A collectivist approach to contract regulation: a comparison of the legislation of Mexico and Brazil

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INTRODUCTION

Mexican and Brazilian contract law were once heavily influenced by classical Roman law, nineteenth century German legal theory and the French codification (Deffenti, 2011) (Sánchez-Cordero, 1981). Throughout most of their history, Mexican and Brazilian legislation shared notions of freedom of contract and a general non-interference in the parties' bargain. With the enactment of the Civil Code of 2002, Brazilian contract law departed from the liberal model of contractual relationships and gravitated towards a collectivist model that increases intervention in the realm of the parties (Deffenti, 2011, pp. 85-86). Meanwhile, despite the rooting of socialist ideas in other areas of the law (i.e. labor and employment), freedom of contract has remained the cornerstone of Mexican contractual legislation.[1]

The principles of contractual freedom and contract enforceability, which favors the individual over the totalitarian state, were designed to regulate the stable European society of the XIX century (Sánchez-Cordero, 1981, pp. 84-85). However, in the XXI century, Mexican and Brazilian societies are characterized by greater inequality and the existence of disparity between contracting parties. Both Nations have modified their legislation to address this realty; therefore, it is beneficial to understand the differences between the Mexican and the Brazilian contractual regulations. The comparison of the two regulatory schemes allows policy makers to determine if society benefits more by following Brazil's evolution toward a social model of all contractual regulation or by following Mexico in maintaining the private law institutions.

As reveled by the enactment of Brazil's Civil Code of 2002, contract law can be revamped to break from the liberal model and adopt legislation with a social function that allows the judiciary to promote the equilibrium between the contracting parties, protect the weaker entity and strive to maximize society's wellbeing (Benetti Timm, 2008, p.10). This note contrasts the new approach to contract regulation adopted by Brazil with Mexico's current contract legislation. It first presents an overview of the origins of the liberal model approach adopted Civil Law countries. Second, it explains the recent "socialization" of Brazil's contractual regulation. Third, it presents the contract law framework in Mexico (through the analysis of the Federal legislation which is representative of most of the State's contract legislations). Finally, it highlights the major similarities and difference between the legislations in both countries.

[1] *Código Civil Federal,* [Hereinafter C.C.F.] Article 1832 (1932) (which reads: "In civil contracts each party is bound in the manner and terms it appears they meant to be bound…")

I. UNDERSTANDING THE LIBERAL MODEL

A. *The adoption of the liberal model in the civil law systems*

In the liberal Germanic model, the obligation was seen as a duty in the form of a personal right that forms part of the property entitlements (*patrimonio)* to the detriment of another's. The obligation is then an enforceable duty existing between two persons. Being a bipolar legal entity, the other party can also demand the enforcement of the duty. This dualist approach balances the notion of a duty (*schuld)* and an enforceable responsibility *(haftung)* (Sánchez-Cordero, 1981, p. 77). This model allows the fulfillment of imperfect obligations as when a party fulfills an unenforceable duty (*schuld*) and is not allowed to seek redress upon realizing the unenforceability of the fulfilled duty.

In the liberal model, the balance of the contractual theory is bound to the principle of contractual freedom. In relation to the formation of the contract, the individuals enjoy a double freedom: Whether to contract and to determine the content of the agreement. The principle of contractual freedom leaves parties at freedom to enter into a contract and the liberty to establish its terms. Determining the reach of the contract is governed by this same principle and the only limitation is contained in the liberal axiom: everything that is not outlawed is allowed (Sánchez-Cordero, 1981, p. 77).

The principle of contractual freedom has its quintessence in mutual consent. The emphasis in the liberal model lays in the meeting of the minds, which is considered sufficient to create rights and duties (Sánchez-Cordero, 1981, pp. 80-81). Mutual consent is also the way to cancel or modify an agreement. After the meetings of the minds, the arising duties are enforceable against the contracting parties. This exercise was designed to be completely private and the government would only be involved in the interpretation of challenged clauses and the judicial enforcement of the agreement.

By favoring the autonomy of those contracting over the interests of the public, the contractual regulations vindicated the individual over the absolutist European States of the XIX century. This model was created to regulate contractual relations in a more egalitarian society where the parties feared government intervention more than abuses arising from their unequal bargaining power.

In our times, this model has led to many instances of abuse. As an example, through boiler plate agreements the drafting parties can exclude all the non-essential safeguards contained in the applicable civil codes. This allowed one contractual party to have regulatory power over the other and limits one side to accept or decline a disadvantageous agreement. However, under the liberal model these types of agreements are still enforceable as long as their purpose is legal and the parties will was not vitiated or coerced. This is not the XIX century scenario for which the liberal model was devised.

