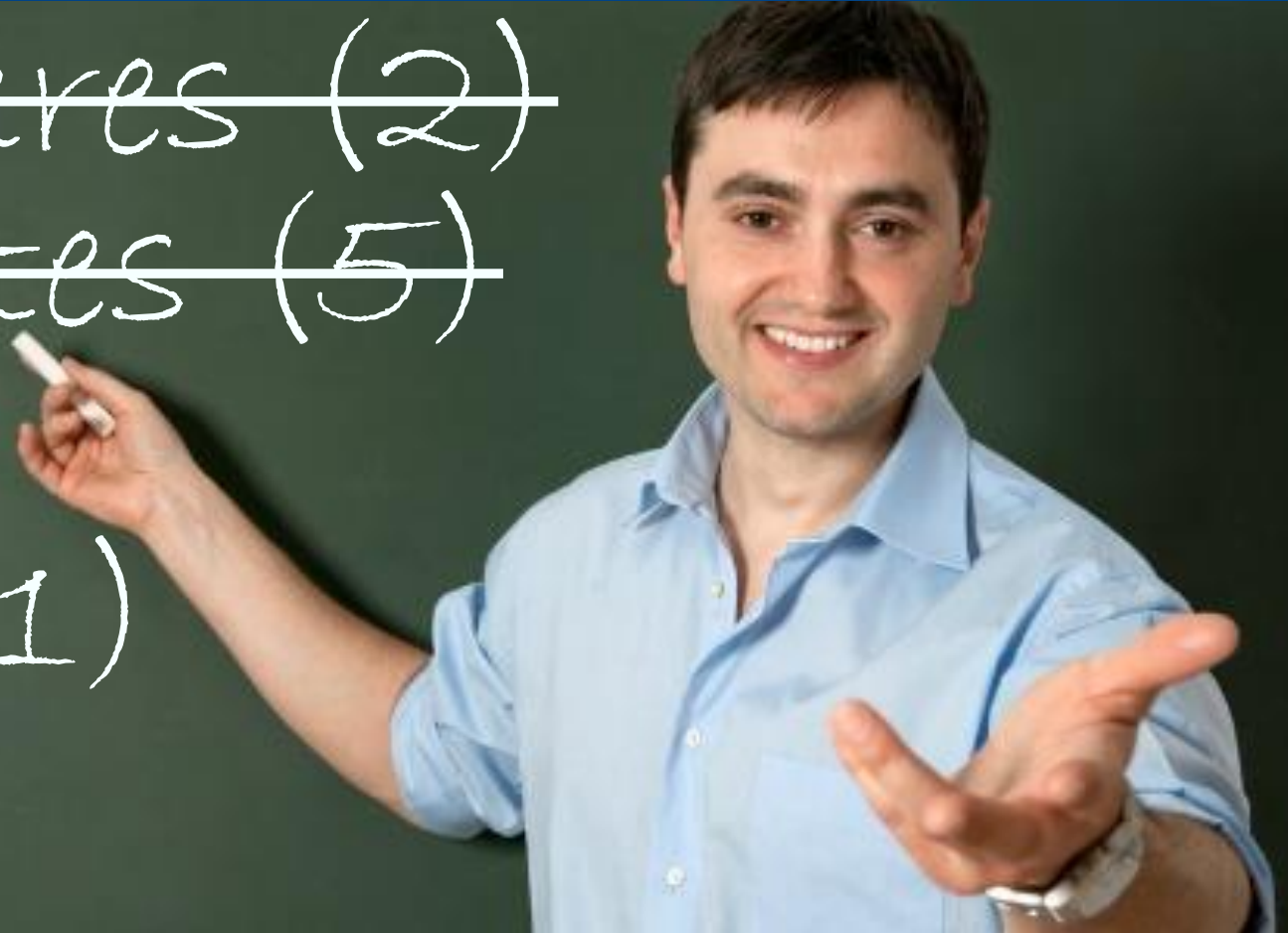
- entrepreneurs wishing to limit their liability
- entrepreneurs for whom GmbH offers tax advantages in case of higher profits
- start-up formalities and accounting rather more cumbersome

~~brochures (2)~~

~~web sites (5)~~

course

book (1)



tax/cor

client
interview

teleconf

PAGE	UNIT TITLE	TOPICS	USEFUL LANGUAGE AND SKILLS
5	1 Introduction to taxation and auditing	What tax advisors do Meeting clients Work, education and training of tax professionals in Germany, the UK and USA Types of businesses	Establishing rapport with clients, greeting them, offering hospitality, making small talk Giving advice
13	2 Advising employees	Different types of taxes Social security Tax allowances and deductions Conducting client interviews Taxes in England	Arranging an appointment Making phone calls Giving advice Being more or less formal
20	3 Advising freelancers and entrepreneurs	The tax situation of the self-employed VAT Corporate taxation Developments in Europe	Advising a freelancer Giving advice on a start-up Explaining corporation and trade tax Calculating trade tax Writing letters
28	4 International taxation	Double-taxation treaties Tax havens International co-operation VAT in the EU	Giving a presentation Writing faxes Explaining and calculating VAT Chairing and participating in teleconferences
40	5 Auditing	The Big Four Annual reports Financial statements Internal and external auditing Global accounting trends	Analyzing annual reports Explaining financial statements Reading auditors' reports
49	6 Auditing in a globalized environment	Corporate governance The Enron scandal Creative accounting Compliance and Sarbanes-Oxley Risky investments	Describing processes, trends and developments Talking about companies and affiliates Holding meetings

Read and listen to the following dialogue between Martina Jones, a retired UK national living in Germany, and Karl Schenkel, a professional German tax advisor. What small thing does Karl do that creates a good impression on his client?

Karl Ms. Jones, isn't it? My name is Schenkel, Karl Schenkel.

Martina Nice to meet you.

Karl If you'd like to follow me to my office, please .. **is this your first visit to Stralsund,** Ms. Jones?

