PhD Program between the Freie Universität Berlin (FUB) and the China Scholarship Council (CSC)

Open PhD Position at Freie Universität Berlin, offered only to Chinese CSC scholarship candidates 2020

Please Note: this PhD position is only offered to Chinese PhD candidates for the application in the framework of the FUB-CSC PhD Program.

Department/Institute: Department of Law
Subject area: Chair for Civil Law, Commercial Law, Corporate Law, Capital Market Law and Foundations of Law
Name of Supervisor: Prof. Dr. Andreas Engert
Number of open PhD positions: 1
Type of the PhD Study: Full Time
Project title: Specific Performance – a Comparison of Chinese and German Law

PhD Project description:

The project is mainly devoted to addressing three subjects related to specific performance. The involved obligations are not only referred to those from contracts, but also from others origins such as tort (i.e., injunctive relief). The legal norms and doctrine and legal practice would be investigated, in order to gain a more comprehensive view of how the institution of specific performance works in a legal system.

The first subject is the explication of specific performance in Chinese law. Where the common law system is concerned, specific performance is deemed one of the remedies for the breach of contracts as well as other alternative remedies such as damages and recession. In contrast, specific performance is considered in civil law system as the nature of an obligation (not limited to obligation arising from contracts) and has priority over other claims. This part will provide clarification and comparison of the two theoretical models of specific performance and explain the concept of specific performance in Chinese Law.

Second, the project seeks to compare the principle of specific performance between Chinese and German law. The meaning of specific performance functioning as a principle of obligation law is twofold. One is that the debtor is bound to perform in natura. The other relates to the creditor who is bound to accept specific performance (specifically, ‘Recht zur zweiten Andienung’ in German law). By contrast, under Chinese contract law, the principle of specific performance only burdens the debtor, which means the creditor is allowed to claim other remedies immediately after non-performance. The second part would concentrate on the justification of the principle of specific performance concerning the creditor and the debtor separately.
Thirdly, the project deals with the limitations of the principle of specific performance in both jurisdictions. The exceptions, including impossibility, damages, recession, reducing price, are available to both parties under certain circumstances. The third part would discuss these circumstances, where the necessity of protecting one party from specific performance prevails the other party’s interests from specific performance, in an effort to elaborate the application of the principle and contribute to the stability of legal practice.

**Language requirements:**

IELTS: 6,5 oder TOEFL: 95 ibt

**Academic requirements:**

Master degree in Chinese (private) law

**Information of the professor or research group leader (website, awards etc.):**

https://www.jura.fu-berlin.de/fachbereich/einrichtungen/zivilrecht/lehrende/engerta/index.html

**Please Note:** In a first step, the complete application should be submitted to csc@international.fu-berlin.de for evaluation by January 4th, 2020. Please do not contact the professor before. He/she will get in contact with you after having received the complete application via the Beijing Office in January.