

ABSTRACT

The position of a weaker party in concluding contracts within business transactions

The purpose of this thesis is to analyse the specificities of concluding contracts with a weaker party under the New Civil Code. The main focus is given on the issue of contract terms which are forbidden because they cause significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the weaker party. The thesis explains who can be a weaker party, what differences it brings up and what are the consequences of breach of those protectionist provisions of law. The thesis is composed of an introduction, four chapters and a conclusion.

First chapter covers the background information and explains who can be in the position of a weaker party, according to which criteria courts should consider the weakness and when it reaches the level which is relevant for law.

Second chapter deals with Section 433 of the new civil code and looks at protection of the weaker party on its basis. It addresses scope of that provision and consequences when a party breaches it. The last part of this chapter concentrates on nullity under the New Civil Code.

Chapter three describes position of the weaker party in concluding adhesion contracts and specificities which rise from the fact that the contract was not individually negotiated.

Last chapter analyses unfair contract terms and is subdivided into three parts. First part provides with examination of modifying prescription, second part deals with limitation of liability, the last part describes how should be tested unfair terms in consumer contracts and examine the frame of application of the unfairness test used in consumer contracts to unfair terms or disadvantageous provisions in contracts other than consumer, especially under § 433, 1800 (2) and 1801 of the New Civil Code. The conclusion summarizes the partial conclusions of chapters one to four and provides a short recommendation *de lege ferenda*.