Martina Yes, it is, and I like it very much. I've had the chance to look around a bit before coming to your office. I retired last year and decided to move to Rügen after working in the Ruhrgebiet for many years.

Karl You've certainly chosen the right place.

Martina Rügen is a wonderful island, it's just wonderful.

Karl **Where are you from originally?**

Martina I'm from Wales.

Karl Another beautiful place.

So, this is my office. **Please have a seat, Ms. Jones. May I offer you a cup of tea?**

Martina I'd love one.

Karl With milk, I guess.

Martina Of course ... oh, and you even have real milk, what a treat! I was at a law firm the other day, and I had to put evaporated milk in my tea.



MEETINGS WITH CLIENTS

Meeting & greeting

Good morning, Mr Smith. How are you?

I'm Klaus Müller. Nice to meet you.

My name is Claudia Schneider. Pleased to meet you.

This is my assistant, Rebecca Kretschmar.

May I introduce you to my business partner, Mr Kamphausen?

How do you do? is a formal, rather old-fashioned greeting. It is not a question. Do not answer it by saying that you are fine. Just say How do you do? as well.

Offering hospitality

Would you like something to drink?

Can I offer you a cup of coffee?

May I offer you a glass of water?

Please help yourself to milk and sugar.

Don't offer a drink as this usually means alcohol.

Small talk

How was your journey/flight?

Is your hotel ok?

Did you find us alright? / Did you have any trouble finding us?

Is this your first time in Germany? / Is this your first visit to Berlin?

Terrible weather today, isn't it?

Good small-talk topics are travelling, accommodation, weather and sports. Personal and potentially sensitive issues, such as politics and religion, should be avoided.

CONDUCTING CLIENT INTERVIEWS & GIVING ADVICE

Structuring the interview

Client interviews can be very demanding. You must elicit information and give advice while maintaining a pleasant atmosphere and explaining matters plainly. The **WASP** approach is useful.



Giving advice

must	You must file your tax return by 31 May.
have to	You have to enclose receipts.
ought to	You ought to do it electronically.
should	You should consider deferring taxes.
suggest	I (would) suggest calling your tax officer. I (would) suggest that I write to your tax office.
recommend	I (would) recommend filing an appeal. I (would) recommend that you do not react.

Being more or less formal

You may wish to distinguish situations in which you are dealing with someone you do not know well from ones in which you are dealing with friendly working relationship with.

Formal

I would advise you to accept the decision.
I recommend that you pay the penalty.
Perhaps you could talk to your employer.
I suggest that you get confirmation from your payroll department.
I think you'd better clarify your status.

Informal

Why don't you change your tax bracket?
How about a joint assessment?
Try claiming home office expenses.
Why not change the bonus system?

Have you thought about treating this as an income-related expense?

TELECONFERENCING.

The way a conference call is run may vary depending on how formal the situation is and what the objectives are. Typical steps include: The chairperson kicks off the conference, welcomes the participants and states the purpose. Then the participants discuss the topics. The chairperson acts as facilitator, asks for opinions and summarizes action items. There might be an agenda to follow and minutes to take. Here are some additional phrases for teleconferencing. They can, of course, also be used for face-to-face meetings.

Opening, chairing and closing

Good morning, everybody.

Can we start?

Let's get down to business.

Who's going to take the minutes?

The purpose of our conference is ...

Our aim today is ...

There are three items on the agenda.

Peter, would you like to start?

Anything to add, Josh?

Let's move on to the next item.

Let me summarize the main points.

Is there any other business?

OK, thank you for all your contributions.

Taking part

In my opinion ...

To my mind ...

In my view ...

I think / believe / suppose / assume / guess ...

I agree with you.

I'm with Rainer on this.

I'm afraid I can't agree with that.

I see it rather differently.

Can I just say at this point that ...

May I just come back to a point that Jim made?

I didn't quite catch that.

Do you see what I mean?

Let me put it another way.

DESCRIBING BUSINESS TRENDS AND DEVELOPMENTS

Auditors often have to analyze, describe and present developments. They may talk about share prices or dividends, sales or profits, market share or interest rates. Such presentations or reports are often supported by visual information contained in graphs, bar charts, and pie charts.

Introducing a graph

This graph shows/illustrates/depicts our sales in the first quarter this year. ... the decline of interest rates last year. ... our increase in market share over the last decade.
The vertical axis represents our profit in millions of dollars/pounds/euros.
The horizontal axis depicts the dividend yield in per cent.

Upward movement

Sales rose by three per cent in March.

Profit increased by one million dollars in 2012.

There was an increase in market share of five per cent over three years.

There was a one per cent increase in interest rates last year.

Finance expenses shot up last quarter.

Downward movement

Sales decreased by 500 units.

Profit fell by 30,000 euros.

There was a decrease/fall in payables.

Earnings from minority interests plunged.

Pension provisions slumped to 400,000 pounds.

Other expressions

The share price hit a low in May last year.

Indices reached a peak at the end of 2012.

Interest rates on savings recovered.

The price-to-earnings ratio fluctuated wildly over the last decade.

Our EBITDA remained steady.

A preposition can make a big difference:

The price was reduced **by** € 10 per item. = The product cost € 10 less than before.

The price was reduced **to** € 10 per item. = The product cost € 10.

CONVENTION

between the United States of America
and the Federal Republic of Germany

for the avoidance of double taxation and the prevention of fiscal evasion
with respect to taxes on income and capital and to certain other taxes

ARTICLE 28

Limitation on Benefits

CASE 1

A German company is owned by three persons, each resident in a different third country. The company is engaged in an active manufacturing business in Germany. It has a wholly-owned subsidiary in the United States. The subsidiary is engaged in selling the output of the German parent. The active manufacturing business in Germany is substantial in relation to the activities of the US subsidiary.

Are the subsidiary's interest and dividend payments to its German parent eligible for treaty benefits in the United States?

