
Contents

Preface 11

The regulation on vice of consent in the Polish Civil Code in the
consumer e-commerce – setting the scene 13

 Scope of the research 14

 The structure and theses of the work 15

 Research methods 18

1. Evolving purpose of the defects of consent regulation 21

 1.1. Historical context: The autonomy of will as a protected value at
 the stage of creating the defects of declarations of will regulation
 in the 1933 Polish Code of Obligations 24

 1.2. The need to balance contractual positions of the parties in B2C
 transactions 27

 1.2.1. Shaping the objectified concept of statement of will based
 on legitimate expectations 27

 1.2.2. The purpose of defects of consent regulation in light of the
 values protected in consumer transactions 30

 1.2.3. Same framework, new objective: Applying a traditional
 private-law mechanism to achieve a new goal 31

 1.2.4. Searching for an alternative: Standardization attempts 33

 1.3. Technology-driven evolution of the defects of consent regulation 43

 1.3.1. Impact of the changes taking place in consumer
 e-commerce on the functionality of the standards designed
 to govern contracts concluded offline 44

 1.3.2. Question about the purpose and subject of protection in the
 case of the defects of consent regulation in the era of
 granular law 48

 1.4. Conclusions 53

2. Legal effects of the behavior of persons who are unable to make a statement of will on their own	55
2.1. Defect of consent or lack of contractual capacity	57
2.2. Legally relevant lack of internal will or defect of the act of will: The Polish solution	60
2.3. Situations typical for the online environment: The lack of contractual capacity	63
2.3.1. Contracting with persons who do not have full legal capacity	64
2.3.2. Contracting with persons who are in a state that excludes conscious or free decision-making	77
2.3.3. Misleading the other party about one's legal capacity	80
2.3.4. Conclusions and alternative mechanisms	87
2.3.5. The need to protect trust in the legal capacity of the other party	92
3. Lacking intention to produce legal effects	97
3.1. The regulation on an ostensible declaration of intent and its application in consumer e-commerce	98
3.2. Submitting a statement with no intention to produce legal effects – defect of consent or lack of a constitutive element of the statement of will	101
3.2.1. The European context	101
3.2.2. Evolution of the Polish approach	105
3.3. Submitting a statement of will in the absence of the intention to produce legal effects in the case of online consumer transactions	112
3.3.1. Attribution of the declaration	112
3.3.2. Situations typical for the Internet environment – mistakes at the time of concluding a contract	127
3.4. Conclusions	137
4. Acting under the false impression of reality	139
4.1. Lack of due diligence at the side of the declarant	144
4.1.1. The mechanism of standard terms incorporation – a specific model of protection by information	149
4.1.2. The impact of website hyperlinks on the legal situation of the parties	149
4.2. Pre-contractual information obligations – regulating the distribution of risks related to information asymmetry	153
4.2.1. Protection by information – various protection models	155

4.2.2. Limiting the practical usefulness of the institution of error by imposition of the pre-contractual information duties on the entrepreneur	157
4.2.3. Individual protection mechanism as a sanction for non-compliance with information obligations – mistake and fraud	160
4.2.4. Sanctions for non-compliance with information obligations: Towards standardized protection	164
4.3. Disloyal behavior of the other party – anonymity, presumptions and trust in the online environment	168
4.3.1. <i>Error in persona</i> – the anonymity on the Internet	168
4.3.2. Error as to the obligation to pay – legitimate expectations of the consumer, information obligations under ACR and personal data as a payment	175
4.3.3. Surprise clauses – protection of trust through regulation on unfair terms	179
4.4. Excluding the possibility of a discrepancy between the reality and its image in the mind of the consumer	184
4.4.1. The legitimate expectations of the consumer as an interpretation mechanism adjusting the actual legal situation of the parties to the consumer’s misperception . .	184
4.4.2. Provisions on the seller’s liability for inconformity of goods and on defects of consent	187
4.5. Distortion of the declaration of will: New technologies as a medium of communication or as a messenger?	198
4.5.1. Reliability of information systems and automated electronic tools	200
4.5.2. Interference by third parties	210
4.6. Conclusions	213
5. Acting under pressure – threats and other ways to force person’s behavior	217
5.1. Threat coming from the entrepreneur – aggressive market practices	218
5.1.1. Premises of protection	218
5.1.2. Preventive function of unfair market practices regulations .	225
5.1.3. Amendments to Directive 2005/29: Implementation of individual protection instruments	238
5.2. Threats coming from a third party	243

5.3. Threats coming from the person traditionally considered as a weaker party	248
5.3.1. The threat of taking actions aimed at influencing entrepreneur's reputation	251
5.3.2. Threatening with exercising one's unilateral right in order to force a specific behavior of the entrepreneur	259
5.3.3. Threat of taking actions before supervisory authorities	260
5.4. Conclusions	260
6. Declaration of will caused by the abuse of special circumstances on the part of the declarant – methods of regulation	263
6.1. Abusing the circumstances of the declarant in the absence of a gross disproportion of benefits	270
6.2. Exploitation of the state of necessity, inefficiency or inexperience – towards broader interpretation	271
6.3. Gross disproportion of benefits – problematic assessment of the equivalence and postulates to take into account not only the main performances of the parties	275
6.4. New context and effects of asymmetry between subjects of civil law – alternative protection mechanisms	278
6.4.1. An attempt to use the institution of exploitation to achieve a new goal. A case study	279
6.4.2. Exploitation of the weaker party by imposing abusive clauses – supplement and <i>lex specialis</i> to the institution of exploitation	282
6.4.3. A model of the regulatory reaction to the abuse of information asymmetry by an entrepreneur – an example of consumer credit framework	289
6.4.4. The stronger entity exploits its position on a given market in order to impose onerous contract terms	291
6.4.5. The payment with data model – proportionality evaluation dilemmas	291
6.4.6. Exercising pressure or exploiting a particular weakness of the consumer in order to persuade him to conclude a contract – chosen market practices in consumer e-commerce	293
6.5. Choosing a protection model – a new defect of consent or a standardized control tool?	303

Conclusions	307
From protecting the autonomy of will to striving for equal opportunities in B2C relations	307
Influence of the specificity of the Internet on the adequacy of regulation of the effects of actions performed by a person incapable of submitting a declaration of will by themselves	309
Deciding on the legal effects of messages which appear to be a declaration of will	311
Misperceptions of reality – reducing the risk of error	312
Acting under pressure exerted by another person – interplay between the status of the person formulating a threat and the protection mechanism	316
Exploitation – should this become a traditional defect of consent? . .	317
Bibliography	319