Invalidity Rules in the European Civil Codes

Abstract Volume

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Panel I
Plenary session – Keynote speeches

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Fézer, Tamás

University of Debrecen, Faculty of Law
Full Professor
fezer.tamas@law.unideb.hu

INVALIDITY IN THE PRINCIPLES OF EUROPEAN CONTRACT LAW: COMMON CORES OR ALTERNATE WAYS?

The Principles of European Contract Law (PECL) has never been adopted as a binding legal authority in the European Union. While it remained a conclusion of a massive research project, the PECL certainly has an impact on the amendments to the legal framework for contracts throughout the Member States, and it serves as a unique *lex mercatoria* for European businesses. Furthermore, the PECL provides for a starting point to any research that aims to identify common cores in the European contract law heritage. Chapter IV of PECL is dedicated to validity of contracts, thus, this chapter serves as the base for the document's approach on invalidity of contractual obligations. Invalidity of contracts remains a much-debated legal phenomenon in almost all jurisdictions and in international business law. The presentation embraces the instances of invalidity (mistake, threat, fraud, inaccuracy in communication, excessive benefit, unfair advantage, unfair terms not individually negotiated), matters not covered by the PECL (illegality, immorality or lack of capacity), the concept and the effect of avoidance, and the consequences of avoidance in light of the most recent amendments to the contract law framework in the Member States. The central question is whether the PECL's system on invalidity of a contract may serve as a bridge between the different approaches of continental civil law legal systems and of the common law legal systems. The presentation provides for some examples on hot topics from the case-law of selected municipal courts in Europe to identify the challenges courts face with respect to deciding on the validity of contracts these days. Using these

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examples and combining them with some of the most recent legislative developments on invalidity across Europe, the presentation is searching for an answer whether the common cores the PECL identified could help the spontaneous approximation of the laws of the Member States on contractual invalidity, or the Member States chose alternate ways to react to the practical challenges of the modern business environment.

Keywords: PECL, invalidity, contract law, European legal heritage, harmonization of laws

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Sándor, István

Eötvös Loránd University, Faculty of Law
Full Professor
istvan.sandor@kelemen-lawfirm.hu

THE SYSTEM OF GROUNDS FOR INVALIDITY IN HUNGARIAN PRIVATE LAW

The aim of the lecture is to present and analyse the system of grounds for invalidity that has developed in Hungarian private law. There is no general part of the Hungarian Civil Code, so it is possible to set up a framework for the invalidity of legal transactions by applying the concepts developed for the invalidity of contracts. The starting point is the rules under Title VI of the Sixth Book of the Civil Code which systematises the grounds for invalidity in two respects. One of the starting points is the distinction between nullity and contestability, which distinguishes, depending on the gravity of the error in the contract, between ipso jure invalidity (nullity) and invalidity, which depends on the juridical act of the aggrieved party or a person with legal interest. The other systematization aspect was based on the dogmatic triad of conditions of validity, so it was grouped according to the error of contractual intention, the error in the contractual juridical act, and the error in the intended legal effect. Errors of contractual intention include mistake, misrepresentation, and unlawful threats, while errors of contractual juridical act include formal errors in the contract. Most of the legal facts were included among the errors of the intended legal effect, e.g. prohibited contracts, contracts contrary to good morals, usurious contracts, obvious disproportionality, nullity of transferring title as security, contract terms infringing impairs consumer rights, etc.

However, the framework outlined above provides full guidance only on the invalidity of contracts. The reason for this is, on the one hand, that the grounds for invalidity contained in the rest of the legislation and in other private laws have not been specifically included in this

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dogmatic framework by the legislator. On the other hand, with regard to unilateral juridical acts we also apply the rules for contracts. With these in mind, it is necessary to analyse each of the invalidity facts one by one in order to determine which dogmatic category it falls into. The Civil Code. e.g. attaches the legal consequences of nullity to nearly two hundred specific rules. In the case of civil law legislation other than the Civil Code, the application of the legal consequence of invalidity may, in my opinion, be made dependent on whether the specific legal norm contains it. As for the dogmatic classification, it can thus be clearly defined in terms of nullity and contestability, while according to the other system of criteria it can already raise questions. Examples are the nullity of a juridical act of a person having no capacity or the cases of the right of contest of the creditor and the liquidator in the winding-up proceedings. The lecture is aimed at presenting this mainly theoretical problem.

Keywords: invalidity, nullity, grounds for invalidity, system of invalidity, prohibited contracts, Civil Code

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Menyhárd, Attila

Eötvös Loránd University, Faculty of Law
Full Professor
menyhard@ajk.elte.hu

INVALIDITY AS A TOOL OF PROTECTING PRIVATE AND PUBLIC INTERESTS

Invalidity sets the limits of freedom of contract. Limits of freedom of contract are justified by correcting market failures or by protecting public interests. Grounds for invalidity are designed to maintain market mechanisms and to avoid interference with public interests. Such protection is, however, provided also with consequences of invalidity.

Consequences of invalidity are not limited to restitution but also may imply statutory intervention. *In pari delicto* or equivalent doctrines derived from the general clauses of private law like requirement of good faith and fair dealing may result in rejecting the value of restitution as a punishment to the party involved in illegality. Such consequences, on the other hand, are justified only regarding the plaintiff but not the defendant. Absence of two-sided or mutual justification raises doubts as to the compliance of such solutions with the fundamental structure of private law. As the ECJ Judgment in the case *Courage v Crehan* also presents, such solution may be rather problematic from the point of view of policy as well because it goes against the underlying policy of invalidity. Statutory sanctions going beyond the remedies like awarding of the value of restitution to the state did not prove to be successful because they don't support the creation of incentives for the aggrieved party to turn to court. This makes the mechanisms of private law less efficient. Partial invalidity is also a statutory intervention as it may give a contract to the party that it never would have concluded.

Keywords: consequences of invalidity, statutory intervention, public policy, good faith and fair dealing, partial invalidity

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Panel II
International discussion in Plenary Session

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de Vries, Tina

Institute for East European Law, Munich
lawyer, mediator
tina.devries@ostrecht.de

INVALIDITY RULES IN THE GERMAN CIVIL CODE (GCC) – THE EXAMPLE OF 'COMMON DECENCY' (S. 138 (1) GCC)

German Law is an example of a Civil law system. A feature of this – probably in Germany in the most abstract system – is the conviction that all possible legal constellations are abstract, sufficient and regulated by just one law. One would have merely to look into the Official Law Gazette to find for each case the prior regulated rule.

Invalidity is mentioned in different sections of the GCC.

The general part of the GCC contains s. 138 which as a general provision is applicable to all parts of the GCC. S. 138 subs. 1 reads: "*Ein Rechtsgeschäft, das gegen die guten Sitten verstößt, ist nichtig.*" or in English: "*A legal transaction which is contrary to public policy is void.*" Other translations for the term 'gute Sitten' could be 'good morals', 'public decency', 'common decency'. Thereby the German legal system refuses to recognise immoral transactions via s. 138 GCC and thus the possibility of deriving enforceable legal consequences from an immoral legal transaction. The term 'gute Sitten' is a general clause. General clauses in the language of the law are usually understood as specific legal provisions containing various types of terms with flexible/undefined meaning. It means that the text recipient is referred to general assessment criteria of non-legal character – that is to say moral values, political values or economic values.

In older German Courts decisions s. 138 GCC was interpreted in the way that a transaction is contrary to morality if it is "*contrary to the sense of decency of all fair and just thinkers*". The formulation used by case law in recent times reads: "*[a] legal transaction is to be judged immoral within the meaning of this provision if it is incompatible with the fundamental values of the legal and moral order according to its overall*

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character, which can be inferred from the summary of its content, motive and purpose." German courts have developed case groups which can be used as a guide in the evaluation of a legal transaction as valid or invalid according to s. 138 GCC. The presentation focusses on the term 'gute Sitten' or 'common decency' as a gate to bring constitutional values into the sphere of private law. It will also refer to the history of this norm and the legal space it opens for judge-made-law.