States; and

bb) a person, more than 50 percent of the gross income of which is not used, directly or indirectly, to meet liabilities (including liabilities for interest or royalties) to persons not entitled to benefits of this Convention under subparagraphs a), b), d), or f) or who are not citizens of the United States; or

f) a not-for-profit organization that, by virtue of that status, is generally exempt from income taxation in its Contracting State of residence, provided that more than half of the beneficiaries, members, or participants, if any, in such organization are persons that are entitled, under this Article, to the benefits of this Convention.

Discuss these questions.



Sole trader



Partnership



Limited company

- 1 What are the advantages and disadvantages of these different kinds of businesses: sole trader, partnership, limited company.
- 2 What kind of business would you conduct under which corporate form? What are capital and liability requirements?



TYPES OF BUSINESSES

Business types that exist in one country do not necessarily have an equivalent in another one. It can therefore be difficult to provide a proper translation. In most countries, there are different kinds of partnerships and limited companies. A type that is widespread in Germany, the *GmbH & Co. KG*, is unknown in both Britain and the US. Such entities must be described in a way that gives the listener an idea about what you are referring to. The entity mentioned could be described as a limited partnership that has a limited company as a general partner. Another example of a business type that is difficult to translate is the *Unternehmergeellschaft*, also referred to as a *Mini-GmbH*. In this case, it would be important to make reference to the share capital.

Germany

Personengesellschaft

Kapitalgesellschaft

Einzelunternehmen

GbR

OHG

KG

GmbH

AG

UK

partnership

limited company

sole proprietorship

civil law partnership

ordinary partnership

limited partnership

private limited company

public limited company

US

partnership

corporation

sole proprietorship

partnership constituted under civil law

general partnership

limited partnership

privately held corporation

publicly traded corporation

If you want to distinguish a *Personengesellschaft* from a *Partnerschaftsgesellschaft*, you can refer to the latter as a 'professional partnership'.

TYPES OF BUSINESSES

Did you know ?

Business types that exist in one country do not necessarily have an equivalent in another one. It can

BOARD OF DIRECTORS

Did you know ?

A corporation is usually run by a **board of directors (BoD)**, sometimes also referred to as the **board of management, executive board** or simply **board**. The board consists of members who are responsible for managing the business (executive directors) and those who oversee them (non-executive directors). This draws a clear line between management on the one hand, and governance on the other. It helps to avoid conflicts of interest, and prevents a concentration of power.

Executives are usually responsible for a specific area of the business, such as operations or finance. Numerous short 'C' (Chief) titles have emerged over the years, among them CEO (Chief Executive Officer), CFO (Chief Financial Officer) and COO (Chief Operations Officer).

Non-executives typically come from outside, are not otherwise connected to the company and therefore considered independent. In some countries, including Germany, they form a separate board (the **supervisory board**).

If you want to distinguish a *Personengesellschaft* from a *Partnerschaftsgesellschaft*, you can refer to the latter as a 'professional partnership'.

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Transcripts

UNIT 1, Exercise 3

Speaker Good morning, ladies and gentlemen. My name is Franziska Schneider and I work for the German National Tax Bar. I'm here to give you a brief overview on the tax advising business in Germany. I will first talk about what our advisors do, then how much they cost and I will conclude by saying something about how you can become a tax consultant.

UNIT 1, Exercise 4

Speaker So first let me tell you something about the scope of a tax consultant's work. Tax advisors provide comprehensive support in tax matters. This includes advice in tax and business administration matters, and representation before tax offices and in fiscal courts. They prepare tax returns and financial statements, and they check the tax assessments made by your tax office. Tax advisors can also do your bookkeeping and payroll accounting, and advise on start-ups, asset management and social security matters. But they can't give general legal advice or audit statements.

UNIT 1, Exercise 5

Speaker You might be interested in fees. The payment of tax advisors is governed by federal law. It involves a statutory fee schedule. This schedule relates to the value of the matter in question or the time spent on it. As tax advisors are liable for the advice they give and the work they conduct, they are obliged to take out professional indemnity insurance

UNIT 1, Exercise 8

Karl Ms. Jones, isn't it? My name is Schenkel, Karl Schenkel.

Martina Nice to meet you.

Karl If you'd like to follow me to my office, please. Is this your first visit to Stralsund, Ms Jones?

Martina Yes, it is, and I like it very much. I've had the chance to look around a bit before coming to your office. I retired last year and decided to move to Rügen after working in the Ruhrgebiet for many years.

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Martina Rügen is a wonderful island, it's just wonderful.

Karl Where are you from originally?

Martina I'm from Wales.

Karl Another beautiful place. ... So, this is my office. Please have a seat, Ms Jones. May I offer you a cup of tea?

Martina I'd love one.

Karl With milk, I guess.

Martina Of course, oh, and you even have real milk, what a treat! I was at a law firm the other day, and I had to put evaporated milk in my tea.

Karl We do what we can, Ms. Jones. I understand you've spent quite some time in Germany and decided to stay?

Martina Yes, that's right. Almost 20 years. My husband passed away last year, and we spent holidays in many different places in Germany. I just love Rügen, so I chose it as my 'final destination'. Sylt is nice, too – but with my pension and the taxes I might have to pay, I think I'll have a better life on Rügen. Which brings me to my question: I understand my pension will be taxed?

UNIT 2, EXERCISE 4 FILE 01

You are Betty or Bernard Longhorn. Call the office of Steuerberater Hofer and make an appointment. You have received a letter from your tax office that you do not understand and need help. The first suggestion for a meeting doesn't suit you. Accept the second one.

UNIT 2, EXERCISE 13 FILE 02

You are Betty or Bernard Longhorn. You moved to Germany last year, and you prepared and filed your tax return for last year with the help of a colleague from work. You have just received your tax notice, and you have difficulties in understanding it. Get your advisor to explain to you the following:

- *Werbungskosten*
- *Solidaritätszuschlag*
- *Kirchensteuer*
- *Sonderausgaben*

Ask follow-up questions if your advisor is not precise enough. You are particularly suspicious of 'solidarity tax' and 'church tax', and are wondering how to avoid these taxes.