II. THE TRANSFORMATION OF BRAZIL'S CONTRACT LAW

Brazil's Constitution and federal legislation have undergone a major transformation aimed to further the 'constitucionalization' of institutions that historically pertained to the realm of private law (Deffenti, 2011, pp. 85-86). Due to this transformation of Brazil's legislation, a new model of contract regulation became necessary. Contract law in Brazil is now based on the theories of "solidarity" that propose the "socialization" or "institutionalization" of the contractual regulation (Sardas, 2008, pp. 17-19). A "social function" of the institutions of private law was originally proposed by legal thinkers

identified with the theory of "social law" like Durkheim, Duguit, Sallielles and Gurvitch. This theory is based on a functional understanding of the law as a tool that can transform society, increase solidarity and achieve social cohesion. (Benetti Timm , 2008, p.2).

This theory gives the law a role in setting parties on equal footing, which is achieved through the disparate treatment of unequal parties. These theories lead to the creation of separate codes that implement disparate treatment to employment contracts and protect consumer rights. However, all other contracts in Brazil were still regulated by legislation based on contractual freedom (Benetti Timm, 2008).

With the enactment of the Civil Code of 2002, Brazil's contractual law is now based on a social law theory. Through this new contractual legislation, the State assumed a new role in the economic activity, with the purpose of allowing economic growth while promoting its distribution and the protection of those with inferior bargaining power (Benetti Timm, 2008, p. 5). This transformation of the contractual regulation is in line with Brazils Constitution and other recently enacted federal legislation. [2]

This section of the note presents the major changes to the contractual legislation: (A) the enactment of a new Civil Code of 2002 and (B) of a Code for Consumer's Protection of 1990.

A. *The Civil Code of 2002*

In 2002, the Brazilian Congress approved a new Civil Code (*Novo Codigo Civil*) that revoked the Civil Code of 1916 and the Commercial Code of 1850. This new Civil Code entered into force in January 11, 2003 and transformed the regulation of obligations and contracts. (Deffenti, 2011, pp. 85-87). The Civil Code treats the social function of contracts as a limitation to contractual freedom (Benetti Timm, 2008, p. 5).

The 2002 Code created major modifications by: (a) mandating that contract regulation adheres to the principle of "social function" of the contract and limiting the parties' freedom of contract to the purpose and limits of the social function of contracta (em razão e nos limites da função social do contrato); (b) imposing a new good faith requirement mandating the parties to observe probity and good faith (*princípios de probidade e boa-fé*) in the conclusion and performance of contracts and; (c) and allowing greater judicial intervention in the judicial revision of contracts.

a. The social function of contracts in the Civil Code of 2002

The "social function" of the contract was established in article 421 of the New Civil Code. By transforming their nature and purpose, "contracts must have not only the ability to instrument the circulation of wealth, but also to functionalize legal rights and to act as a tool that conditions the principle of contractual freedom (Rosado de Aguiar, 2011, p. 24).[3] The new legislation no longer considers a contract to be a private instrument under the principle of individual freedom of contract but as a societal instrument to achieve social and economic goals.

The transition from the freedom of contract to the social function of contracts has gone as far as to understand the contract as a collective act regulated by the state of which the contracting parties are only some of the interested parties. This has led to the

[2] *Constituição Federal* [Hereinafter *Brazilian Constitution*], Articles 1 & 3.

[3] Decision N. 70002855328 of the Ninth Civil Court by J. Nereus Joseph Giacomolli, District of Porto Alegre of the Tribunal de Justicia del Estado de Rio Grande do Sul 15/10/2003.

understanding that the "social function of contracts has the purpose of precluding the imposition of onerous and harmful clauses to economically weaker parties."[4] This can go well beyond the prominence of the legal figure on "contractual injury" (lesão) which will cause the annulment of the contract unless the party favored agrees to the reduction of its profits.[5] Injury occurs when a person in urgent need, or inexperience, undertakes to provide manifestly disproportionate consideration to the value of provided by the pother party.

b. *Good faith requirement in contracts*

Complementing the understanding of contracts as a tool to achieve social goals, the new Civil Code requires contractual parties to observe, at the conclusion of the contract as well as in its implementation, the principles of probity and good faith.[6] This standard allows judges, not the parties, to decide whether or not a bargain is righteous enough to pass muster. The analysis will be an objective standard disregarding whether a party acted in bad faith or with the intention to cause harm (Rosado de Aguiar, 2011, p. 4). Further, the new contract legislation also mandates legal transactions to be interpreted according to the good faith and usages of the place of its conclusion.[7] By favoring localism over uniformity the judges receives even greater latitude to interpret contracts in a manner that will further social goals over the expressed will of the parties.