Keywords: common decency, indirect third-party effect of fundamental rights in private law, judge-made-law, general clauses

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Dudás, Attila

University of Novi Sad, Faculty of Law
Associate Professor
a.dudas@pf.uns.ac.rs

GENERAL RULES OF INVALIDITY OF CONTRACTS IN SERBIAN LAW

The effective Serbian Law on Obligations in the most part retained the general rules on invalidity of contracts from the former federal Law on Obligations from 1978. The Law explicitly differentiates two categories of invalid contracts: null and void contracts, on the one hand, and avoidable contracts, on the other. While the general legal consequences of both categories are principally the same, restitution in integrum, null and void contracts have some other, more stringent legal consequences as well. The most important is the ban of restitution of performance of the party who acted in bad faith, which in cases when the contract grossly violates good morals may be supplemented by the forfeiture of the object of performance. The effective Serbian Law on Obligations still has in force the rule retained from the former federal Law from 1978, according to which the court may order the party who acted in bad faith to transfer the object of his or her performance to the municipality where the party has its residence or domicile.

Avoidable are considered contracts with flawed contractual intention, such as contracts concluded in mistake, deceit or under threat. In addition, avoidable are contracts of minors older than 14 years concluded without the consent of their natural or legal guardian, or contracts of adults whose capacity is not completely excluded, but only partially reduced, concluded outside their capacity or without the consent of the legal guardian. Furthermore, since *leasio* is considered a case of mistake making the contractual intention flawed, the remedy is the avoidability of the contract.

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Under Serbian law, a contract is null and void if it infringes the public order, imperative rules or good morals, unless something else is prescribed by the law or the purpose of the infringed rule implies a different remedy. The illegality and immorality of a contract is scrutinised through its object (content) and cause. Aside these general rules, the Law on Obligations specifically qualifies usurious contracts and form-defective contracts as null and void, but in latter case only if the formal requirement is considered essential. Yet, there are several means of 'saving' a contract from the consequences of invalidity, primarily by the institutions of convalidation and partial invalidity.

The third category of invalid contracts, the non-existent contracts are clearly identified by the doctrine, but it is questionable whether the Law on Obligations envisages separate legal regime applicable to this category, distinct from the one applicable to null and void contracts. The Law, namely, uses wording or implies at many instances that in certain cases it considers the contract not concluded at all. However, in the rules pertaining to legal consequences of invalidity refers only to null and void, and avoidable contracts. The doctrinal standpoints differ whether a separate legal regime applicable only to non-existent contracts could be implied from the general rules, regardless that no specific set of rules exists.

Keywords: Serbian Law on Obligations, null and void contracts, avoidability of contract, non-existent contracts

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Buletsa, Sibilla

Uzhhorod National University, Faculty of Law
Full Professor
sbuleca@gmail.com

FEATURES OF REGULATION OF INVALIDITY OF THE AGREEMENT IN THE CIVIL CODE OF UKRAINE

This article is devoted to the peculiarities of regulating the invalidity of the agreement. Given the legal regulation in Ukraine is carried out at the level of the Civil Code of Ukraine and the Commercial Code of Ukraine, which enshrined radically different approaches to the invalidity of the agreement. The Civil Code embodied approach, in which the provisions on invalid transactions (§ 2 of Chapter 16) are general in nature, and they must apply to both unilateral transactions and agreements. Moreover, there is no doubt that most of these rules are designed to apply them to an invalid agreement (for example, paragraph 2 of Part 1 of Article 216 of the Civil Code). In turn, certain rules on certain agreements (subsection 1 of section III of book 5 of the Civil Code) provide grounds for challenging the condition, the nullity of the agreement, the grounds for contesting or nullity of the agreement, the legal consequences of invalidity of the agreement or condition. In turn, at the level of the Civil Code there is invalidity, in particular: business agreements, business obligations, terms of business obligations, contracts. Thus, in contrast to the Civil Code, the Commercial Code prevails in the approach to the invalidity of the economic obligation. The Supreme Court of Ukraine of October 19, 2016 stated the difference between the invalidity of the contract and the obligation, emphasizing the admissibility of the existence of the invalidity of the obligation. He pointed out that the invalidation of the contract and the invalidation of the obligation are not identical concepts, because by direct indication of the law, the contract declared invalid by the court is invalid from the moment of its commission, and invalidation of the obligation under this contract concerns the consequences of invalidity such an agreement. Also in the decision of the Supreme Court of June 22, 2020 and the decision

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of the Supreme Court of March 10, 2021 states that the existence of grounds for invalidation of the contract should be established by the court at the time of its conclusion, not as a result of non-performance or improper performance. Non-performance or improper performance of obligations arising from the disputed contract is not grounds for its invalidation. Thus, the invalidity of the contract as a private law category, designed to prevent or suppress violations of civil rights and interests or to restore them. In essence, initiating a dispute over the invalidity of a contract not to protect civil rights and interests is unacceptable.

The division of invalid agreements into void and disputed ones is also analysed. Analysis of Articles 204 and 215 of the Civil Code shows that the legislator has chosen an approach in which the voidability of the agreement is constructed as a general rule. On the contrary, the nullity of the contract is specified directly in the law or it is declared invalid by a court. The disputed contract is declared invalid by a court if one of the parties or another interested person denies its validity on the grounds established by law (Part 3 of Article 215 of the Civil Code). That is, there are reasons for a dispute over the validity of the disputed agreement. They can be quite diverse: error, deception, violence and other defects. The Civil Code separately regulates certain grounds for contesting transactions, but does not contain an exhaustive list of grounds. This means that any agreement can be challenged if it does not meet the general requirements of the transaction. The voidability of the contract is embodied in the so-called 'virtual' invalidity, when only the most typical grounds for challenge are listed. In this case, it is allowed to challenge the contract by filing a claim for invalidity and on other grounds. Sometimes they are additionally indicated (for example, Part 3 of Article 668 of the Civil Code), but in general it is allowed in case of violation of imperative norms enshrined in acts of civil law, the interests of the state and society, its moral principles.

Keywords: contract, invalidity, disputability, nullity, civil rights, interest

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Veress, Emőd

Sapientia Hungarian University of Transylvania, Cluj-Napoca
Full Professor
emod.veress@sapientia.ro

INVALIDITY RULES IN THE ROMANIAN CIVIL CODE

Romanian law uses the institution of nullity as a defense against legal acts that violate the mandatory legal rules, public order, or public morality. Invalidity is both preventive (the parties, knowing that the legal transaction is invalid, should not enter into it) and repressive, punitive (if the parties do enter into an illegal legal transaction, it will be invalid).

Under Romanian law, two degrees of nullity are distinguished: absolute nullity (*nulitate absolută*, *negotium nullum*) and relative nullity or voidability (*nulitate relativă*, *negotium rescissibile*). Romanian law, in line with the Francophone tradition, refers to voidability by the term 'nulitate relativă', literally translated as a relative nullity.

The absolute nullity of a legal transaction is a civil sanction that occurs when the norms protecting the public interest have been violated, and therefore the legal transaction has no intended, legal transactional effect at all. For example, a transaction is subject to absolute nullity when there is a total absence of (legal) intention, or the object of the legal transaction is missing.

The relative nullity of a legal transaction results from a breach of the norms protecting private interests, and therefore the invalidity of the transaction can be invoked by the party whose interests are protected by the breached norm. The voidable legal transaction creates a situation of contingency: the legal transaction is provisionally in force, but the law gives one of the parties the power to ask for annulment retroactively.

