

Default in commercial obligations and its consequences

Summary

I chose the topic default in commercial obligations and its consequences because I would like to be devoted primarily in private law in my future career and I consider the deal with this topic in detail very useful.

Default in commercial obligations is very common phenomenon. It can cause huge problems in the economic situation of the subjects that are within the applicability of the Commercial Code. It is necessary to govern the consequences of default to mitigate the impact of a breach of an obligation on parties of the commercial obligations and to punish the party that breaches an obligation. Also the legislation compel the parties to a contract to fulfil their obligations.

The purpose of my thesis is to analyze the topic default in commercial obligations and its consequences, draw attention to some deficiency of the legal regulation and to suggest an amendment of legislation.

The thesis is composed of two chapters. Chapter One deals with concept and nature of default in commercial obligations, it consists of two parts. First describes the conception of debtor in default and second conception of creditor in default. Chapter Two is concerned with the consequences of the default and it is subdivided into seven parts. Each part focuses on several consequence.

The main conclusions, I have arrived at, are following. The Commercial Code recognizes debtor in default and creditor in default. The liability for default is strict without possibility to liberation. Debtor is in default when he does not fulfil his obligation on time or he fulfils it but not properly. Creditor is in default if he does not accept a properly performance or he does not provide a necessary cooperation, which is obliged to, to fulfil a debtor's obligation.

The consequences of default are the same for debtor in default and creditor in default except one. Only if debtor is in default with monetary obligation, creditor is entitled to claim interest of late payment.

Other consequences of default is a right of a party which is not in default to insist on the proper fulfilment of the obligation, if statute or contract do not provide for else, the party who is in default is not entitled to demand a fulfilment of obligation of the other party, if their obligations are mutual. Party to a contract has a right to claim damages, contractual penalty, if it is stipulated, and to withdraw from a contract if other party is in default. The Commercial Code recognizes two ways of withdrawal from a contract which depends on if the breach of the contract is fundamental or non – fundamental. The party who is in default is the holder of a danger of damage to property. The last consequence is the mentioned one, that creditor has a right to claim interest of late payment. The regulation of interest of late payment also implements Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on Combating Late Payment in Commercial Transactions in its Section 369a.