UNIT 3, EXERCISE 4 FILE 03

You are Betty or Bernard Longhorn. You have been working as a self-employed consultant for three years, helping people with drafting their job applications. Your clients are interested in working abroad. Some also apply to international companies with subsidiaries or offices in Germany. They need covering letters and CVs, and they sometimes ask for interview preparation. Your service includes help with drafting and proofreading.

So far, your turnover has looked like this:

Year 1: €4,600
 Year 2: €7,400
 Last year: €9,800

You have not charged VAT yet, and would prefer avoiding the hassle. Most of your customers are private clients, so VAT would make your service more expensive for them. You are not sure how your business will develop, but you have already been hired by a major training provider to deliver ten workshops this year. They will pay €3,000 per workshop. Seek advice on VAT implications.

UNIT 2, EXERCISE 4 FILE 04

Use your own name. You are Steuerberater Hofer's assistant and take a phone call from a client. Suggest a meeting date. Ask the client to spell his/her name. Ask for the client's phone number and read it back to him/her.

UNIT 2, EXERCISE 13 FILE 05

You are Steuerberater/in Hofer. Listen to your client and answer his/her questions.

Here are some expressions you may wish to use:

X tax arises when ...

This is a special tax for ...

This item refers to income-related expenses, for example ...

Your tax office has considered EUR ...

X are special expenses that you incur for certain types of insurance, such as health and pension insurance.

You can deduct a partial amount / the full amount. Instead of quoting actual amounts, you can use an allowance, for example EUR ... for income-related / special expenses.

UNIT 3, EXERCISE 4 FILE 06

You are Steuerberater/in Hofer. Elicit relevant information and advise your client. §19 UstG reads as follows:

- (1) Die für Umsätze geschuldete Umsatzsteuer wird von Unternehmern nicht erhoben, wenn der Umsatz zuzüglich der darauf entfallenden Steuer im vorangegangenen Kalenderjahr 17.500 Euro nicht überstiegen hat und im laufenden Kalenderjahr 50.000 Euro voraussichtlich nicht übersteigen wird.
- (2) Der Unternehmer kann dem Finanzamt bis zur Unanfechtbarkeit der Steuerfestsetzung erklären, dass er auf die Anwendung des Absatzes 1 verzichtet. Nach Eintritt der Unanfechtbarkeit der Steuerfestsetzung bindet die Erklärung den Unternehmer mindestens für fünf Kalenderjahre. Sie kann nur mit Wirkung von Beginn eines Kalenderjahres an widerrufen werden. Der Widerruf ist spätestens bis zur Unanfechtbarkeit der Steuerfestsetzung des Kalenderjahres, für das er gelten soll, zu erklären.

A-Z word list

A

to abolish [ə'bɒlɪʃ]	abschaffen	to adjourn [ə'dʒɔːn]	vertagen
abolition [ˌæbə'liʃn]	Abschaffung	administrative [əd'mɪnɪstrətɪv]	Verwaltungs-
to abridge [ə'brɪdʒ]	(Text) kürzen	administrative burden	Verwaltungsaufwand
absence ['æbsəns]	Fehlen, Nichtvorhandensein	[əd,mɪnɪstrətɪv 'bɜːdn]	
abundance [ə'bʌndəns]	Fülle	to admit to sth [əd'mɪt tə]	etw zugeben, eingestehen
accidentally [ˌæksɪ'dentəli]	unabsichtlich	to adopt [ə'dɒpt]	annehmen, einführen, über-
accommodation [ə,kɒmə'deɪʃn]	Unterbringung, Unterkunft		nehmen, verabschieden
accordance, in ~ with	in Übereinstimmung mit	adoption [ə'dɒpʃn]	Einführung, Verabschiedung, Übernahme, Annahme
[ɪn ə'kɔːdəns wɪð]			Vorauszahlung
according to [ə'kɔːdɪŋ tə]	laut, nach, gemäß	advance payment	
to account sth [ə'kaʊnt]	etw verbuchen, buchen	[əd,vɑːns 'peɪmənt]	
to account for sth [ə'kaʊnt fɔː]	für etw verantwortlich sein	advantage, to take ~ of sth	etw nutzen, etw wahrnehmen
account, to take sth into ~	etw berücksichtigen	[,teɪk əd'vɑːntɪdʒ əv]	
[,teɪk ɪntu ə'kaʊnt]		advantageous [ˌædvən'teɪdʒəs]	vorteilhaft
account, bank ~ ['bæŋk əkaʊnt]	Bankkonto, Girokonto	advice [əd'vaɪs]	Beratung, Rat, Tipp
accountability [ə'kaʊntə'bɪləti]	Verantwortlichkeit, Haftung	advice, tax ~ ['tæks ədvaɪs]	Steuerberatung
accountancy [ə'kaʊntənsi]	Buchführung	to advise sb [əd'vaɪz]	jdn beraten
accountant [ə'kaʊntənt]	Buchhalter/in, Steuerberater/in	advisor, tax ~ ['tæks ədvaɪzə]	Steuerberater/in
accountant, Certified Public A~	Wirtschaftsprüfer/in	to affect [ə'fekt]	sich auswirken, beeinflussen, betreffen
(CPA) (US) [ˌsɜːtɪfaɪd ,pʌblɪk			
ə'kaʊntənt]		affiliate [ə'fɪliət]	verbundenes Unternehmen
accountant, Chartered A~ (UK)	Wirtschaftsprüfer/in	to affirm [ə'fɜːm]	bekräftigen, festlegen
[ˌtʃɑːtəd ə'kaʊntənt]		aftermath ['ɑːftəməθ]	Folge, Nachwirkungen
accounting [ə'kaʊntɪŋ]	Buchhaltung, Rechnungswesen	agenda [ə'dʒendə]	Tagesordnung
accounting, cash ~	Einnahmenüberschussrechnung	agreement [ə'ɡriːmənt]	Abkommen
['kæʃ əkaʊntɪŋ]		allowance [ə'laʊəns]	Freibetrag
accounting, creative ~	kreative Buchführung	allowance, tax ~ [ˌtæks ə'laʊəns]	Steuerfreibetrag
['kriːetɪv ə'kaʊntɪŋ]		alongside [ə'lɒŋ'saɪd]	neben
accounting, forensic ~	Forensic Accounting	to amend [ə'mend]	ergänzen, ändern
[fɔːrensɪk ə'kaʊntɪŋ]	(Untersuchung von Betrugs- verdachtsfällen)	amortization [ə,mɔːtəɪ'zeɪʃn]	Abschreibung (auf immaterielle Vermögenswerte)

Glossary

amortization

Process of reducing the book value of an intangible asset over a specific number of years.