In addition to absolute and relative nullity, the Romanian Civil code also introduced a specific form of nullity: the unwritten clause (*pro non scripto habetur*). Similar rules are also contained in the French, Belgian, and Swiss Civil Codes and the Civil Code of the Canadian province of Quebec.

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The legal nature of the unwritten clause is disputed. According to the opinions expressed, such clauses are subject to partial absolute nullity or partial relative nullity, and there is also a view that they are a distinct, *sui generis* type of sanction. In my opinion, it is a specific form (subtype) of partial absolute nullity, where a provision of the parties to a legal transaction which is contrary to the law and which is automatically null and void, by the effect of the law, is spontaneously replaced by the mandatory provisions of the law, thus saving the legal transaction. In general, partial nullity can only exist if the nullity does not affect the essential elements of the legal transaction. However, a non-existent clause may be an essential element, but it does not lead to the total nullity of the legal transaction because the mandatory rules of law replace the omitted provision. Thus, for example, a non-existent clause is the penalty in the contract of engagement provided for the event of termination of the engagement. Practically, the unwritten character of a particular clause is a corrective sanction that does not require the intervention of the courts, and the corresponding legal norm replaces the unwritten phrase.

Keywords: Romanian Civil code, absolute nullity, relative nullity, unwritten clauses

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Josipovic, Tatjana

University of Zagreb, Faculty of Law
Full Professor
tatjana.josipovic@zg.t-com.hr

RESTITUTION CLAIMS FOR NULL AND VOID CONTRACTS

Under Croatian law, contract nullity is prescribed for the gravest and serious breaches of fundamental principles of the social order that originate from the Constitution, mandatory law, and morals, as well as the most serious breaches by the contractual parties. Nullity protects both the most important public interests and the interests of the contractual parties. Null and void contracts do not produce the legal effects that they should otherwise produce if they are valid. The right to invoke nullity does not terminate. The courts monitor nullity *ex officio*, and nullity can be invoked by, in addition to the contractual parties, any other interested party and the state attorney. Once nullity has been declared, each contractual party is obliged to make restitution to the other party for anything received under the null and void contract.

The consequences of nullity under Croatian contract law are regulated by the law for a long time. Restitution claims were regulated under the former 1978 Obligations Act, and the same regulatory concept for restitution claims was taken over by the Obligations Act applied since 1st January, 2006. These are traditional contract law rules that prescribe that in cases of nullity each contractual party is obliged to make restitution to the other party for anything received under the null and void contract. If this is not possible, or, if the nature of what had been satisfied is conflicts with restitution, appropriate compensation must be paid in cash observing the prices at the time the judgment is handed down. Furthermore, the contractual party responsible for the conclusion of the null and void contract must pay damages suffered by the other bona fide contractual party due to nullity.

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The application of these rules was neither particularly problematic nor addressed in case law or the literature for a number of years. The pursuance of restitution claims for null and void contracts became a topical question for legal practitioners, academics, as well as the wider public after a final decision was issued by the Croatian courts regarding a consumer collective action, declaring contract terms containing CHF foreign currency clauses and floating interest rates in consumer credit contracts as unfair. The declaration of these terms as unfair in consumer credit contracts, hence null and void, put forward novel questions regarding the pursuance of consumer restitution claims against banks. On the one hand, the question was raised with respect to how collective actions affect the statute of limitations for individual restitution claims for amounts overpaid under such unfair terms. On the other hand, it became disputed how the statute of limitations is calculated and when it begins to run for individual restitution claims, i.e. whether it runs from contract formation, a particular payment, or the final judgment declaring nullity. The courts have, partially due to public pressure, but mostly due to the commitment of interpreting national law in light of EU law and the ECJ case law on the interpretation of Directive 93/13/EEC on unfair terms in consumer contracts regarding effective consumer protection, changed in 2020. Existing holdings with respect to statute of limitations calculations for restitution claims for null and void contracts. Opinions on certain issues in statute of limitations calculations for collective actions not regulated under statutory contract law were also accepted. The novel views and interpretations on statute of limitations for restitution claims had serious effects on the position of parties in null and void contracts. A significantly larger number of consumers, whose claims had already been time-barred in the interim were enabled in pursuing restitution claims. Furthermore, due to the fact this was a general opinion applicable to all null and void contracts, the concept of calculating statutes of limitations for all restitution claims for all null and void contracts was changed irrespective of grounds for nullity and irrespective of the identity of the contractual parties. The new interpretation brought about a resurgence of old restitution claims in many other cases of null and void contracts.

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The paper describes the new opinions of the highest Croatian courts on the pursuance of restitution claims for null and void contracts. It analyses their effects on the protection of the contractual parties, as well as legal certainty in general. It discusses whether judicial activism can be sufficient for securing optimal legal certainty and the protection of legitimate interests of the parties in null and void contracts, or legislative intervention is sometimes necessary in order to adjust contract regulation to current socioeconomic conditions in the market.

Keywords: null and void contracts, restitution claims, statute of limitations, unfair contract terms

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Panel III

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Palásti, Gábor

Freelancer.
Károli Gáspár University of the Reformed Church in Hungary, Faculty of Law
External lecturer
palasti.gabor@gmail.com

VALIDITY ISSUES IN THE SYSTEM OF THE ROME I REGULATION

In cross-border contractual matters, validity requirements of multiple legal systems affect the validity of the same contract. Other than providing a single connecting factor and *lex causae*, Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) provides special rules for validity. Article 10 paragraph 1 solves the conflict of laws 'circulus vitiosus' of invalidity by providing that if the contract is invalid or non-existent under the lex causae, the lex causae still applies. Paragraph 2 of Article 10 offers an additional connecting factor to rely upon to show that a party did not consent to the contract or to a contractual term. The Article has specific case law and jurisprudence not only in connection with its outright provisions but also in connection with distinguishing the issue of existence from validity.

Formal validity (Article 11) follows the principle of '*favor validitatis*' by offering various additional solutions to determine validity in case the contract were formally invalid under the lex causae. The rules under Article 11 also have their own judicial practice and jurisprudential interpretation. Both Articles follow the requirement of uniform interpretation that builds upon the objectives and structure of the Regulation and the common legal traditions of the Member States. The proposed presentation provides an in-depth analysis of both articles and the legal terms used therein, coupled with available case law of Member State courts.

Keywords: conflict of laws, law applicable to validity of contract, connecting factors of validity of contract, favor validitatis, Rome I Regulation

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Boóc, Ádám

Károli Gáspár University of the Reformed Church in Hungary, Faculty of Law
Full Professor
booc.adam@kre.hu

THE APPEARANCE OF LAESIO ENORMIS IN THE HUNGARIAN CONTRACT LAW

As it is well known *laesio enormis* is an ancient legal institute of Roman Private Law. According to Roman law, in sales of land, if the price paid was less than half of the value of the land, the vendor could have the contract rescinded unless the purchaser made up the full value (see: J.A.C. Thomas: Textbook of Roman Law. Amsterdam - New York - Oxford, 1976. 283 p.). The presentation will scrutinize the appearance of this legal institute in the Hungarian private law from a comparative-historical approach, bearing in mind the differences of the regulation of this legal institute in the old Civil Code of 1959 and the new Civil Code of 2013 having been effective since the 15th of March, 2014.

The presentation is trying also to focus on the issue whether the reason for invalidity based on laesio enormis (gross disparity) could be regarded as an objective or a subjective category taking into consideration the regulations of the new Hungarian Civil Code. Based on the foregoing the following paragraphs of the new Hungarian Civil Code will be scrutinized in the presentation:

Section 6:98 [Gross disparity in value]

(1) If, at the time of the conclusion of the contract, the difference between the value of a service and the consideration due – without either party having the intention of making a gratuitous grant – is grossly unfair, the injured party shall be allowed to avoid the contract. The contract shall not be avoided by the party who knew or could be expected to have known the gross disparity in value, or if he assumed the risk thereof.

