

# The challenges of international construction contracts

- The substance and the concept of the ESCL-conference 2023

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What is *the reason* for a conference on 'Liability standards in construction contracts' – with an international perspective?

# The foundations of construction contract law

- Domestic by nature
- Industrialization: Division of works and knowledge
- Immobility of performances
- Employers terms
- National markets, national standards and national background law

# The foundations of construction contract law

- Internationalization (?)
- Export of construction projects
- Opening of (EU)markets (1990-) and increased transnational mobility
- Digitalization and (re)unification of works and knowledge in the supply chain has created mobility
- Energy supply and green transition

# Denmark

- 5.944.144 people (Statistics Denmark, 3<sup>rd</sup> quarter 2023)
- GDP 380 billion EUR
- Construction sector : 13 pct.

## The relevance of foreign construction contract law

- Liability standards are markers for production systems
- Sphere of liability of a contractor/architect differently defined
- *Seemingly alike* contracts may show to contain fundamentally different risk- and liability allocations
- The role of *domestic* principles of *(construction) contract law*

## The relevance of foreign construction contract law

- Classical cross-border problems (full legal corpus)
- Modern transnational markets (infrastructure, off shore, energy)
- Fragmentation/modularization of construction contract law
  - Employers choice (Fehmern-crossing)
  - Contractors/suppliers terms (windfarms)

## Three layers of contractual regulation

Specific (liability) clauses (Country A)

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Standard form (Country B)

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Governing law of the contract (Country C)



## Interpretation

*Less careful :*

### **T:BB 1999 71 VBA – Sewage treatment plant in Bhutan**

FIDIC Terms + Danish law = § 2, subs. 2 and § 15, subs. 4, of AB 92 (?)

*More careful:*

### **FED 2018 04 (High Court) – All risk insurance of oil rig**

UK-Terms + but Danish law = "Sue and labour" in accordance contractual corpus developed in UK law

## The aim of this conference

- Shed light on different liability standards and liability clauses in construction contracts
- How do these standards and clauses conflict or correspond with doctrines of domestic construction (contract) law?
- 14 presentations in 5 modules: Fitness for purpose, limitations of liability, direct claims, ESG-liability and FIDIC based liability
- 3 presentations of the point of departure: Common law, civil law, and Nordic law

# Format

*A presenters conference...*

...with the potential for informal discussions and networking!

PLEASE ENJOY 😊