Big Four

The largest accounting firms in the world: Deloitte Touche Tohmatsu, Ernst & Young, KPMG, PricewaterhouseCoopers.

credit method

Under double taxation treaties, a way of deducting taxes paid in another state from someone's domestic tax burden.

depreciation

Process of reducing the book value of a fixed asset over a specific number of years.

exemption method

Under double taxation treaties, a way of not charging taxes on income generated and taxed in another state.

International Accounting Standards (IAS)

Accounting standards developed and published by the International Accounting Standards Committee (IASC) between 1975 and 2000.

International Accounting Standards Board (IASB)

Successor of the International Accounting Standards Committee (IASC) from 2001, calling new standards developed from then International Financial Reporting Standards (IFRS).

International Accounting Standards Committee (IASC)

A private organization, founded in London in 1973. Its objective was to establish uniform, globally accepted accounting principles. It published its first International Accounting Standard (IAS 1) on the presentation of financial statements in 1975. By the end of 2000, it had produced a total of 41 standards. It was succeeded by the International Accounting Standards Board (IASB) in 2001.

statement of activities

A financial statement prepared by charities / non-profit organizations, disclosing their income and expenses. It is similar to an income statement and depicts funding sources, programme and administrative costs, as well as restrictions imposed on assets by donors.

statement of changes in equity

A statement that shows the amounts of equity the owners have at the beginning and at the end of the reporting period.

statement of comprehensive income

Comprehensive income includes net income (profit or loss) and other comprehensive income (OCI), which are certain gains and losses not shown in the statement of income (e.g. unrealized gains/losses on available-for-sale securities, currency and pension liability adjustments).

statement of expenses

A presentation of expenses by their functions (e.g. programme, development and fund raising expenses), usually included in the statement of activities of a charity / non-profit organization.

triangulation

In EU trade, a chain of supply of goods involving three parties when, instead of the goods physically passing from one party to the next, they are delivered directly from the first party to the last in the chain. For VAT purposes, the first party can declare the transaction as a supply, the last party can treat it as an acquisition. This makes the handling of VAT much easier as the second party, which would usually have to handle this as an acquisition followed by a supply and make appropriate VAT filings, is not involved.

John Lynch & Alexander Dudziak oHG

Ruppiner Chaussee 183 · 13503 Berlin · Tel: (030) 531 29 16 · Fax: (030) 531 29 17

Maurer Hubu Rauf Steuerberatungsgesellschaft
Frau Steuerberaterin Andrea Maurer
Kurfürstendamm 210
10719 Berlin

6 March 20..

Income Tax Assessment for John Lynch & Alexander Dudziak oHG

Dear Ms Maurer

With reference to our above-mentioned enterprise, we would like to approach you with some queries regarding our tax filings.

First of all, we would like to ask you to advise us on both our corporation and our trade tax burden. Our bookkeeping department has already calculated our taxable income for last year. It amounts to €100,000.

Secondly, we would like to know whether we could save taxes by simply moving our office outside Berlin. Please do the necessary research and provide us with suitable information.

Finally, we would be happy to continue using your services. However, we would appreciate it if you could reconsider your hourly rate. We have been very satisfied in our dealings with your firm, but we also have to consider savings on all fronts. You will be aware that there is a wide choice of accountants, and cutting our costs is paramount to us. We were thinking of a reduction of 20%. Please send us your remuneration agreement if you are prepared to accept our proposal.

We look forward to hearing from you.

Yours sincerely

John Lynch

North American Layout

John Lynch & Alexander Dudziak oHG

Ruppiner Chaussee 183 · 13503 Berlin · Tel: (030) 531 29 16 · Fax: (030) 531 29 17

March 6th, 20..

Maurer Hubu Rauf Steuerberatungsgesellschaft
Frau Steuerberaterin Andrea Maurer
Kurfürstendamm 210
10719 Berlin

Re: Income Tax Assessment for John Lynch & Alexander Dudziak oHG

Dear Ms. Maurer:

With reference to our above-mentioned enterprise, we would like to approach you with some queries regarding our tax filings.

First of all, we would like to ask you to advise us on both our corporation and our trade tax burden. Our bookkeeping department has already calculated our taxable income for last year. It amounts to €100,000.