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(2) The parties may exclude the right of avoidance provided for in Subsection (1), with the exception of contracts that involve a consumer and a business party.

It needs to be underlined that the second sentence of paragraph 1 of Section 6:98 reads as follows: "The contract shall not be avoided by the party who knew or could be expected to have known the gross disparity in value, or if he assumed the risk thereof". It is to note that this is a new stipulation compared with the regulation of the former Hungarian Civil Code. The question will be addressed in the presentation whether this new stipulation reflects the legal practice, which have been developed during the regime of the former Hungarian Civil Code.

The presentation will also highlight the important findings of the decisions of the High Courts of Hungary (Supreme Court, Courts of Appeal, etc.) regarding the application of laesio enormis (gross disparity).

Keywords: private law, Roman law, invalidity, laesio enormis, gross disparity, Hungarian Civil Code

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Grad-Gyenge, Anikó

Budapest University of Technology and Economics, Faculty of Social and Economic Sciences
Associate Professor, habil.
grad-gyenge.aniko@gtk.bme.hu

THE RENEWED BESTSELLER CLAUSE IN THE HUNGARIAN COPYRIGHT ACT

The bestseller clause of the Copyright Act is an older legal institution of Hungarian copyright law. The rule was taken over by Hungarian law from the German Copyright Act. The bestseller clause provides protection for a creator in a weaker contractual position than the user. It provides effective assistance for the subsequent consideration of unforeseen circumstances at the time of the conclusion of the contract. Its primary purpose is to remedy the post-contractual shift in value by means of the special means of judicial amendment of the contract.

The legal institution of bestseller clause is a special regulatory solution compared to the provisions of the Civil Code on invalidity. It is a special provision compared to invalidity in the event of a significant difference in value, however it provides a strong limitation on the legal consequences of invalidity.

It only provides an opportunity for the court to amend the contract and eliminate the striking difference in value.

The rule has very poor judicial practice, both in Hungary and abroad. The primary reason for this is that the parties apply contractual arrangements that avoid future uncertainties regarding the amount of the royalty.

One of the aims of the DSM Directive is to extend the legal opportunities for weaker contracting parties, including the EU-level harmonization of the bestseller clause. According to the Article 20 Member States shall ensure that, in the absence of an applicable collective bargaining agreement providing for a mechanism comparable to that set out in this Article, authors and

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performers or their representatives are entitled to claim additional, appropriate and fair remuneration from the party with whom they entered into a contract for the exploitation of their rights, or from the successors in title of such party, when the remuneration originally agreed turns out to be disproportionately low compared to all the subsequent relevant revenues derived from the exploitation of the works or performances.

The presentation examines the possible effects of extension of the bestseller clause to new areas in the national copyright law and the relationship between the new provisions and civil law invalidity rules.

Keywords: correction of license by court, bestseller clause, DSM directive, (copyright) contract adjustment procedure

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Sápi, Edit

University of Miskolc, Faculty of Law
Assistant Professor
jogsapi@uni-miskolc.hu

LEGAL THEORY AND JUDICIAL PRACTICE OF THE INVALIDITY OF LICENCE AGREEMENTS*

The purpose of the lecture is to provide an overview of the invalidity rules and case law of the licence agreements in the field of copyright law. The rules governing copyright relations are not exclusively governed by the rules of copyright law but are complemented by the rules of civil law as well. In fact, the specific grounds for invalidity issues of licence agreements, show that these contracts are specific among private law contracts and that the rules applicable to it cannot be brought solely under the Civil Code. This special situation and legal environment are justified by the typically weaker position of the author in the contracting process, consequently we can find some author-sensitive rules here.

The copyright law rules on the invalidity of licence agreements can be found in a mosaic-way, rather than in a concentrated way, as in the Civil Code. In fact, the reason for this is also to be found in the regulatory environment, since the Copyright Act only lays down the 'copyright-focused' invalidity rules, which can supplement the grounds for invalidity in the Civil Code in cases where the subject matter of the legal relationship is the use of a copyright work.

In the presentation I will focus on some 'general civil law' issues of invalidity, such as the requirement of written form or the problems of standard contractual terms and on the special forms of invalidity regulated by copyright law. In this sense, I intend to focus on not just the legal theory but show the relevant judicial practice as well.

Keywords: licence agreement, copyright contracts, invalidity, best-seller clause

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Halász, Csenge

University of Miskolc, Faculty of Law
Assistant Lecturer
ha.csenge0701@gmail.com

INVALIDITY ISSUES RELATED TO THE GENERAL TERMS AND CONDITIONS OF SOCIAL NETWORKING SITES

There are a number of social and economic challenges associated with the operation of social networking sites. In the field of law, they affect practically the entire legal system. By choosing one of these questions, I examine the general conditions of social media in my lectures.

This issue is important because of the contractual relationship between social networking sites and users. This issue is important due to the contractual relationship between the social media sites and users that arises during registration, which includes acceptance of the terms. However, the terms of use are not only indicative but defines the mutual rights and obligations of the parties, i.e. the operation of the online interface itself. However, an important circumstance is that users do not read them most of the time, so they are not aware of the contents of the provisions contained therein. This practice can therefore be considered extremely worrying, as the general terms and conditions are an integral part of the contract between the parties.

In view of all this, in my presentation I will examine the validity of the general terms and conditions after classifying the contract concluded between the parties. Unfair terms can typically be used as grounds for invalidity, as exemplified by several foreign lawsuits. A German court decision, for example, recently declared Facebook's content removal terms invalid. The decision is considered to be extremely important not only for its invalidity but also for the protection of freedom of expression. Based on all this, the validity of the general terms and conditions of social networking sites requires a thorough examination, which I will attempt in this short presentation.

Keywords: contract, invalidity, social media, Terms and Conditions

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Benke, József

University of Pécs, Faculty of Law
Associate Professor
benkejozsi@gmail.com

A COMPARATIVE ANALYSIS OF AUSTRIAN AND LOUISIANA PRIVATE LAW JURISDICTION WITH RESPECT TO THE CORRELATION BETWEEN CONTRACTUAL RISK TAKING AND THE IRRELEVANCE OF ORIGINAL AND CONTINUING LAESIO ENORMIS

For all contracts, the main element of risk is either the initial lack or the subsequent disruption of the value balance of services. Determining the conditions under which the value of the service and the consideration at the time of the conclusion of the contract or at the time of performance can be considered to be in proper balance can be both a legislative and an enforcement issue. If the band, within or around which the difference between the two values is not considered to be legally undesirable, is defined by the legislator, there is no discretion left to the application of law. However, in the case of a generalised rule, i.e. where the legislator does not define the disproportionality in terms of a specific ratio or range of values, it is at the discretion of jurisdiction to decide on the question of proportionality. The proportionality of the value of the services can be examined at two relevant times: at the time of the conclusion of the contract, in which case the issue is examined in the context of the invalidity of the contract, or at the time of performance, in which case the problem falls within the scope of the breach of contract.

These rules of invalidity and breach of contract as traffic safety criteria are expressly excluded by law for certain types of contracts, while in other cases, the law expressly authorises the parties to exclude these guarantee rules for their legal relationship by their commercial will, since their interests are precisely directed towards a higher degree of risk-taking. Where these rights are not

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based on law, the contractual intention of the parties must include the assumption of these rights. In the continental-rooted Civil Code of the US state of Louisiana, the problem is based on a body of law, which is fairly similar to the Austrian ABGB, the wording of these Codes' provisions is sometimes identical (see e.g. CC Art. 2451 and ABGB § 1267sqq). At the same time, it is remarkable that, compared to the almost identical legal environment, the judicial thinking in litigation differs greatly in the practice of the higher courts of the two states.

