

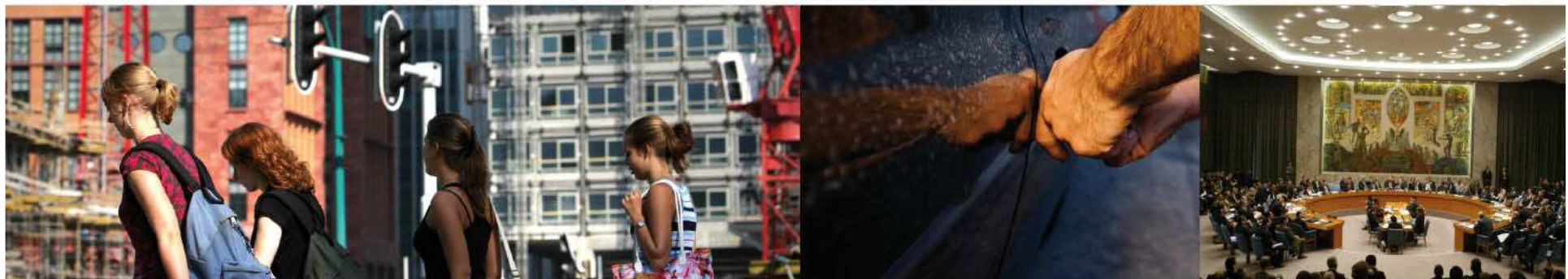


Dutch Construction Contracts: views from abroad

