

Professional Certificate in German Commercial Law (HGB)

## Contract Law in Germany

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Contract Law in Germany, also known as Vertragsrecht, is a critical area of law that governs the creation, performance, and enforcement of agreements between parties. This system is primarily based on the German Civil Code (Bürgerliches Gesetzbuch or BGB) and is essential to understand when conducting business or entering into agreements in Germany. Here are some key terms and vocabulary in Contract Law in the context of the German HGB:

### 1. Vertrag: Contract

A Vertrag is an agreement between two or more parties that creates legal obligations and is enforceable by law. In Germany, contracts are primarily governed by the BGB, which sets out the requirements for a valid contract, including offer and acceptance, consideration, and capacity to contract.

### 2. Angebot: Offer

An Angebot is a proposal made by one party to another, expressing the willingness to enter into a contract on specific terms. An Angebot must be clear, specific, and capable of acceptance, and it creates a legal obligation on the part of the offeror once it is accepted.

### 3. Annahme: Acceptance

Annahme is the act of accepting an Angebot, which creates a binding contract between the parties. Acceptance must be unconditional and must match the terms of the offer exactly.

### 4. Gegenleistung: Consideration

Gegenleistung is the value that each party provides to the other in exchange for their respective obligations under the contract. It can take the form of money, goods, or services, and it is a key requirement for a valid contract.

### 5. Geschäftsfähigkeit: Capacity to contract

Geschäftsfähigkeit refers to the legal ability of a party to enter into a contract. In Germany, only individuals who have reached the age of majority (18 years) and are not otherwise legally incapacitated can enter into a contract.

### 6. Vertragsfreiheit: Freedom of contract

Vertragsfreiheit is the principle that parties are free to enter into any contract they choose, provided it does not violate any laws or public policy. This principle is a fundamental cornerstone of German contract law.

### 7. Schriftform: Written form

Schriftform is a requirement for certain types of contracts, such as those involving the sale of real estate or the creation of a partnership, to be in writing and signed by both parties.

### 8. Störung der Geschäftsgrundlage: Frustration of purpose

Störung der Geschäftsgrundlage is a doctrine that allows a party to void or modify a contract if an unforeseen event occurs that fundamentally changes the basis on which the parties agreed to the contract.

#### 9. Anfechtung: Avoidance

Anfechtung is the legal process of avoiding or invalidating a contract due to fraud, mistake, or threats.

#### 10. Schadensersatz: Damages

Schadensersatz is the legal remedy available to a party who has suffered harm as a result of a breach of contract. The party may be entitled to compensatory damages, which are intended to put them in the position they would have been in if the contract had been performed correctly.

#### 11. Nacherfüllung: Cure

Nacherfüllung is the legal right of a party to demand that the other party remedy a breach of contract by performing their obligations correctly or providing a replacement or repair of the goods or services in question.

#### 12. Kündigung: Termination

Kündigung is the legal process of terminating a contract, either by mutual agreement of the parties or by one party giving notice to the other.

#### 13. AGB: Standard Terms and Conditions

AGB are standard terms and conditions that are commonly used in German business transactions. These terms and conditions are typically presented to the other party in a printed format or as a link to a website and are deemed to be accepted by the other party unless they object to them within a specified time period.

#### 14. HGB: German Commercial Code

The HGB is a separate code that governs commercial transactions in Germany. It contains provisions that are specific to commercial contracts, such as those involving the sale of goods, transportation, and banking.

#### Challenges:

1. Understanding the legal terminology and concepts used in German contract law can be challenging for non-native speakers.
2. Interpreting the Schriftform requirement and determining which contracts must be in writing can be difficult.
3. Applying the Störung der Geschäftsgrundlage doctrine requires a nuanced understanding of the facts and circumstances surrounding the contract.
4. Avoiding or invalidating a contract due to fraud or mistake requires a thorough understanding of the legal requirements and procedures involved.
5. Calculating damages in the event of a breach of contract can be complex and may require expert testimony.
6. Navigating the Kündigung process can be challenging, particularly when there are multiple parties involved.
7. Understanding the differences between the BGB and the HGB and determining which code applies to a particular contract can be difficult.

#### Examples:

1. A German company offers to sell goods to a US company for a fixed price. The US company accepts the offer, and the parties enter into a contract. The goods are delivered, but they are not of the quality promised. The US company can demand Nacherfüllung, requiring the German company to replace or repair the goods.
2. A German company enters into a contract with a supplier to purchase goods at a fixed price. Unforeseen circumstances, such as a natural disaster, cause the price of the goods to increase significantly. The German company can invoke the Störung der Geschäftsgrundlage doctrine to modify or void the contract.
3. A German company enters into a contract with a US company to provide goods or services. The contract contains AGB that are presented to the US company in a printed format. The US company fails to object to the AGB within the specified time period, and they are deemed to be accepted.
4. A German company enters into a contract with a supplier to purchase goods at a fixed price. The supplier fails to deliver the goods as agreed. The German company can terminate the contract and demand Schadensersatz.
5. A German company enters into a contract with a US company to provide goods or services. The contract is in English, but it contains a clause requiring any disputes to be resolved in a German court. The US company challenges the clause, arguing that it violates the HGB's requirement that commercial contracts be in German.

#### Practical Applications:

1. Drafting clear and concise contracts that comply with the requirements of the BGB and the HGB.
2. Understanding the Schriftform requirement and ensuring that all necessary contracts are in writing.
3. Applying the Störung der Geschäftsgrundlage doctrine in a nuanced and appropriate manner.
4. Avoiding or invalidating contracts due to fraud, mistake, or threats.
5. Calculating damages in the event of a breach of contract.
6. Navigating the Kündigung process in a timely and efficient manner.
7. Understanding the differences between the BGB and the HGB and determining which code applies to a particular contract.
8. Incorporating AGB into contracts in a way that is compliant with German law.
9. Negotiating and resolving disputes in a way that is fair and equitable to all parties involved.
10. Providing clear and concise communication to all parties involved in a contract, ensuring that everyone understands their rights and obligations.

#### Conclusion:

Understanding Contract Law in Germany is essential for anyone conducting business or entering into agreements in the country. The key terms and vocabulary outlined above provide a foundation for understanding this complex system, which is based primarily on the BGB and the HGB. By understanding the requirements for a valid contract, the legal remedies available in the event of a breach, and the nuances



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of concepts such as Störung der Geschäftsgrundlage and AGB, parties can ensure that their contracts are compliant with German law and that their rights and obligations are clearly defined. By following best practices in contract drafting, negotiation, and dispute resolution, parties can build strong and lasting relationships that are mutually beneficial.