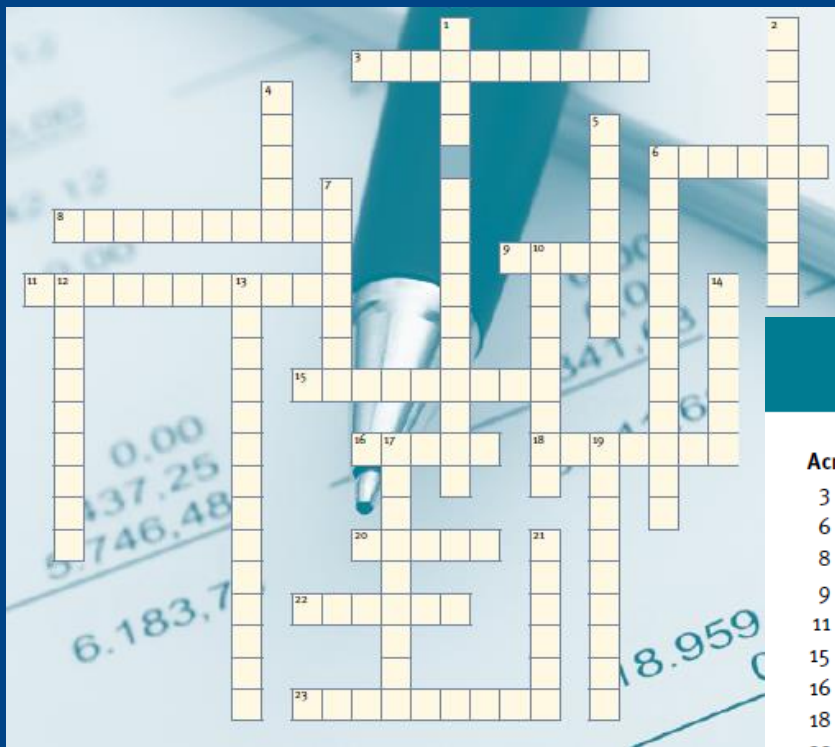
Secondly, we would like to know whether we could save taxes by simply moving our office outside Berlin. Please do the necessary research and provide us with suitable information.

Finally, we would be happy to continue using your services. However, we would appreciate it if you could reconsider your hourly rate. We have been very content with your firm, but we also have to consider savings on all fronts. As you know, there is a great choice when it comes to tax and accounting services. We were thinking of a reduction of 20%. Please send us your remuneration agreement if you are prepared to accept our proposal.

We look forward to hearing from you.

Sincerely,

John Lynch



Test yourself!

Across

- 3 An asset that does not have a physical nature, such as a patent or goodwill, is this sort of asset.
- 6 A process whereby things are checked.
- 8 Observing the law.
- 9 A non-cash benefit.
- 11 The development or success of a company.
- 15 An item that is subtracted from income before taxation.
- 16 Another word for 'profits'.
- 18 A crime which involves hiding income or assets in order to illegally save taxes.
- 20 An extra payment on top of one's regular salary.
- 22 An agreement between governments, for example in the field of international taxation.
- 23 A limit or ceiling.

Down

- 1 A simplified method of calculating one's profit instead of drafting a balance sheet.
- 2 A presentation of financial figures.
- 4 A place that offers favourable treatment, such as low taxes or little bureaucracy, is a tax ...
- 5 When income is taxed at the same rate, it falls into the same tax ...
- 6 Money paid in compensation for performed work.
- 7 Money made from sales.
- 10 Costs incurred when generating income.
- 12 A senior manager.
- 13 Another word for 'responsibility'.
- 14 Another word for to 'keep', for example when you keep profits within the business, rather than distributing or paying them to owners or investors.
- 17 A specific amount granted for tax purposes.
- 19 Moving assets or a business to a country with favourable tax rates leads to this.
- 21 Money returned, for example when one has paid too much tax.

Acronyms

AICPA	American Institute of Certified Public Accountants
B2B	business to business
B2C	business to consumer
CCAB	Consultative Committee of Accountancy Bodies
CCCTB	Common Consolidated Corporate Tax Base
CDO	collateralized debt obligations
CDS	credit default swaps
CG	corporate governance
CGT	capital gains tax
CIMA	Chartered Institute of Management Accountants
CIPFA	Chartered Institute of Public Finance and Accountancy
CIT	corporate income tax
CPA	Certified Public Accountant
CR	Corporate Responsibility
CSR	Corporate Social Responsibility
EBITDA	earnings before interest, tax, depreciation and amortization
EPS	earnings per share
FASB	Financial Accounting Standards Board
GAAP	generally accepted accounting principles
IAS	International Accounting Standards
IASB	International Accounting Standards Board
IASC	International Accounting Standards Committee
ICAEW	Institute of Chartered Accountants of England & Wales
IFRIC	International Financial Reporting Interpretations Committee
IFRS	International Financial Reporting Standard(s)
IRS	Internal Revenue Service
KPI	Key Performance Indicator
TIEA	Tax Information Exchange Agreement
MTT	municipal trade tax
OCI	other comprehensive income
OECD	Organisation for Economic Co-operation and Development
P&L	profit and loss
PAYE	pay as you earn
PCAOB	Public Company Accounting Oversight Board
P/E	price-to-earnings ratio
ROI	return on investment
ROE	return on equity
SEC	Securities & Exchange Commission
SIC	Standing Interpretations Committee
SOX	Sarbanes-Oxley Act
SPE	special purpose entity
TIEA	Tax Information Exchange Agreement
VAT	value-added tax

A NICE TRICK



UNIT 3

page 20

Start-up

Freelancers (in the sense of German *Freiberufler*) are self-employed and perform scientific, artistic, authorial, teaching or educational work. Examples include musicians, painters, journalists, writers, teachers and translators, but also doctors and dentists, architects, lawyers, tax advisors and auditors. Their work is immaterial and creative. They need to be distinguished from traders (*Gewerbetreibende*). Freelancers have less registration and reporting requirements. They do not need to prepare annual financial statements – a simple calculation of revenues and expenses (profit and loss / cash accounting) is sufficient. Freelancers do not become compulsory members of the Chamber of Commerce or Trade, and they do not have to contribute to the state accident insurance scheme. They are not required to pay trade tax.

- 11 1. time to meet you
2. Yes, it is, and I like it very much.
3. I'd love one.

12 1, 3, 4.

- 13 1. assurance services
2. freedom
3. adherence

14 2h, 3d, 4f, 5a, 6b, 7e, 8c

UNIT 5

page 40

Start-up

The Big Four (Deloitte & Touche, Ernst & Young, KPMG, PricewaterhouseCoopers) are the largest accounting firms in the world. Until the end of the 20th century, it was a group of eight. Its number was reduced to five by several mergers, later to four following the dissolution of Arthur Andersen in the course of the Enron scandal.