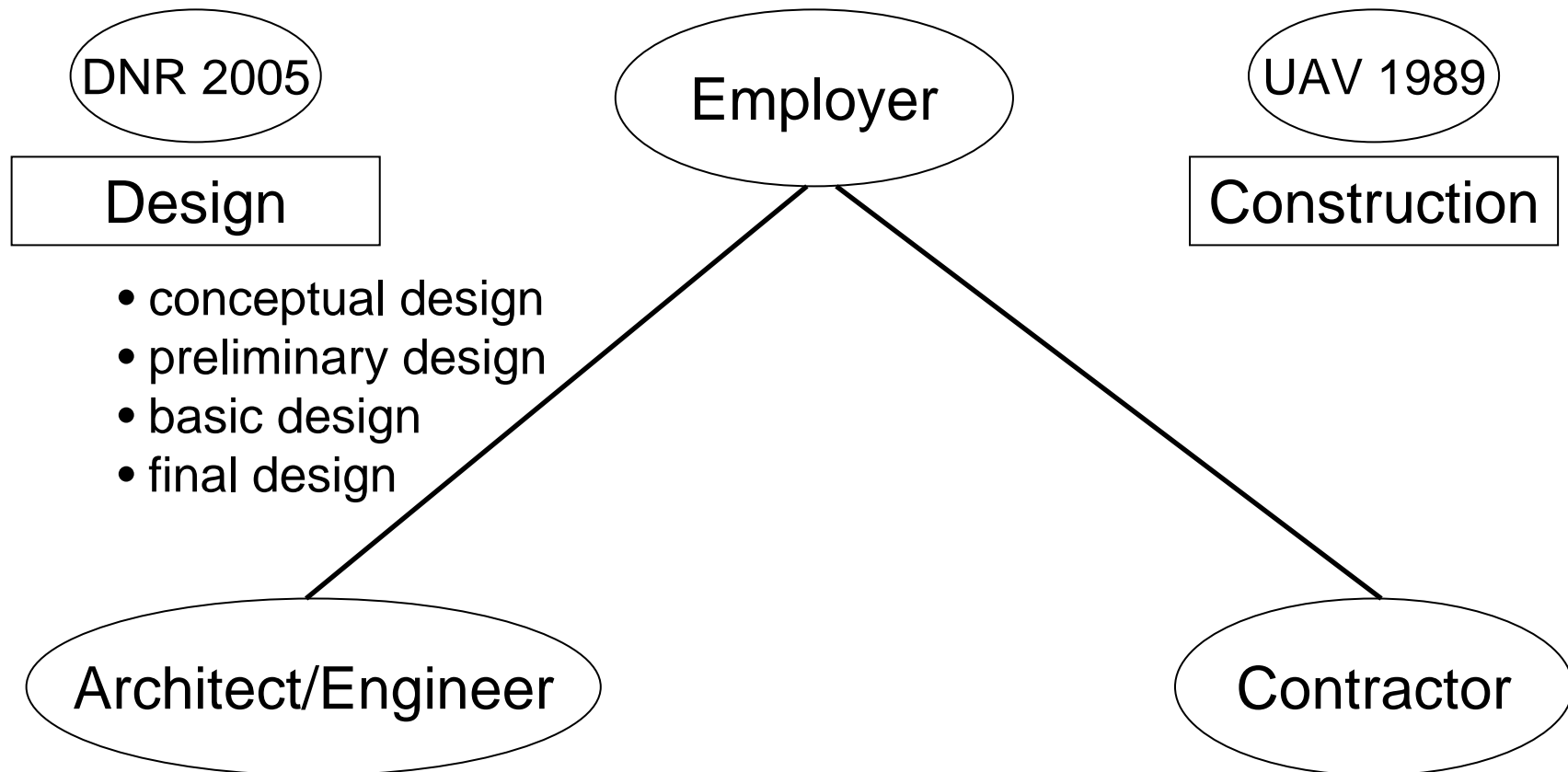
Amsterdam, 15 October 2010

Uniform Administrative Conditions – GC 2005

