

Proposal to Reform Spanish Contract Law

- I. Introduction
- II. Core aims of Reform Spanish Contract Law
 - 1. Rules derived from Convención de Viena 1980
 - 2. Rules derived from Principles of European Contract Law (PECL)
 - 3. Judicial Law
 - Problem:.....Double Means: between the Tradition Law and European Contract Law
- III. General Provisions
 - 1. Conditions for the conclusion of a contract
 - 2. Invalidity
 - 2.1. Nullity
 - 2.2. Avoidance
 - 3. Contents and Effects: Change of Circumstances
 - 4. Non-Performance
 - 4.1. Definition: non “exact” performance (non-conformity)
 - 4.2. Remedies: right to performance-price reduction-termination of contract-damages and interest.
 - 4.3. Excuse due to an impediment: “cause étrangère”.
 - Problem.....Concept of “cause”.
 - Problem.....Nullity “in extremis”
 - Problem.....Rules of damages: “Mare Amplissimum”.
- IV. Specific forms of contract
 - 1. Terms not individually negotiated
 - 2. Certain legal aspects of electronic commerce
 - Problem..... Control to determine contents of contract: Good faith move in a particular way of dispositive rules without exception
- V. Consumer Law: “Inside” the Code
 - 1. Field of regulation: terms not individually negotiated-distance contracts -contracts negotiated away from business premises
 - 2. Instruments of protection: right of withdrawal, règles de droit impératives (mandatory rules), pre-contractual information duties.
 - Problem.....Minimum Codification

ANEXO

- Propuesta de Anteproyecto de Ley de Modernización del Derecho de Obligaciones y Contratos (Proposal to Reform Spanish Obligations and Contract Law), Comisión General de Codificación-Sección Derecho Civil, Boletín Informativo-Ministerio de Justicia, Enero-2009.
- Convenio de Viena 1980
- Principles of European Contract Law (PECL)
- DIRECTIVE 85/577/EEC to protect the consumer in respect of contracts negotiated away from business premises.
- DIRECTIVE 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts
- DIRECTIVE 97/7/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 May 1997 on the protection of consumers in respect of distance contracts
- Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL COM(200.) XXX , on the protection of consumers in respect of distance contracts (Codified version)
 - DIRECTIVE 1999/44/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees
- DIRECTIVE 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on combating late payment in commercial transactions
- DIRECTIVE 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce).
- DIRECTIVE 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ("Unfair Commercial Practices Directive").