Keywords: laesio enormis, contractual risks, General Civil Code of Austria, Louisiana Civil Code, Sale of a Hope

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Pusztahelyi, Réka

University of Miskolc, Faculty of Law
Associate Professor
reka.pusztahelyi@gmail.com

UNDUE INFLUENCE AND UNFAIR EXPLOITATION: LEGAL CONCEPTS 'HIDING' IN THE HUNGARIAN LEGISLATION AND JURIDICAL PRACTICE*

This presentation aims to highlight the unique (re)naissance of a special invalidity ground, i.e., the English equity doctrine of undue influence, in the very beginning of the twentieth century, during the period of the heightened endeavours for codification of the private law in Hungary, parallel with the impact of § 138 of the German BGB. Alongside the early draft texts (from 1900) of the Hungarian civil code up to the 'Recommendation for a Private Law Bill' (Private Law Bill, 1928), and later, in the period of the HCC of 1959 and the HCC of 2013, this legal concept has greater or lesser influence upon the judicial practice depending on the field of law at issue. Moreover, its impact on the legal literature of that time is also undeniable.

As for the Law of Succession, undue influence upon testamentary disposition was regulated as a sui generis ground of invalidity (point c) section 1 § 7:40 of HCC). Despite that its judicial practice is quite poor, presumably due to the heavy burden of proof and its elusiveness, this rule cannot be deemed as a 'fossil' or a 'xenolith'. Its significance is recently demonstrated by the decision of the Supreme Court of Hungary No. 270 of 2020.

In the field of Contract Law, a distinction should be made not only between the undue influence and other errors of contractual intention, but also between usurious contract, immoral contract and unfair exploitation. The latter ground of invalidity has only historical importance now. The

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question then arises: whether a difference of degree exists between unfairness (acting contrary to good faith) and immorality (contrary to good morals), that is, all cases of undue influence can merge into the invalidity of immoral contracts.

The presentation also deals with the undue influence as a subjective condition of the usurious contract of § 6:97 of HCC, in order to highlight its importance. Finally, it examines the relevance of the reciprocity condition (excessive advantage vs obviously gross disparity) of the usurious contract and the nullity of the contract for gift on the base of immorality.

Keywords: undue influence, law of succession, usurious contract, unfair exploitation, contracts contrary to good moral, good faith in contract law

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Panel IV

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Auer, Ádám

University of Public Service, Department of Civilistics
Associate Professor
auer.adam@uni-nke.hu

THE HUNGARIAN PROHIBITED CONTRACT'S RULE OF INVALIDITY IN EUROPEAN CONTEXT*

Certain questions of the invalidity of contracts are an evergreen topic in civil law. In our presentation we will examine the question of prohibited contracts. Among these, we will also discuss the case where the contract is in conflict with other rules, other than civil law. The dogmatic challenges of prohibited contracts arise from the complexity of contracts. The dogmatic of private law have to provide clear answers to contracts based on a complex legal environment, for instance the breach of which rule renders the contract invalid. The premise is that the scope of contracts governed solely by the Hungarian Civil Code is relatively limited. A number of specific laws apply to all other contracts, therefore the dogmatic relationship between said laws is not a negligible problem.

In our presentation, we will present three models of prohibited contracts. In Hungarian judicial practice, a number of court decisions have been made in this area following entry into force of the Act V of 2013. The Hungarian Civil Code reverted to the interwar private law solution and accordingly a contract contrary to the law will no longer necessarily be null and void. According to the models presented in our presentation, the *lex specialis* may (1) apply sanctions other than invalidity or (2) even exclude the nullity of the contract. Finally (3), there may also be situations in which the legislator singles out infringements and orders nullity. The question is whether these three models are consistent with the principle of avoiding the nullity of the contract. What are the possible directions for improvement? The examination of this question will include an

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assessment of unification process of European contract law and an overview of the solutions and a brief evaluation of the solutions provided by the main European codes.

Keywords: prohibited contract, illegal contract, Hungarian Civil Code, public procurement

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Dúl, János

University of Public Service, Faculty of Public Governance and International Studies,
Assistant Professor
janosdul@gmail.com

THE INVALIDITY OF ASSET MANAGEMENT CONTRACTS

The presentation addresses the issue of validity and invalidity of asset management contract of national assets. The definition 'national assets' covers the state assets and the assets of local governments, therefore the asset management contract is regulated by Act CXCVI of 2011 on the national assets, Act CVI of 2007 on the state assets and Act CLXXXIX of 2011 on Hungary's local governments. There are also other legal acts that must be taken into consideration such as Act V of 2013 on the Civil Code due to the fact that the above-mentioned legal acts use certain legal terms regulated by the Civil Code. The contract shall be considered as a contract on the borderline of private law and public law; one must pay attention to every aspect of this contract. One aspect of it is the validity and invalidity of the contract.

I will outline the issue of validity primarily along the grounds for invalidity regulated by the Civil Code. There are certain grounds which cannot be taken into account. They are, in principle, related to the performance of a public task as the purpose of the asset management contract, or to the subjects of this contract or the contract is valid due to other special features. However, other grounds of invalidity can be used.

Keywords: validity, invalidity, nullity, contestability, national assets, asset management contract

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Juhász, Ágnes

University of Miskolc, Faculty of Law
Associate Professor, habil.
civagnes@uni-miskolc.hu

PARTIAL INVALIDITY IN HUNGARIAN CONTRACT LAW*

The presentation aims at reviewing certain questions relating to a legal institution, the partial invalidity, which is rarely examined by the contemporary civil law literature. The presentation covers both the problems of assessment of the legal institution's legal nature and the difficulties of its application in the legal practice.

Until the beginning of the 1990s, it was a governing rule in the codified Hungarian civil law that invalidity concerning only a certain part of a contract leads to the invalidity of the entire contract. Partial invalidity appeared as an exception from this general rule. In 1993, this provision was amended and partial invalidity became the general rule in all those cases, when invalidity concerns only a certain part of the contract. By changing the previous regulation, Hungarian legislator intended to react to the criticism expressed by the literature. According to the ministerial justification of the amending act, both the smooth flow of transactions and the autonomy of contractual parties prevails better, if legal effect is prevented by the civil code only in the case of the invalid contract term.

The principle of partial invalidity of contract is also maintained by the Act V of 2013, i.e. the Hungarian Civil Code in force (hereinafter referred as HCC). As to paragraph (1) of Article 6:114 of the HCC, if the ground for invalidity concerns specific parts of the contract, legal effects of invalidity shall apply to those parts. In case of partial invalidity, the entire contract shall fail if the contractual parties presumably would not have concluded it without the invalid part. The phrase

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'presumably' requires for further interpretation, which makes necessary the examination of the parties' hypothetical contractual intention. These questions will be reviewed in the presentation as well.

Regarding partial invalidity, application of the legal consequences of invalidity also shall be examined. Though the text of the HCC clearly provides that legal consequences shall be applied only for the part of the contract affected by invalidity, opinions appeared which emphasise the risks arose by the remedying of the invalid part of the contract by court. Their main argument is that the court can resolve the consequences of invalidity in a way that differs from the party's request; such a judicial intervention overshadows the prevailing of the principle of contract freedom. Although the application of partial invalidity is driven by the aim 'to keep the contract alive', it is worth thinking how the fulfilment of a contract whose elements are left or modified can serve the parties' interests and the realisation of the originally defined contractual purposes.

Keywords: partial invalidity, application of legal consequences of invalidity, hypothetical contractual intention, severability

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Völcsey, Balázs

Eötvös Loránd University, Faculty of Law
Assistant Professor
volcsey.balazs@ajk.elte.hu

CASES OF INVALIDITY DUE TO ERROR OF WILL IN THE CONTRACT

Article 6:90-6:93 of Act V of 2013 on the Civil Code (CC) settle invalidity due to the mistake of will on the part of the parties. In my presentation, I would like to analyse these grounds of invalidity, highlighting the meaning of 'error of will'. As part of this, I also make the relevant delimitations, including the legal institution of pseudo-representation. My aim is not only the presentation of certain grounds for invalidity, i.e. error, deception, secrecy, sham (simulated) contract, but the summarising of the most important conclusions that can be drawn upon the case law. In doing so, the issue of proof and the applicable means of proof must be examined separately, since in the case of these grounds of invalidity the principle of will as an aspect of interpretation has fundamental significance.