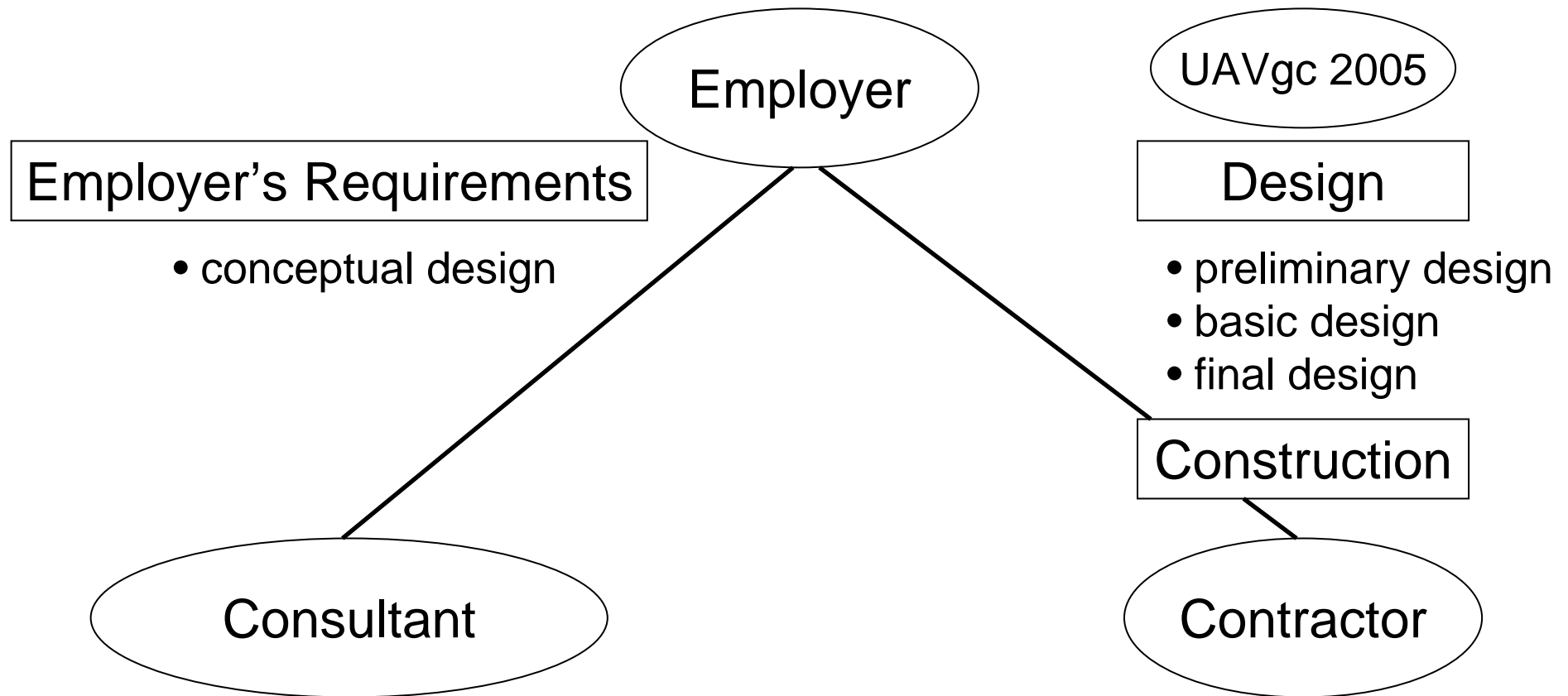
Chris Jansen



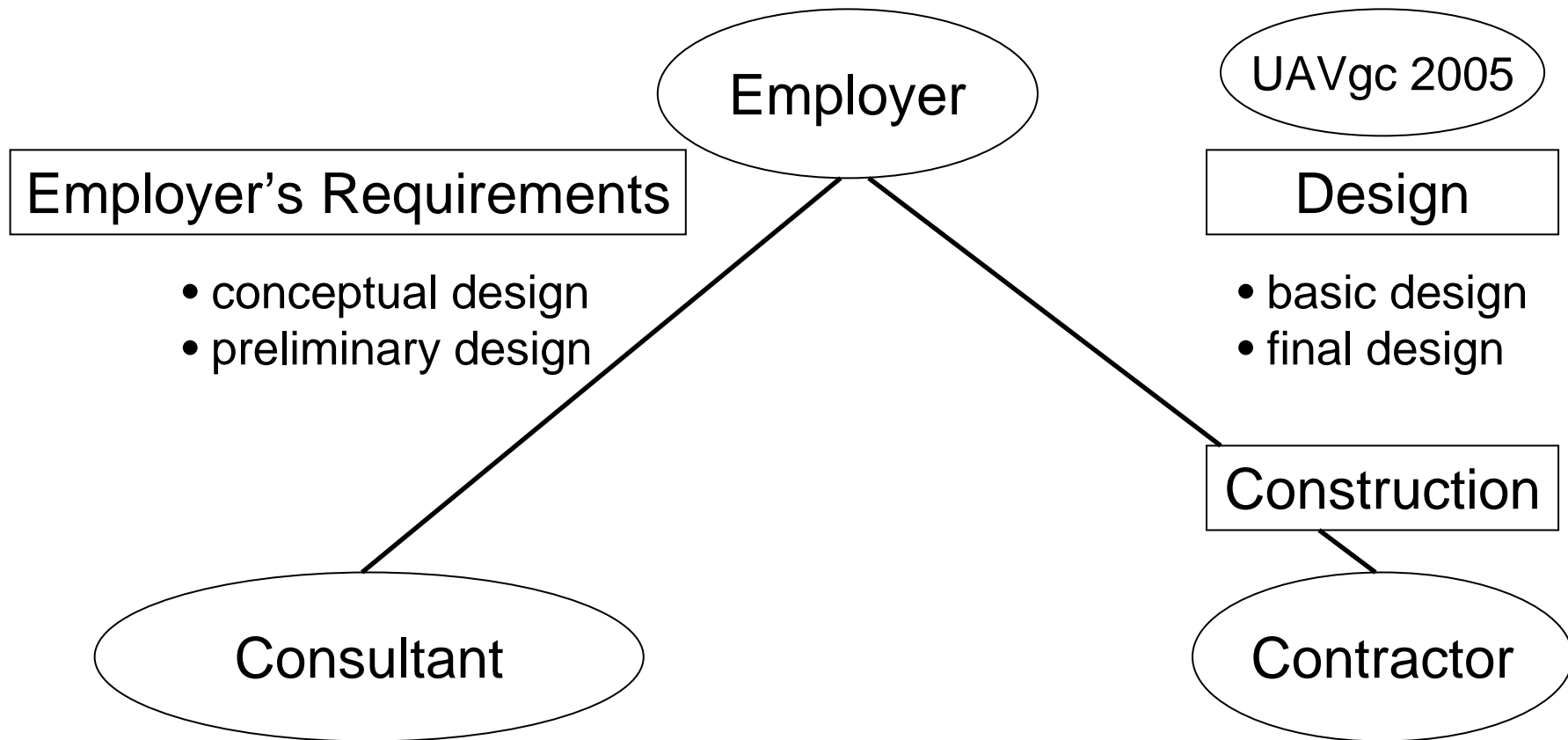
