

Legal Aspects of Invoking the Exception of Default in the Insurance Contract

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ABSTRACT

In this paper, we will try to clarify the possibility of invoking the exception of non-performance in the insurance contract, which is a synallagmatic contract, but which presents a series of particularities that call into question the simultaneous performance of the contracting parties' obligations. Because of the specific nature of the insurance contract, the plea of non-performance of the contract is questionable, since the performances to which the contract gives rise are not simultaneous. Thus, the insured pays the insurance premium when the contract is concluded or in installments during performance, and the insurer pays the indemnity when the insured event occurs or is discharged if it does not occur. This obligation to pay the insurance premium is correlative to the insurer's obligation to pay the indemnity, but it is prior to the latter, the insurer's performance being conditional on this prior operation. At the same time, in legal doctrine, the question has been raised as to whether there is still a correlation between the reciprocal obligations assumed by each of the parties, as long as the risk has not been realized. On the other hand, the exception of non-performance of the contract is based on the simultaneous performance of the obligations by the parties to a sign-signatory contract, and when they set a time limit for performance, the exception can no longer be invoked.

Keywords: allowance, performance of obligations, reciprocity, synallagmatic contract, simultaneity