In the second half of my presentation, during the analysis of the sham (simulated) contract, a brief overview of the foreclosure contract and the demarcation of the two legal issues are inevitable, taking into account the provisions of the § 6:120 of the CC and the Civil Department Opinion no. 1/2011 (VI. 15.) PK of the Curia of Hungary on certain application issues of the margin agreement. In my work, in connection with the individual grounds for invalidity, I also deal separately with the special rules for gratuitous contract (§ 6:93 CC).

Keywords: principle of will, declaration principle, mistake, sham contract

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Molnár, Sarolta

Pázmány Péter Catholic University, Faculty of Law and Political Sciences
Assistant Professor
molnar.sarolta.judit@jak.ppke.hu

INVALIDITY IN THE INSTITUTION OF MARRIAGE

Book IV of the Hungarian Civil Code is peculiar for many reasons, while it employs the language of contracts and the notions of invalidity its meaning is quite different. First, the marital bond itself. While some legal traditions understand marriage to be a contract, others take the view of it to be a covenant. Regardless, procedures that result in invalidity have notably different consequences of a simple contract. What are the grounds for invalidity when forming a marriage, and can the courts deal with the special complexity of such cases? In some countries these grounds are much more often called as canonical courts have jurisdiction over marriages and the civil legal system acknowledges such rulings. Does this have its root in the understanding of marriage as a covenant rather than a contract? Although, the Civil Code has established the very important differentiation between void marriages and non-marriages how is this applied at court and what might be different, sometimes even disadvantageous consequences of one or the other. On the other hand, there is a trend in family law that we call the contractualisation. How far does this more autonomous family law stretch? The limitations of contractual freedom must present themselves in questions regarding invalidity. This exceptionalism of family law goes beyond marriage, it involves contractualisation in both vertical and horizontal family law. On the horizontal side all arrangements of partnership might be put to question and vertically challenges of parenthood might bring invalidity issues the jurisprudence must face more and more often.

Keywords: marriage, contract, covenant, contractualisation

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Kriston, Edit

University of Miskolc, Faculty of Law
Assistant Lecturer
jogedit@uni-miskolc.hu

THE LEGAL ROLE OF IMMORALITY IN FAMILY PROPERTY CONTRACTS*

Family property contract is an atypical form of contract regulated by family law rules and contractual legal rules at the same time. Contractual freedom is an important part of family property relations. Though private autonomy between family members cannot tolerate intervention, there are lots of situations that make it necessary.

The limits of contractual freedom have a complex system in the Hungarian Civil Code. The reason for this is that the protection of legal rules has two directions: on the one hand, it helps the family member in a vulnerable situation. On the other hand, it protects third parties who have a legal relationship with the family members. Another important reason for the complexity is the connectable nature of the legal rules, as property contracts are primarily regulated by family law and secondly by contract law. As a result, we can find limits that came from family law orders, as well as those that have a contractual nature but at the same time adjust to the family relationships. The principles at the beginning of the Book Four of the Hungarian Civil Code seem as pure family law limits, especially concerning to equity and the protection of the weaker party. However, the courts have emphasized in many cases that the principles can only be an obstacle to contract freedom in extreme situations. Circumstances that cause the invalidity of the contracts can be identified as one of the contractual legal limits, especially the vitiated consent (mistake, deceit, unlawful threat, or sham contracts), the gross disparity in value, immoral contracts, and the illegal/unlawful contracts.

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However, the invalidity of these contracts, as an important issue is already a neuralgic point. In the case of family property contracts, the long-term nature and the emotional relation between the family members makes it difficult to use the traditional legal consequences of contract law and also complicates to finding a perfect solution for the legal argument of parties. This is especially true in the internal/intimate legal relations of the parties, where the basis of accounts is called into question - because the property of the parties is always changing -, it is difficult to reconstruct the circumstances at the time of concluding the contract, not to mention the temporary changes in the value of the property.

Immorality, as a reason of invalidity, has a unique interpretation and adjudication in family property contract because the emotional reason of the parties complicates the situation, and it is hard to track back the reasons or motivation, which led the family members to accept disadvantageous terms.

In my presentation, I will introduce the Hungarian legal practice and interpretation of the immoral contract and I will analyse the recent cases.

Keywords: contract law, family law, invalidity, immoral contracts

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Panel V

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Szalma, József

Károli Gáspár University of the Reformed Church in Hungary , Faculty of Law
Full Professor
szalma.jozsef@kre.hu

CONDITION AND EFFECT OF THE LEGAL TRANSACTION ACCORDING TO HUNGARIAN AND EUROPEAN LAW

In this work the author analyses the dissolving and suspensive conditions and time limits, as ancillary provisions of the contract (legal transaction), which make dependent the entry, cancellation or modification of the legal effect of the contract or the legal transaction from an uncertain, future circumstance not caused by the parties. The effect of the legal transaction is understood to mean the rights and obligations of the parties who regularly reach an agreement of intent. The terms and conditions of the parties may suspend, postpone or modify the effect, but they themselves do not affect the validity of the legal transaction. On the contrary - the absolutely void contracts have no effect from the time they come into being, due to the law.
The conditional contracts remain in effect from the beginning, although the effect of the will of the parties is limited. The (forbidden or impossible) conditions can also be void, and then in principle they have no effect restrictions. In the case of relative nullity (contestability), which arises due to the lack of will (e.g. fallacy), the legal transaction loses its effect after the successful contestation on the part of the interested party, *ex nunc*. They can be validated without contestation within the contestation period. For conditions such dissolving conditions, such a 'convalidation' of the effect is not possible, the legal transaction is still valid, but it loses its effect. The analysis was carried out from a comparative law perspective, taking into account Hungarian, German, Austrian, French and Swiss law.

Keywords: condition and timing, nullity, contestability, contract validity and invalidity

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Leszkoven, László

University of Miskolc, Faculty of Law
Associate Professor
joglacus@uni-miskolc.hu

INVALIDITY AND CONTRACTUAL EQUILIBRIUM*

Contractual *synallagma* basically means that there is a service owed by a contractual party and a service to be performed by the other party, which services should be mutually performed and which are mutually interdependent. Reciprocity (i.e. remunerative nature) is a classic example for this correlative legal situation.

Presumption of reciprocity is a basic principle of contract law, determined by law. Nevertheless, the current law does not require for equivalence of the replaced services. According to the principle of the freedom to determine the content of the contract, the amount of the consideration for a service can be freely determined by the contractual parties. Gross or excessive difference in value can result in the invalidity of contract due to different grounds like mistake, fraud, gross disparity in value, usury, etc. These grounds of invalidity often spring from the same source.

Contracts lacking balance do not result in invalidity by all means (c.f. aleatory contracts). The measurement or comparison in certain cases (e.g. business share of a limited liability company, intellectual property, etc.) also causes difficulties. In such cases it is also a question, if we can speak about the existence or the disruption of the contractual balance.

There are also a few related legal instruments deserving further consideration. Among others, the reduction of the excessive interest, earnest money or contractual penalty is a legal instrument which takes particular regard on the proportionality of value. The relationship between the

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reduction and the intervention due to invalidity is a less explored area of contract law, even though the similarity of the legal logic of these legal institutions is undeniable.