Traditional construction contracts



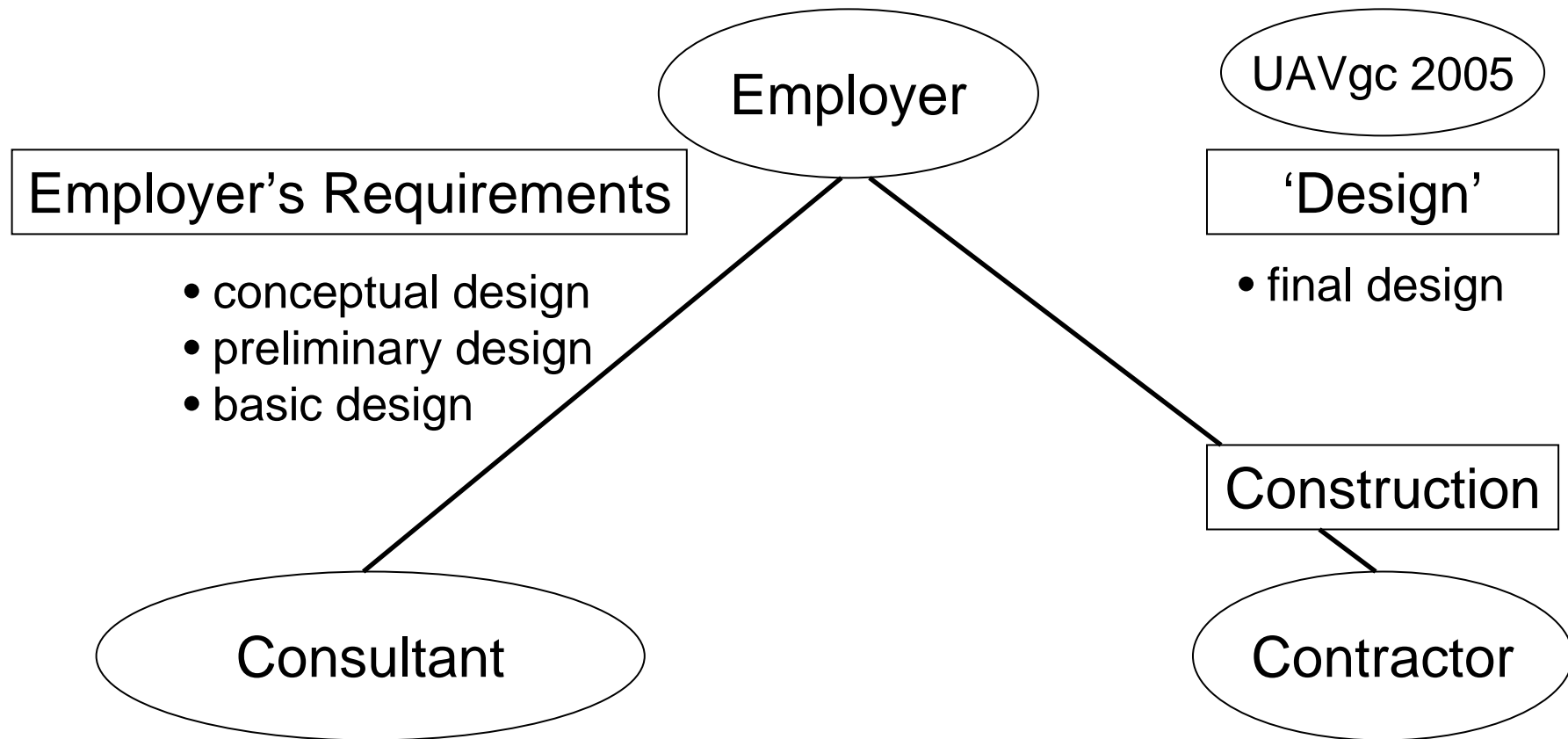
Integrated contracts (I)



