

Abstract: Consensus and commercial terms: theoretical and comparative analysis

This final thesis deals with the topic of the battle of the forms using the theoretical apparatus of rules governing the formation of contract. The problem is modeled (and therefore limited) for the case of formation of contract for the sale of goods concluded between merchants when each of them uses his/her own commercial (standard) terms. Another limitation of the thesis is connected with the use of classical contractual paradigm which is based on the continuity of offer and acceptance in the process of contracting. The key element of contract is found in consensus, therefore it is consensus which is analyzed in connection with extensiveness of terms, about which the minds have to meet in order to form the contract, and also in connection with the content of already formed contract.

The final thesis has two objectives. First, it is to verify on theoretical level that no matter what principle in the process of formation of contract is used (whether mirror-image rule or not) both law professionals and legal theory are forced to find solutions which are in accordance with the principle of economic analysis of contract. Second, it is to analyze solutions on the formation and content of contract which were adopted by Czech legislative body during the recent reenactment of the Czech civil law. The discontinuance of new civil law in the Czech Republic asks for comparative analysis. For this purpose following legal texts (including sources of inspiration for Czech legislator) are used: UN Convention on the International Sale of Goods, American Uniform Commercial Code, Draft Common Frame of Reference and UNIDROIT Principles of International Commercial Contracts.

The final thesis is divided into four chapters. First chapter describes the objectives of the thesis and used methodology while proceeds further with the description of economic analysis of contract. Second chapter examines general questions of contractual process, its classical and modern paradigm and importance of consensus, all in reflection of Czech civil law. Commercial (standard) terms and its characteristics including those connected with the contractual process are also described here. Third chapter is dedicated to answer questions about the formation of contract, foremost how broad the consensus about the content has to be in order to confirm the existence of contract. This chapter is divided into two parts. Based on the legislative texts which adopted either solution, each part reveals different principle about the formation of contract: mirror-image rule on one side and absence of full consensus on the other side. Fourth and final chapter proceeds further with the following question dealing with the content of the contract. It focuses on different rules regularly chosen by legislators (last

shot rule, first shot rule and knock out rule). Disadvantages lead to formulate an alternative solution which is found in the best shot rule.