

Workshop Studiekring 'Normatieve uitleg'

Good Faith concepts in U.S. Contract Law

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Historically: virtually meaningless

- 1776: Lord Mansfield “basis of all contracts and dealings”
- Next 200 years: only real estate title disputes & negotiable instruments
- 1993: First U.S. court case (NY) copyright dispute

Traditional U.S. Common Law Attitudes

- Courts will not write contract for parties
- Statute of Frauds
- Parole Evidence Rule
- Four Corners Principle

Law v. Equitable Principles

- Promisory Estoppel
- Implied Promise
- Custom & Usage
- Unconscionability

UCC Article 2: Sale of Goods

- *1:201(b) (2): “standards of fair dealing”*
- *1:304: “good faith in its performance and enforcement”*

Restatement of Contracts (Second)

- *“Every contract imposes on each party a duty of good faith its performance and enforcement”*

CISG

- *No direct good faith obligation*
- *Only “interpretation of the Convention” with respect to “good faith in international trade”*

How has it applied in practise?

- a favorite topic for scholars
(but their proposals fall far short of European concepts)
- Courts ignore it or mention it as subsidiary motivation
- Consensus it cannot be reduced to a definable set of norms

Recent Glimmers of Life?

- Comonos v. Sun Co. (PA Super.Ct. 2003)

- Restatement art. 205

- Doctrine of Necessary Implication

“implies a requirement necessitated by reason and justice without which the intend of the parties would be frustrated”

- NB: cannot overrule express terms

- Seidenberg v. Summit (NJ S.Ct. 2002)

implies an obligation not to do anything that would injure the right of the other party to receive the fruits of the contract

Questions?

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