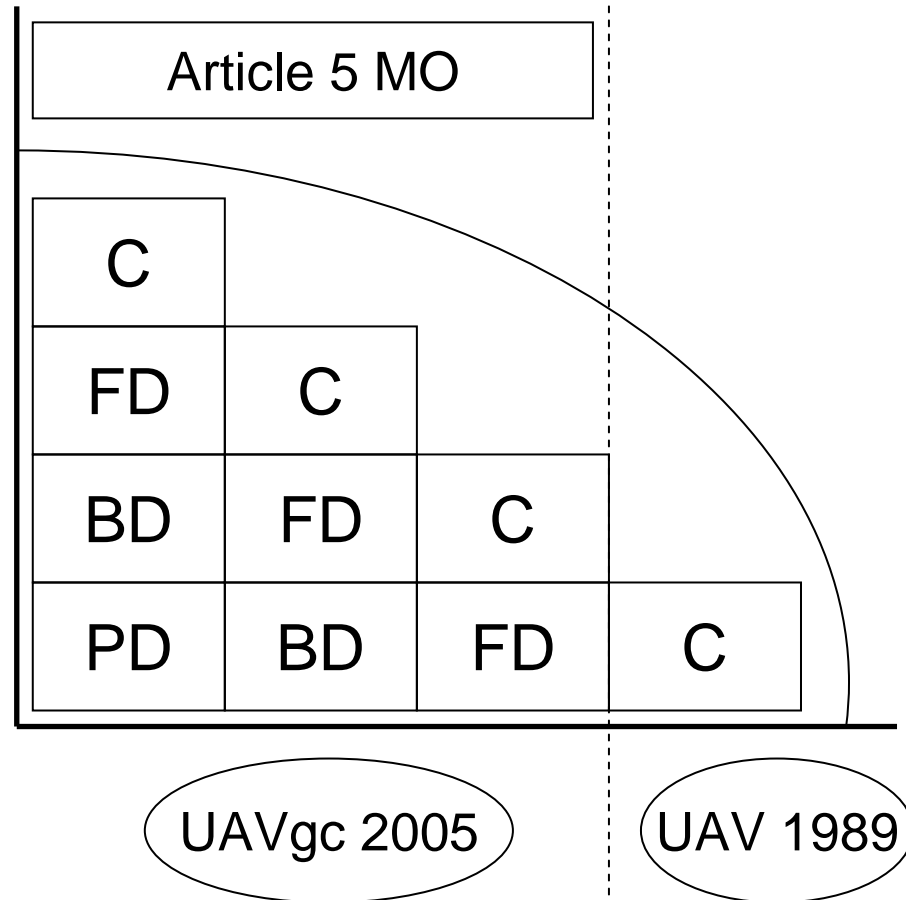
Integrated contracts (II)



Integrated contracts (III)