Finally, the civil code deems unlawful to exercise a right when it clearly exceeds the limits imposed by the economic or social order, good-faith, or morals.[8] This requirement includes in a single article the new principles directing contract law: the social function of contracts, good-faith in bargaining and a moral approach to the enforcement of contractual rights (Rosado de Aguiar, 2011, p. 12)

c. Revision of contracts

The judicial review of the terms bargained in the contracts is a central part of the social function theory. This type of government intervention is exactly the "evil" the nineteenth century liberal approach intended to avert through the principle of contractual freedom and the enforcement of the terms as agreed by the parties. Following the new social approach, the civil code now allows the judge, at the request of a party, to fix a term to the real value of the benefit in a contract of continuous performance where due to unforeseen an inevitable circumstances there is a disproportion between the benefits and the costs at the time of its execution[9]

The Civil Code also allows debtors to request the termination of a continuous contract where a party's obligation becomes too costly, with great advantage to the other due to the occurrence of extraordinary and unforeseen events.[10] This provision safeguards the interest of those whose bargain fail at the expense of those who successfully assume risks. The termination of the contract can be avoided if the defendant offers to equitably

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[4] Decision 70011602091 in the Civil appeal decision of the Fifteenth Civil judge Otavio Augusto de Freitas Barcellos of the Tribunal de Justicia del Estado de Rio Grande do Sul 02/05/2005.

[5] *Código Civil,* [Hereinafter C.C.] Article 157 (2002) (which reads: "Contractual obligations are presumed to be constituted at the place where the offeror resides".)

[6] C.C. Article 422, (which reads: "Contractors are required to keep, at the conclusion of the contract as well as in its implementation, the principles of probity and good faith.")

[7] C.C. Article 113.

[8] C.C. Article 187.

[9] C.C. Article 431.

[10] C.C. Article 478.

modify the conditions of the contract and a party can also request that their duty be reduced, or the mode of execution be changed in order to avoid being sa ddled with an excessive burden.[11]

Through the expansion of judicial intervention in contracts, Brazil's new legislation has subjected the fairness of the bargained agreement to judicial review and given the judiciary "the prerogative of revising contracts, adjusting the bargain and equilibrating the relation between the parties within the parameter of the rule of law and the function of the judiciary." [12]

B. *The Consumers Protection Code* of 1990

The Consumers Protection Code (*Código de Defesa do Consumidor)* is a federal code created by a Constitutional mandate. The legislation was enacted in 1990 and its application is limited to consumer transactions. The code is a law of public order and social interest that transcends private interests and parties are not free to contract the inapplicability of its provisions. [13] The protections offered by the code are obligatory, imperative, mandatory for the parties and judicially enforceable (Batista de Almeida, 2000, p.44).

The Consumer Protection Code applies only to consumers which are defined as every person purchasing products or services as the final user.[14] Therefore, this legislation does not directly affect all contractual relationships in Brazil. The purpose of the Consumer Code is to enact a dissimilar treatment of unequal parties by recognizing that consumers are in a disadvantageous situation when contracting with most businesses and service providers (Brito Filomeno, 1999, p. 26) The rights created by the Consumer Protection Code do not exclude other contractual rights or those derived from the analogous application of other laws, the general principles of law, customs or equity.[15] Therefore, consumer rights overlap with any existing rights in a consumer contract.

The Consumer Protection Code protects consumers against confusing or unclear contracts, requires that contract's terms be interpreted in the manner most favorable to the consumer and will even allow the consumer to withdraw, within a week, whenever the parties contracted outside of the place of business. [16] These rights are additional to new rights granted in the Civil Code. The code also makes null and void abusive contractual clauses when they establish obligations considered unfair, abusive, that lead the consumer to an unreasonable disadvantage, or are inconsistent with good faith or equity.[17] The code also disallows clauses that shift the burden of proof to the detriment of the consumer, stipulate the use of compulsory arbitration or allow a supplier to directly or indirectly

[11] C.C. Article 479 and 480.

[12] Decision 70007162027 decision of the Judge Luis Augusto Coelho Braga of the Tribunal de Justicia del Estado de Rio Grande do Sul 16/09/2003.

[13] *Código de Proteção e Defesa do Consumidor* [Hereinafter C.D.C.] Article 1 (1990), (which reads: "The Code prescribes standards for consumer protection as a public order and social interest, pursuant to art. 5, item XXXII, 170, section V of the Federal Constitution and Art. 48 of its Transitory Provisions.")