Recently, the balance between the contractual positions has rightly received growing attention. This question diverges from the problematic of service and its consideration, since it needs for a different kind of approach, where the applicable toolbox for legal protection is also special. In contractual relationships, such questions are raised by the contractual justice, the prevailing of the principles of the interdependency and equality of contractual parties, or the examination of the entire contract instead of the application of the invalidity test of certain contract terms. The principle of good faith and fair dealing seems to be appreciated, while the notion of decency ('good morals') is filling up with modern content. Blanket clauses (general clauses) allow the flexible evaluation including the evaluation of changed circumstances and the development of legal application as well. Nevertheless, the uncertain content of these factors is contrary to legal certainty. Therefore, the exploration and elaboration of the relationship between the legal consequences of acts contrary to civil law principles and the legal institution of invalidity is unavoidable.

Keywords: invalidity, gross disparity in value, usurious contract, collision with good morals, decency, blanket clause, good faith and fair dealing

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Prugberger, Tamás

University of Miskolc, Faculty of Law
Full Professor
prugberger.tamas@t-online.hu

Nádas, György

University of Debrecen, Faculty of Law
Associate Professor, habil.
nadas.gyorgy@law.unideb.hu

ERROR IN THE CONTRACTUAL INTENTION, MISTAKE, MISREPRESENTATION AND UNLAWFUL THREATS

Nowadays, Western European states regulate the legal mechanism for the rectification of errors and omissions in all contracts and legal declarations on the basis of civil law, which also applies to contracts related to employment.

There is no special legal regime for invalidity and challenge in Western European labour law. Therefore, in the event of a challenge to an employment contract or other employment law agreement, the general civil law provisions of that state shall also apply.

In essence, almost the same protection is required with regard to the determination of the will for the benefit of an employee who is existentially dependent on the employer in the employment contract as is necessary for the consumer in industrial trade and production, as in most cases he makes his contract offer using a pre-arranged form.

Keywords: error in the contractual intention, mistake, misrepresentation, unlawful threat

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Mélypataki, Gábor

University of Miskolc, Faculty of Law
Assistant Professor
jogmega@uni-miskolc.hu

IS THE TERMINATION OF EMPLOYMENT SENT BY E-MAIL INVALID? – DILEMMAS OF THE ELECTRONIC COMMUNICATION IN THE HUNGARIAN LABOUR LAW

The entry into force of the new Hungarian labour law rules has brought to the fore responses to new life situations, such as the possibility of electronic communication. Under certain conditions, Hungarian legislator treats electronic documents in the same way as paper documents. Our everyday interactions are changing and they become more and more digital. When we look at work relationships, e-mail communication is particularly significant, while we are also increasingly using instant messaging applications such as Messenger or Snapchat.

As a consequence, employees are increasingly using digital solutions to make legal statements. These situations raise many questions. Some of these questions have not been answered yet by the Hungarian legislator. Legislation has always lagged behind digitalisation. Law can function only as a tracking system. Therefore, unfortunately, it can happen that there are no clear rules at a given moment on the use of these tools. For a long time, it has not been clear what legal effect was given by the legislator to legal declarations made in digital space or in digital form. For a long time, it was also not clear whether an inappropriate Facebook post could be a legal basis for termination of a legal relationship. Nevertheless, the question of how applying the three criteria of truth, clarity and reasonableness to terminations sent by SMS, e-mail or Messenger, has equal importance.

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In case of electronic declarations, the subject matter and other conditions for posting are often unclear. A key question is how to apply the fictions relating to posting? Should the form and content criteria be the same as for non-digital declarations and if so, under which conditions? Have the statements made in different forms the same probative value? The legislator needs to answer these questions, since in the current pandemic situation many workers are still trapped online, which will lead the more frequent use of digital solutions, even if it is only temporarily. However, it must be seen that regardless of the pandemic, communication in the digital space between employee and employer was already important in some sectors. This form of communication will be more significant in the future. That is why a legislative response to these questions is needed.

In this paper, we would like to introduce, along the above indicated questions, the current legislation and to make proposals for rethinking.

Keywords: labour law, invalidity, electronic communication, termination of labour relations

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Rácz, Zoltán

University of Miskolc, Faculty of Law
Associate Professor
civracz@uni-miskolc.hu

INEXISTENCE, INVALIDITY AND INEFFECTIVENESS OF THE JURIDICAL ACTS IN THE LABOUR LAW

Validity and invalidity are not synonymous concepts; they cover different legal content and result in different legal consequences as well. In case of non-existent contracts, there is no consent between the parties on the essential elements of the contract. In such cases, contracts either have no legal effect at all or we can speak of some special legal effect.

Though the invalidity system of labour law is based on civil law, specific characteristics of labour law as an independent field of law are also taken into account. It is a fundamental difference that unlike civil invalidity, the restitution of the original situation is not possible because of the long-term nature of the legal relationship. Instead, labour law imposes a remedy on the parties and if it is not possible, termination of employment is mandatory. Incidentally, invalidity under labour law also means incapacity to produce the intended legal effect and we distinguish between two different types of invalidity: nullity and voidability.

In the event of termination of contract, an agreement between the parties shall be concluded and shall remain in force, however, for some reason, it can not produce legal effects between the parties. Therefore, the existence and validity of the contract is a precondition for invalidity.

Keywords: labour law, invalidity, ineffectiveness, termination

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Panel VI

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Shakibapoor, Amanda Petra

University of Pécs, Faculty of Law
PhD Student
amanda.nagy.petra@gmail.com

EXAMINATION OF DIRECTIVE 93/13/EEC ON UNFAIR TERMS IN HUNGARIAN LAW

In my presentation, I review the Council Directive 93/13/EEC and the relating legislation, which is presumably one of the most important European rules in terms of private law. This directive was the first major intervention in the law of the Member States. With the creation of the European Union, a constitutional structure has already been established, but at the same time, Member States also have a system of internal law based on tradition, which must have been harmonised. Directive 93/13/EEC on unfair terms has made the most significant change in the private law of the European Union. It introduced the concept of an unfair contract term in Hungary, among others, where no such definition existed before. In my dissertation I would like to present the following points in more detail. As a starting point, I describe the concept of a contract in the European Union and compare it with the provisions of the Hungarian Civil Code. I will cover the regulation of unfair contract terms, as well as the new Civil Code and Directive 93/13 / EEC. I will review how the provisions of Directive 93/13 / EEC have been incorporated item by item into the new Civil Code. Through some examples, the reasons for invalidity in relation to specific contracts are going to be analysed. Last but not least, as an international perspective, I would like to talk about the differences between nations in the regulation of unfairness.

Keywords: Directive 93/13/EEC, European rules, unfair terms, contracts in the European Union

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Alma'Aitah, Meera

University of Debrecen, Géza Marton Doctoral School of Legal Studies
PhD student
maaytameera7@gmail.com

THE CONCEPT OF NULLITY AND ITS TYPES

The contract is that agreement that the law required for its establishment of a set of basic pillars through which it guarantees the validity of the contract on the one hand and to preserve the interest of the contracting parties on the other hand.

However, the latter may tire out some of its conditions or elements, which exposes it to nullity which means the penalty decided by the law when one of the pillars of the contract is missing (consensual – form in formal contracts – the place – the reason) or a condition of health (competence – integrity of the will).

If one of the pillars required by the legislator is missing in the contract, the contract becomes void or voidable, meaning the lack of legal effect of the contract in which the legal rules were not respected. That is, as if it had not been, this and invalidity is defined as: "a sanction inflicting a certain legal act on its origin in violation of a legal rule that leads to its non-enforcement."

There are two types of invalidity, one absolute and the other relative. It is absolute and relative in view of the pillars of the contract on the one hand and the conditions for the validity of the contract on the other.

If one of the pillars of the contract is missing, the contract is absolutely null and void due to the seriousness of the defect in the contract, but in the case of the failure of one of the health conditions, the invalidity was relative and not absolute, because the defect in the contract is less serious and the contract is repairable.