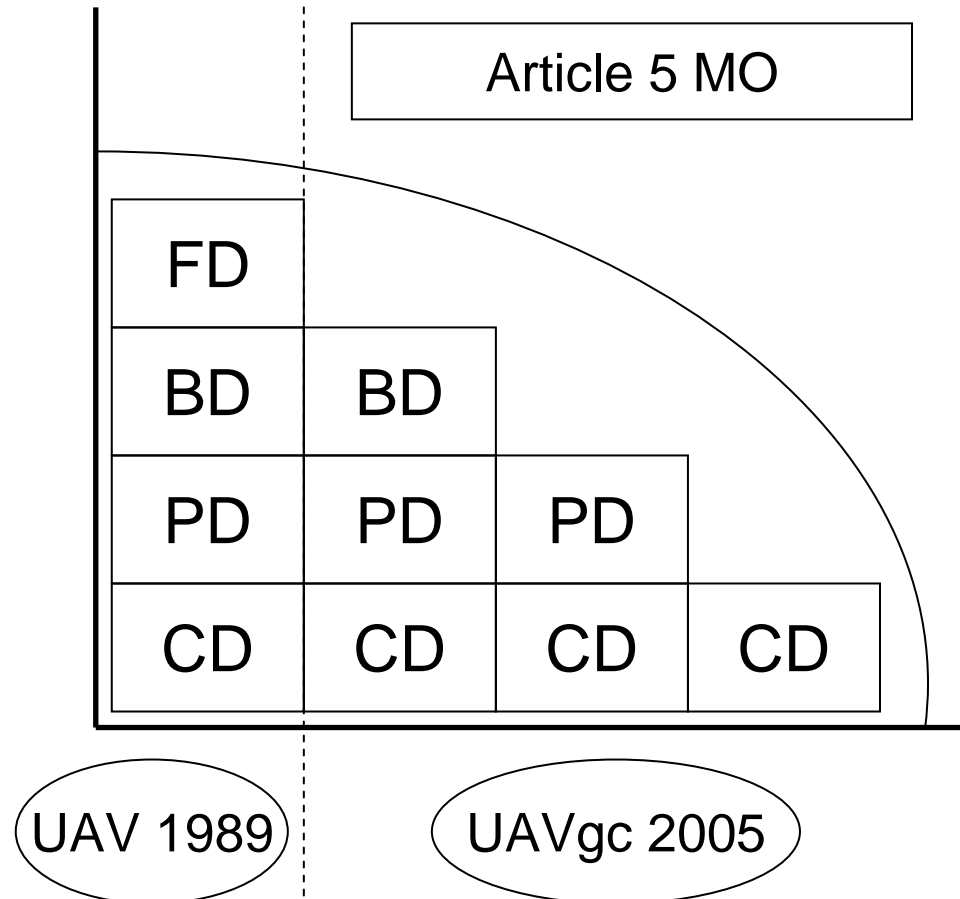
Contractor's freedom of choice



The heart of the matter

- traditional and integrated models are not opposites of one another
 - the parties' freedom of choice differs gradually, dependent on the location of the model involved on the 'sliding scale'
 - even in the traditional model, the Contractor will take 'design' decisions
 - compare I.N. Duncan Wallace, Hudson's, 4-065.
 - even in the integrated model, the Employer will influence the process by taking (design) decisions