[14] C.D.C. article 2.

[15] C.D.C. article 46.

[16] C.D.C. articles 46, 47 and 49.

[17] C.D.C. article 51, §IV.

change the price unilaterally.[18] Finally, the code disallows provisions that negatively affect the contractual balance.[19]

The Consumers Protection Code has a tittle dedicated to the protection of the consumer through judicial processes in which the legislature included detailed procedures for class action suits for individual damages.[20] Although this note is analyzing the code's role in transforming contract regulation, it is necessary to cover this remedy because "even though these rules are set forth in the Consumer Code, the class proceeding embodied in this piece of legislation is "trans-substantive" in character and applicable to every kind of group right amenable to class litigation." (Gidi, 2003). This modification is particularly important to the development of contractual regulation as it has allowed class actions to be "brought against … private corporations, in order to curb the abusive or deceptive clauses in adhesion contracts." (Gidi, 2003).

III. MEXICO'S CONTRACT REGULATION

The institutions of Mexican private law have been losing ground since the enactment of the current Federal Constitution in 1917. A product of a social revolution and the first such document in history to set out social rights, (serving as a model for the Weimar Constitution of 1919 and the Russian Constitution of 1918) the Mexican Constitution transformed several areas of the civil law like the regulation of property and the regulation of employment agreements.

A. The Federal Civil Code of 1928

The liberal principles of private law have also receded since the enactment of the Federal Civil Code of 1928. This code is no longer purely based in the liberal model of the nineteenth century. The rules concerning property rights, the existence of objective liability and the establishment of abuse of rights, were all product of the socializing trend left by the Mexican Revolution.[21] The Civil Code Drafting Commission underscored its social spirit, by declaring its purpose to be "above all, seeking the root of the Civil Code yearnings for economic emancipation of the working classes that drove our last social revolution and crystallized in Articles 27, 28 and 123 of the Federal Constitution of 1917." (Garcia Tellez, 1932, p. 39).

While there were numerous changes in Mexico's laws, the influence of the principle of contractual freedom was not diminished in the civil code. Instead, Congress partitioned the legislation and created a federal employment code which regulates all employment contracts based on socialist principles and a still liberal civil code that regulates all other contracts. With the exception of employment agreements, Mexico's contacts are still regulated by a product of liberalism: the principle of freedom of contract (Sánchez-Cordero, 1981, pp. 82-83).

[18] C.D.C. article 51, §§VI, VII, X.
[19] C.D.C. article 51, §§XVI, VII, X.
[20] C.D.C. tittle III.
[21] C.C.F. Articles 1913 and 830 (stating modifications in property rights and the existence of objective liability).

B. The Federal Consumer Protection Law

In Mexico the Consumers Protection Law (*LeyFederal de Proteción al Consumidor)* was enacted in 1990 and its application is limited to consumer transactions.[22] The Consumer Protection Code applies only to consumers which are defined as every person purchasing products or services as the final user.[23] Therefore, this legislation does not affect all contractual relationships. This law was intended to give consumers legal certainty and transparency in their commercial contracts with suppliers of goods and services without redefining contracts, changing the burden of proof or offering special judicial review.

Instead of subjecting consumer contracts to greater judicial scrutiny, the Federal Consumer Protection Law requires certain types of contracts to be registered when they are prone to impair the consumers' rights. [24] However, once duly registered with the Federal Attorney's Office of Consumers' (PROFECO) the clauses are binding and enforceable. Only with unregistered consumer contracts are the unfair or inequitable provisions non-binding and unenforceable.[25]

Although the Federal Consumer Protection Law is deemed to be of public order and social interest and could afford greater protections, it does not create judicial remedies for consumers. According to this legislation, consumers must have: access to administrative instances, a forum to defend their rights and access to mechanisms for solving disputes.[26] However, the code does not grant consumers greater access to judicial review, create procedural advantages or shift the burden of proof at trail.