A void contract is absolutely null and is considered legally non-existent, as it is the absence of one or more of the pillars of its contract. It has its effects, but it is defective and can be invalidated.

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Relative invalidity or voidable contract is an existing contract, but it is tainted by defects of consent, such as error, fraud, coercion and exploitation, or if the contracting party is incompetent. There are certain effects of nullity which differ according to the type of nullity (absolute or relative). These effects impact the existence of the contract legally and its effect on the contracting parties with the existence of the material effects of the contract as a material fact. Furthermore, there are direct and other indirect or accidental consequences of nullity.

In this essay, we will try to clarify the concept of nullity at first, then the types of nullity and its effects on the contract will be exposed.

Keywords: contract, nullity, types of nullity, relative invalidity, void contracts, pillars, consequences

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Szendrei, Tamás

University of Debrecen, Géza Marton Doctoral School of Legal Studies
PhD Student
tamas_szendrei@outlook.com

SOME CONSIDERATIONS REGARDING THE NULLITY OF THE JURIDICAL PERSON IN THE LIGHT OF THE ROMANIAN CIVIL CODE

Nullity is one of the oldest imposition of civil penalties that evolved over time and underwent a series of transformations. Closely linked to the civil legal act, in a first stage nullity was regarded as an organic state thereof, and could only be total and irreversible. Subsequently, nullity was not designed anymore as part of the legal act, but/and instead it was seen as a penalty that occurs if the law has been violated, by removing the contrary effects.

The presentation aims to approach some aspects related to the institution of nullity, whether absolute or relative, as it is stipulated by the Romanian Civil Code, with direct address to the nullity of the juridical person.

The difference between the nullity of the agreement of association and the nullity of the juridical person itself, born by such association, is clearly revealed by the law. The two notions are still linked. One cannot imagine a nullity of the agreement without the nullity of the legal person born by such agreement. Nevertheless, the nullity of the juridical person is laid down independently, comprising limited cases of occurrences. The regulation of the nullity of the juridical person finds out its correspondence in the Company Law. The nullity of the company has a distinct regulation, in Company Law, in line with the regulation of the nullity of the juridical person. In this case the civil law imported the notion from commercial law in order to limit the incidences of the nullity, aiming the security of the civil circuit and the interest of the third persons.

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Through the presentation, we would also like to focus on the controversial and critical conceptual aspects of the issue.

Keywords: nullity, imposition of civil penalties, juridical person, nullity of the juridical person, new Romanian civil code, nullity of the Company, legal act, effects, Romanian Civil Code

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Projics, Nárcisz

University of Pécs, Faculty of Law
PhD Student
projics.narcisz@pte.hu

ANNULLED MARRIAGE IN HUNGARIAN CIVIL LAW

I present a small slice of invalidity in a special area, within the legal institution of marriage. Firstly, it is important to examine whether a marriage exists and is valid, because only such a marriage has legal effect. In this study, I examine the reasons for marriage annulment. In connection with marriage annulment, I analyse the marriage annulment lawsuit on the basis of Hungarian civil procedure law. Matrimonial lawsuits including lawsuits for the annulment of a marriage, are also status lawsuits. The decision made in these lawsuits affects the personal status of the spouses.

I distinguish between the cases, when a marriage should be considered non-existent and when it is invalid. The legal consequences in any case provide a principled basis for the distinction between non-existent and annulled marriage. I scrutinise the causes of marriage annulment which are as follows: marriage age limit, marriage of a person incapacitated due to guardianship, marriage in a state of incapacity, the existence of a previous marriage and family relationship. Next, I analyse the determination of marriage annulment and the related rules for marriage annulment lawsuit (for example: competence, jurisdiction etc.). I present the range of persons entitled to bring an action for annulment and the scope of a possible defendant in an action for annulment.

A marriage can be considered annulled if it is found by a court. This judgment is valid against everyone (*contra omnes*). Finally, it is worth looking at the legal consequences of an annulled marriage, the so-called residual legal effects.

Keywords: marriage, non-existence, annulment, lawsuit

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Otgongerel, Jantsan

University of Debrecen, Marton Géza Doctoral School of Legal Studies
PhD Student
ojantsan@gmail.com

STUDYING THE SETTLEMENTS BY THE COURT OF EUROPEAN UNION OVER ACTIO PAULIANA RELATED DISPUTES

The Court of Justice of the European Union (hereinafter referred to as the CJEU) interprets whether EU law applies equally to all EU countries and resolves the legal disputes between national governments and EU organizations. Besides, in certain circumstances, individuals, companies, and organizations may apply to the CJEU if they believe that the EU has violated their rights in any way.

There were around ten court decisions related to *Actio Pauliana* claims such as C-115/88, C-339/07, C-337/17, C-722/17, C- 394/18, C- 213/10, C-157/13, C- 256/00, C- 274/16, and C-133/78 in the database of the CJEU. Most of the court decisions refused to accept the claim and decided that the claim does not fall under international jurisdiction. Therefore, I have selected and compared five specific disputes with the court decisions that accepted the claims, establishing international jurisdiction, and refusing to accept the claim, as well as attracted the attention of lawyers and researchers.

The court decisions acknowledged and interpreted the Actio Pauliana related insolvency claims in the legal regulation pertaining to the insolvency and reorganization of the companies. However, the Actio Pauliana claims between the family members were rejected and the cases were dismissed. In European law, there is no direct regulation on fraudulent transfers or Actio Pauliana related disputes and is mainly used only to establish jurisdiction.

The European law does not directly codify the legal actions to be taken in the event of a false or fraudulent transfer of property to others by a debtor for the purpose of causing damage to a

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creditor but it is settled by the court precedent in view of the laws of the member states. I think that the court decisions for this civil case or dispute, which protects the interest of the creditor, remain a controversial topic among European lawyers.

Keywords: European law, civil law, Actio Pauliana, fraudulent conveyance, fraudulent transfer

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Tóth Gergő József

University of Miskolc, Faculty of Law
Assistant Lecturer
civtothg@uni-miskolc.hu

CAN A GIFT CONTRACT CONFLICT WITH GOOD MORALS?*

Good morals and the general duty to comply with these principles accompany the needs of the legislator and law seekers from the very beginning of the society. Legal provisions aiming to defend good morals are codified by the Hungarian civil law, as well. In particular, it was also expressed in a short but rather substantial rule of the contract contrary to good morals among the invalidity rules of Act V of 2013, the Hungarian Civil Code. Seeking its origins, we need to go back to ancient Rome, since in the imperial custom, the immoral (contra bonos mores) behaviour, was considered illegal even if it did not explicitly violate a special legal norm. Nowadays it is extremely difficult to define a comprehensive legal concept for the moral standards, especially for the contract contrary to good morals as a ground of invalidity.

In the case law, we frequently encounter the problem of non-compliance with good morals in connection with maintenance contracts. In this context, the decisions of the Supreme Court are consistent, and clear that the knowledge about the impending death of the dependent can be established as a possible cause of invalidity. But this problem also appears in loan agreements, and in some cases relating to matrimonial property contracts, and moreover, in the field of the employment contracts.

However, in connection with the case to be discussed in this presentation, we may add a much more exciting question: To what extent can a gift contract be considered contrary to good morals?

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In the legal practice, this ground of invalidity rarely emerges in the context of a gift contract. That means it is only quite exceptionally that gratuitous contract would be deemed null and void for that reason.

However, we often forget a simple and undeniable circumstance: due to the contractual nature of the gift contract, the agreement is a bilateral legal transaction, where the acceptance of the gift made by the donee, is essential for the conclusion of the contract. From this point of view, the violation of good morals in the case of this contract should be sought and examined exclusively here, because by accepting the gift, the donee presumably knew what other circumstances had affected the contractual consent of the donor.

Keywords: good morals, gift contract, invalidity, case law

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