

The defects of the legal transaction result from imperfections or vices in the formation and/or expression of the will of the traders.

In this sense, the objective of today's text is to elucidate what are the defects of the legal business, presenting the due legal foundations and bringing concrete examples.

## **WHAT ARE THE DEFECTS OF THE LEGAL TRANSACTION?**



According to the legislation and the civil doctrine, the defects of the legal transaction are:

- Error or ignorance
- Malice
- Coercion
- State of danger

- Lesion
- Fraud against creditors
- Simulation

The first 6 defects in the list presented above are avoidable. That is, they take effect until the moment of their annulment.

The last defect, simulation, causes the nullity of that legal transaction. This means that the act has no legal effect.

Having understood what are the vices of legal transactions and their effects in the legal sphere, we proceed to elucidate each one of them from their main causes and characteristics.

## **ERROR OR IGNORANCE**

Error, also called ignorance, consists of the false representation of reality and the false notion of the elements of the legal transaction by the agent.

This false impression of reality and elements must be a determining factor for the occurrence of that legal transaction. Moreover, this ignorance stems from its own causes, that is, without the inducement of third parties.

Furthermore, the error may be substantial or accidental. In the first case, the substantial error consists of the situation in which, if the agent had known the truth, he would not have practiced the legal transaction.

The hypotheses of substantial error are in Article 139 of the Civil Code, see:

Art. 139. "The error is substantial when:

I - concerns the nature of the business, the main object of the declaration, or any of its essential qualities;

II - concerns the identity or essential quality of the person to whom the declaration of will refers, provided that he or she has had a relevant influence on it;

III - being by law and not implying a refusal to apply the law, it is the sole or main reason for the legal transaction."

An accidental error is one that is not caused for the annulment of the legal transaction.

## **MALICE**

Provided in Articles 145 to 150 of the Civil Code, deceit consists of an intentional act that occurs to induce someone to produce the legal act, which will benefit the author of the deceit or others.

In addition, this induction action must be essential for the business to happen.

The intent may be classified as principal or accidental. In the main fraud, the intentional action occurred substantially for the production of the business, which generates the annulment of the business.

In the case of accidental fraud, the legal transaction would take place regardless of the occurrence of this defect. Therefore, there is no cancellation.

## **COERCION**

Provided in Article 151 of the Civil Code, coercion stems from a serious threat exercised over the individual, against his will, for the occurrence of the legal transaction.

Coercion exercised by a third party (art. 154 of the Civil Code) may cause the transaction to be annulled if the party that will benefit is aware of it. Otherwise, the third party will be liable for all losses and damages of the aggrieved party.

## **STATE OF DANGER**

Pursuant to Article 156 of the Civil Code of 2002, the state of danger can be considered as excessively onerous liability so that the agent is saved or someone from his family who is at risk known to the other contracting party.

An example brought by the doctrine refers to an individual affected by a serious illness and in need of emergency surgery submits to the exorbitant values proposed by the doctor in the treatment or surgery.

## **LESION**

Provided by Article 157 of the Civil Code, the injury occurs when the agent assumes an evident disproportion between the benefits of a legal transaction due to inexperience or the need of the moment.

Thus, the need of the moment consists of the inevitability of the conclusion of the transaction, and inexperience is related to the lack of instruction or knowledge on the part of the victim.

## **FRAUD AGAINST CREDITORS**

Arranged by Articles 158 to 165 of the Civil Code, fraud against creditors consists of the situation in which the debtor, being insolvent or will become insolvent with the conclusion of the business, maliciously disposes of his assets, gratuitously or onerously.

Thus, in onerous situations, the other party must know about insolvency, unlike in cases of donation.

## **SIMULATION**

Able to nullify the legal transaction provided for in Article 167 of the Civil Code, the simulation consists of a manifestation of a subject's deceitful will, with the intention of harming third parties or defrauding the law.

The doctrine presents different types of simulation, they are:

1. Absolute
2. Relative/concealment
3. Innocent/tolerable

In conclusion, these are the defects of the legal business and its main characteristics. Did you like the content and want to learn more about the universe of law? Keep following our blog and follow our Instagram.