- 1 1 Annual reports inform shareholders about the financial standing of their company. They traditionally begin with a letter from the company's Chairman or Chief Executive, summarizing relevant developments. They also provide specific information on new products and services, business performance and social responsibility. Sections on corporate governance and the remuneration of directors have become an integral part, too. Annual reports also contain financial statements and a report by independent auditors, also referred to as auditor's opinion.

- 8 1. depend on
2. deduct, on, exceeding
3. taken into account
4. expect
5. file
6. receipt, reference number
7. assist, arises
8. free

Generally speaking, the bigger the business, the wiser it can be to move towards a limited company. Sole traders can pursue any business. They operate on their own, manage their business independently and are their own boss. Operations such as hairdressers, tailors and small retailers are typical examples of sole traders. They can be run by a single person (the 'proprietor' or 'owner') and do not require a statutory minimum capital. The owner is, however, personally liable for any obligations or debts. In partnerships, management and liability can rest on many shoulders. Despite a few exceptions (KG and GmbH & Co. KG), all partners are personally liable. There are no capital requirements. Limited companies are more difficult to set up. You need specific minimum capital (GmbH: € 25,000; AG: € 50,000), registration and formal documentation (articles of association, certified by a notary). Therefore, the costs are higher, but the liability is limited by shares. This means that it only extends to the share capital or equity of the company, not to its members or shareholders.

For these reasons, a small trading business where the risks are considerably low, can very well be run as a sole trader or partnership. A limited company should be considered for medium-sized and large businesses, especially if liability is a primary concern. It's also possible to go for something 'in between': In a limited partnership (KG = *Kommanditgesellschaft*), liability rests on the general partner (*Komplementär*) only. Likewise, the very German GmbH & Co. KG has a limited company, and not an individual, as its liable general partner.


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Wrap Up!

Listening 1: Company formation

Lawyers play important roles in the formation of a company, advising clients which entities are most suited to their needs and ensuring that the proper documents are duly filed.

You are going to hear a conversation between an American lawyer, Ms Norris, and her client, Mr O'Hara. The lawyer describes how a specific type of corporation is formed in the state of Delaware.

4 ⏮ Listen to the conversation and tick the documents required for formation that the lawyer mentions.

- 1 DBA filing
- 2 articles of incorporation
- 3 stock ledger
- 4 general partnership agreement
- 5 stock certificates
- 6 IRS & State S Corporation election
- 7 bylaws
- 8 organisational board resolutions

5 **Company types (USA)** Look at the following table, which provides information about the documents required to form and operate the different company types in the United States. Based on what you heard in Exercise 4, which type of business association was the lawyer discussing with her client?

US entities	Documents required for formation and operation
sole proprietorship	DBA filing
general partnership	General Partnership Agreement, local filings if partners
limited partnership	Limited Partnership Certificate, Limited Partnership Agreement
C corporation	Articles of Incorporation, Bylaws, Organisational Board Resolutions, Stock Ledger
S corporation	Articles of Incorporation, Bylaws, Organisational Board Resolutions, Stock Ledger, IRS & State S corporation election

6 **Company types (UK)** The table on page 23 contains information about types of common UK business associations, covering the aspects of number of owners, capital contributions and management. (In many jurisdictions around the world, there are entities which share some or all of these characteristics) Look at the table and decide which entity (a–e) is being described in each row (1–5).

- a private limited company (Ltd)
- b general partnership
- c public limited company (PLC)
- d limited partnership
- e sole proprietorship

Listening 2: Forming a business in the UK

You will hear a dialogue in which a lawyer, Mr Larsen, discusses some of the characteristics of two business entities with Mr Wiseberg, a client who is interested in forming a company in the UK.

11 ⏮ Listen to the phone conversation and tick the two company types the men are discussing.

- 1 sole proprietor
- 2 UK limited partnership
- 3 UK private company limited by shares
- 4 UK private company limited by guarantee
- 5 UK public limited company
- 6 US C corporation
- 7 US S corporation

12 ⏮ Listen again and decide whether these statements are true or false.

- 1 The client has not yet decided what type of company he wants to form.
- 2 The client has never founded a company before.
- 3 The lawyer points out that the two types of company differ with regard to the matter of personal liability.
- 4 The shares of a US C corporation can be freely traded on a stock exchange.
- 5 Both company types mentioned by the lawyer can be formed by a person who is a citizen of another country.
- 6 The UK company type discussed places a restriction on the number of people permitted to buy shares in the company.
- 7 The fastest way to form a company is to submit the documents directly to Companies House.

UK enacts third-party rights statute

1) _____

On 11 November, 1999, the Contracts (Rights of Third Parties) Act 1999 became law in England, Wales and Northern Ireland. The act applies to contracts governed by English law or the law of Northern Ireland entered into beginning 11 May, 2000. It also applies to each English law contract entered into beginning 11 November, 1999 which expressly provides for its application.

2) _____

The new statute has a significant effect on a variety of contracts, and, as contracts are at the heart of business transactions, on business in general. It fundamentally alters the English law principle of privity of contract that permits only parties to a contract to enforce its terms, even if the contract clearly purports to confer a benefit on a third party.

3) _____

The statute enables a person that is not a party to a contract to enforce its terms if the contract expressly provides that the non-party may do so, or if one or more terms of the

contract purport to confer a benefit on the non-party, unless on a proper construction of the contract, it appears that the parties did not intend the term to be enforceable by the non-party.

4) _____

Therefore it becomes important that contract drafters take into account whether any third party has been given rights under a contract. The parties may agree in the contract to exclude the application of the statute. If this is not done, one or more of the parties may be exposed to unexpected claims by third parties who were not intended to be beneficiaries of the contract.

5) _____

The new act does not affect rights granted to third parties by means other than the act itself. Therefore, if the parties to a contract wish to grant third-party rights under it, they may continue to do so through the use of collateral contracts, novations, assignments, deed polls, trust relationships and other established English law mechanisms.