Employer's requirements



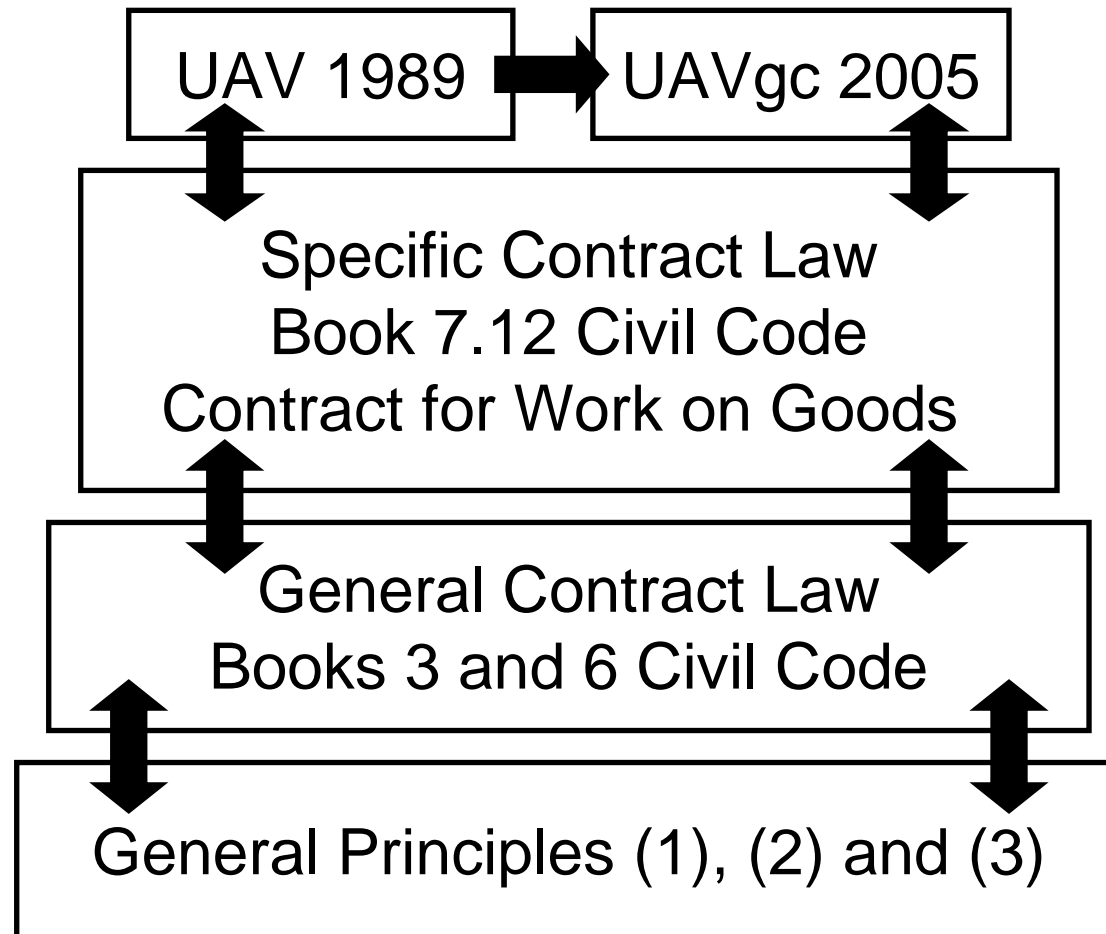
General principles

- each party is primarily responsible for its own process decisions
- responsibility under the first principle may shift if the other party should reasonably have pointed out the risk inherent in the said process decisions
 - Contractor's duty to warn
 - 'faulty' supervision by or on behalf Employer
 - Jansen 1998, confirming Van den Berg 1993: Dutch law being the odd one out...

General principles (continued)

- Contractor responsible for ‘external’ risks, unless it is unreasonable to expect him to foresee, prevent and/or control the risk
- all principles subject to contract...

Coherent system



Principle (1) under UAVgc 2005

- each party is primarily responsible for its own process decisions
 - Employer
 - clause 3, sections 1-7; clause 6, sections 3 and 5; clause 9, section 1; clause 13, section 4
 - Contractor
 - clause 4, sections 1-3; clause 10, sections 2 and 4; clause 13, section 1

Principle (2) under UAVgc 2005

- responsibility under the first principle may shift if the other party should reasonably have pointed out the risk inherent in the said process decisions
 - Contractor
 - clause 4, section 7; clause 13, section 6; clause 14, section 4
 - Employer
 - clause 20, section 4; clause 21, section 10; clause 22, section 3, clause 28, section 10

Principle (3) under UAVgc 2005

- Contractor responsible for ‘external’ risks, unless it is unreasonable to expect him to foresee, prevent and/or control the risk
 - permits, licences, etcetera
 - clause 10, section 4
 - soil and site
 - clause 13, section 2

Contact

Prof. Dr. Chris E.C. Jansen
Vrije University Amsterdam

Faculty of Law

De Boelelaan 1105

1081 HV AMSTERDAM

+31 20 598 6263

c.e.c.jansen@vu.nl