

„One Belt One Road Strategy“ and Legal Services

International Construction Contract Challenge

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BREYER | RECHTSANWÄLTE

International
Construction
Law Association

ICLA

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Domestic construction

- Issues faced domestically in construction generally same world wide
- Even though parties are all same nationality (i.e, domestic contractors, employers, engineers, etc) still disputes exist because always differences in interpretation and meaning of words
- For e.g during hearing of amendments to Animals (Scientific Procedures) Bill, in House of Lords in England, the following was stated by one of their Lordships (30 April 1987):

“My Lords, the difference between “may” and “shall” is one of the bugbears of the Statute law and of Parliamentary debate. I do not know how many hours I have spent in both Houses of Parliament debating the difference between “may” and “shall”. I think we need an Act of Parliament to resolve this difficulty and to declare once and for all that “may” means “shall” . . . anyway in this case “may” has been translated into “shall”. Of course, we know that it meant “shall” all the time but I need not pursue it any further.”

Applicable law in construction

- Domestic construction
 - Dispute in domestic construction projects:
 - Contract – how to interpret contract; and
 - National law – Civil codes/statutes
 - Most countries, especially Civil law countries don't have specific Construction Laws. For e.g:
 - UK: no specific law governing construction contracts → closest is Housing Grant, Construction and Regeneration Act 1996 which deals only with payment.

Applicable law in construction

- Interpreting contracts
 - Common law: subjective intention of parties not relevant; parties' intentions are assessed objectively by giving ordinary natural meaning to words used. If this leads to absurdity or ambiguity in words used, determine meaning reflecting business common sense and “factual matrix”
 - Civil law: there are often legal rules of interpretation (for example, §§133, 157 of the German Civil Code). There isn't always is priority of literal interpretation, rather an examination into the true intention of parties
- Language
 - Words and grammar differ from each jurisdiction. Different languages have their own characteristics
 - **Never rely on a translation of Contract!** Not possible to simply translate Contract → each legal term carries within itself broad legal implications
 - Mandatory law will affect Contract terminology