The Uniform Electronic Transactions Act (UETA)

- 1 _____
The National Conference of Commissioners on Uniform State Laws (NCCUSL) adopted the UETA on July 29, 1999. The UETA's purpose is to provide a uniform national framework governing use and application of electronic transactions.
- 2 _____
The act defines the terms "record," "electronic record," and "electronic signature" and provides as a general rule that electronic records and signatures satisfy legal requirements that a record be in writing or signed. The UETA also applies only to transactions between parties when each has agreed to conduct transactions by electronic means. Some types of transactions will be exempt. Although the UETA is intended to have broad application, under certain circumstances transactions governed by the Uniform Commercial Code (UCC) or the Uniform Computer Information Transactions Act (UCITA) will be excluded from the statute's affect.
- 3 _____
The UETA contains provisions governing provision or transmission of information in electronic form, attribution of electronic records and signatures, distributing risk of error in electronic transmissions, and retention of "original" electronic records. Other provisions govern automated electronic transactions or the use of so-called electronic "agents" and acceptance of electronic records and signatures by governmental agencies.
- 4 _____
The UETA also creates a form of electronic negotiable instrument, called a "transferable record." As long as an entity has "control" of the transferable record, it is a holder of the record as defined by UCC § 1-201(20) and has the same rights and defenses as a holder of a negotiable instrument or document under UCC Articles 3, 7, and 9. The requirements of delivery, possession, and endorsement are eliminated.
- 5 _____
A person has "control" over the record if "a system employed for evidencing the transfer of interests in the transferable record reliably established that person as the person to which the transferable record was issued or transferred." This requirement can be met by a system that creates, stores, and assigns the transferable record in a manner that satisfies six specific conditions listed in the UETA.
The UETA will affect the rules governing creation of enforceable contracts or instruments. Transactions existing or signed electronically that might be unenforceable under traditional principles of law may become enforceable when taking into account the UETA's provisions.

EXERCISE

An attorney in your working group has just been contacted by one of your firm's clients, a multinational computer hardware and software company which maintains its headquarters in your country. The client was in the process of expanding its consulting and logistics operations in the US market, and was negotiating the purchase of a small group of consulting companies situated in Texas and California. To negotiate the purchase, your firm's client hired a reputable Californian law firm to conduct the due diligence* of the target companies, and address other legal matters concerning the purchase.

American counsel submitted the due diligence report to the managing director of your client firm. The managing director is flying to the US in the morning and has a couple of last-minute questions regarding the contents of the report.

The due diligence report indicates that the corporate form adopted by the consulting group in California is a limited liability company, whereas the one adopted by the Texan group is a professional limited liability company.

Your colleague wants to call the client before close of business and asks you to help prepare answers to the following questions:

- 1) What is the difference between a limited liability company and a professional limited liability company?
- 2) What are the advantages and disadvantages of operating under each of these respective corporate forms?
- 3) Outline any relevant considerations to the acquisition of these entities by a foreign buyer.

EXERCISE

Your firm has been contacted by a publicly funded international aid and development organization in your country. The agency provides loans to local investors who are developing projects in underdeveloped countries in partnership with businesses and private individuals domiciled in such countries.

According to the investment policy of the aid organization, loans must be securitized and are paid back in full on terms and conditions favourable to the borrower. The aid agency has been contacted by a local investor who wishes to develop a spa and resort facility and golf course on the island of Zanzibar in Tanzania. The project will provide a permanent, revenue-generating business which will employ several thousand locals.

The representative of the aid agency will shortly be travelling to Tanzania to discuss the project with local investors. The contemplated security for the loan is an area of coastal agricultural land, upon which the resort and golf course will be developed.

The agency asks you to prepare a short report including basic information on the investment climate before further research is carried out and local counsel retained. As Tanzania is a new development venue for the agency, and they can't rely on their previous experience or knowledge of the country, they have stressed the importance of ensuring that any information you supply is from extremely reliable sources.

Your report should address the following areas:

- 1) Securing a mortgage on investments in Tanzania
- 2) Openness to foreign investment
- 3) Corruption

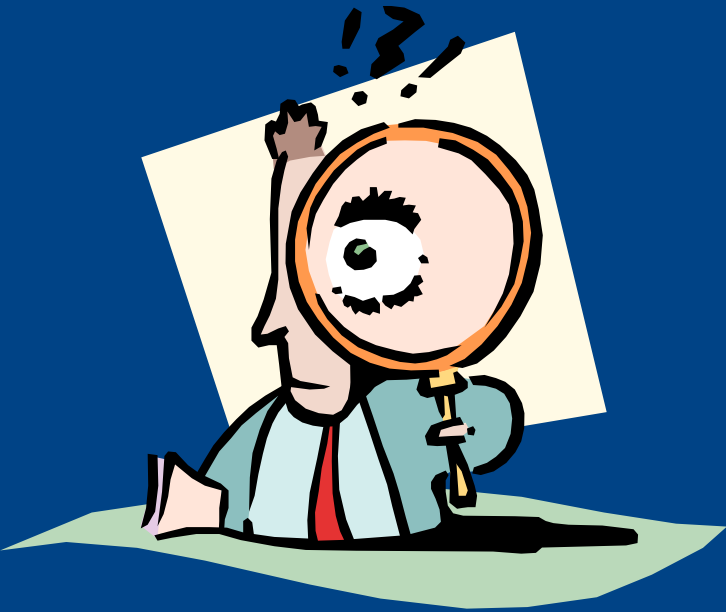


Insolvency



- ▣ unemployment
- ▣ sickness
- ▣ divorce

Employment



- ▣ dismissal
- ▣ labour relations

Corporate



- ▣ affiliate/associate/
subsidiary
- ▣ company formation
 - ⊕ GmbH & Co. KG
 - ⊕ UG
- ▣ Prokura/Prokurist

Contracts



- ▣ LOI / MoU / Term Sheet
- ▣ consideration
- ▣ equitable remedies
- ▣ punitive damages



<http://www>

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XING <

xing.com/profile/Patrick_Mustu