

Lecture 4: CESL. Formation of Contract; Pre-contractual information duties; Defects of consent

Fryderyk Zoll

Pre-contractual information duties (Articles 13 – 29 CESL)

- General pre-contractual information duties
- In B2C contracts
- In B2B contracts

Pre – contractual information duties in particular situations:

Off premises contracts

Distance contracts

E-commerce situation

Lack of conformity

Pre-contractual information duties

- The idea of the duty to loyalty at the pre-contractual stage
- The idea of the culpa in contrahendo (Rudolf von Ihering)
- The consequences of the breach of the information duties:
- Damages (Art. 29 I)
- No charges or other costs (Art. 29 II)
- Vices of consent (Art. 48 and 49)
- Prolonged period of withdrawal (Art. 42 II)
- No liability for diminished value of the goods after withdrawal (45 III)

Pre-contractual information duties

- The pre-contractual statements becomes a part of the contract (Article 69)
- Statement of the producer or the person acting on behalf on it in consumer contracts (Art. 69 III)

Formation of contract

- Concept of „notice”
- Theory of delivery (in opposition to the „mailbox rule” – Article 10 (CESL))
- Offer and acceptance (Art. 30 – 39)
- Revocation of the offer
- Modified acceptance
- Battle of forms

Right to withdraw from the contract (Articles 40 – 47 CESL)

- Concept of the right to withdraw from the contract – a device of making an „informed decision” by the consumer
- No right of withdraw for „non-consumers”
- Right of withdraw reserved for special kinds of the formation of the contract – distance contracts and off premises contracts
- Effects of withdrawal from the contract
- Exception from the right to withdraw

Defects of consent (Art. 48 – 57)

- Mistake
- Fraud
- Threats
- Unfair exploitation
- Avoiding the contract by notice

Hypothetical

- A student X has an exam in two weeks. He has bought online books from the professional seller B. A was not really intending from the beginning to acquire the books. After 12 days of the delivery he has notified in writing the seller about exercising his rights of withdraw from the contract. He has sent the books back and requires the return of the price.
- Student X while entering the contract has indicated that the delivery address is in Poland. The seller is located in Sweden.
- The parties have agreed upon the application of the CESL in a separated agreement and the seller has confirmed this choice by sending an email.

Hypothetical

- Check list
- Is the CESL applicable?
- **Cross-border contract as defined in Article 4 (Regulation)**
- **Contract covered by the CESL (sales, related service, contract of supply of digital content) – Article 5 (Regulation) and Article 2 (Regulation)**

Hypothetical

- **Eligible parties:** Article 7 Regulation
- Both traders (one SME)
- Trader and consumer (see: definitions in Art. 2)
- Trader and Non-trader and Non-consumer (?)
- **Effective opt in:** Article 8 and 9 Regulation

Hypothetical

- **Effective withdrawal from the contract**
- Contract concluded
- Consumer contract (B2C)
- Off premises or distance contract not exempted from the right to withdraw
- Notice of withdrawal
- Period has not lapsed
- Exercising of the right to withdraw in compliance with good faith (Article 2 II CESL)