The Federal Consumer Protection Law mandates mediation procedures and promotes optional arbitration as the appropriate forum to solve consumer-related contractual disputes.[27] These two forms of alternative dispute resolution offer less benefits than a judicial process and can become an additional burden for those consumers with the means to go to trial. This law does not foresee or allow class actions in either the arbitration procedures or at trial; however, there is an existing Constitutional mandate to enact legislation allowing class actions to reach federal courts. At this point it is uncertain if the new legislation will include contractual disputes or only torts and other civil wrongs.[28]

IV. COMPARISON OF THE BRAZILIAN AND MEXICAN CONTRACTUAL LEGISLATIONS.

The principles behind the Mexican and Brazilian contract law had a common origin and throughout most of their history, Mexican and Brazilian legislation shared notions of freedom of contract and a general non-interference in the parties' bargain. (Deffenti, 2011,

[22] Ley Federal de Protección al Consumidor [Hereinafter L.F.P.C.] article 1, (1990), (which reads: "Contractual obligations are presumed to be constituted at the place where the offeror resides.")
[23] L.F.P.C. article 2.
[24] L.F.P.C. article 86.
[25] L.F.P.C. article 86 § IV.
[26] L.F.P.C. article 1.
[27] L.F.P.C. articles 111 and 117.
[28] *See,* amendment to article 17 of the Constitution published in Mexico's Official Gazette of the Federation (Diario Oficial de la Federación) on July 29, 2010 mandating that ("Congress shall issue the laws that regulate collective actions. Said laws shall determine the fields of application, the judicial procedures, and the mechanisms for damage recovery. The federal judges shall have exclusive jurisdiction over these procedures and mechanisms.")

pp. 85-86). Due to the changes brought by the enactment of the Federal Constitution of 1988, the Consumer Protection Code of 1990 and the Civil Code of 2002, Brazilian contract law has departed from the liberal model of contractual relationships and now treats contracts as implements designed to serve societal functions. (Deffenti, 2011, pp. 85-86). Like Mexico, Brazil regulates employment agreements through specialized legislation and not through the ordinary contractual legislation. In contractual maters, Brazilian consumers have even greater rights, through specific legislation, than those afforded by the Civil Code. As a result of the aforementioned modifications, contract law in Brazil is now based in the theories of solidarity that advance the socialization or constitutionalization of contractual regulation.

Mexican institutions of private law have been losing ground since the enactment of the Federal Constitution of 1917 and the Federal Civil Code of 1928. Mexico's Civil Code is no longer purely liberal; however, with the exception of employment agreements, contracts in Mexico are still regulated by the principle of freedom of contract. Consumers have some additional protection in Mexico through the enactment of the Federal Consumer Protection Law in 1990, but the legislation did not create substantial modifications to the contractual regulation.

Through the analysis of their contractual regulation, this note highlights the following differences between Mexican and Brazilian contractual regulation: (A) the different understanding of the nature or function of contracts, (B) the different extent of judicial intervention in contracts (C) the different rights in consumer related contracts, (E) and the existence of class action litigation for contract disputes.

A. The nature or function of contracts

Through its recent transformation, the contractual regulation in Brazil now promotes social goals and limits the principle of contractual freedom. Instead of the parties' liberty to contract and determine the bargain, Brazil's contract regulation adheres to the principle of the "social function" of contracts (Sardas, 2008). [29] This has increased the good faith requirements by mandating that the parties observe probity and good faith in the conclusion and performance of contracts. (Rosado de Aguiar, 2011, p. 26). The regulation also deems unlawful to exercise a right when it clearly exceeds the limits imposed by the economic or social order, good-faith, or morals.[30]

In contrast to the modifications in Brazil, the contractual regulation in Mexico considers contracts to be private instruments regulated by the principle of freedom of contract. Thus, to form a contract all that is required is the consent of the parties to something that may be matter of a contract.[31] If the matter is legal, contracts are only invalidated when there is a defect in the consent of a party. [32] In Mexico, mere consent to a contract binds the parties to its terms according to goof faith, costumes and the law. [33] This nature of contracts is the major distinction between Mexican and Brazilian contractual regulation.

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[29] Decision N. 70002855328 of the Ninth Civil Court by J. Nereus Joseph Giacomolli District of Porto Alegre 15/10/2003

[30] C.C. article 187.

[31] C.C. article 1794

[32] C.C. article 1795

[33] C.C. article 1796

B. Judicial intervention in the contractual relation

As part of enacting the social function theory in Brazil, the judiciary reviews the terms in contracts beyond the consent of the parties and the legality of the matter contracted. In Brazil, the judiciary now has the prerogative of revising contracts and is allowed to equilibrate the bargain.[34] In some situations, the new legislation allows judges to review contracts and fix stipulations to the real value of the benefit in order to avoid an unfair disparity between the benefits and the costs at the time of the contracts execution.[35]

Since the contract in Mexico is a private instruments regulated by the principle of freedom of contract, judges do not intervene to balance the bargain even if trough time the agreement becomes burdensome for one of the parties. In Mexico when a contract is perfected through the consent of the parties it binds them and its terms are enforceable within the legal framework. [36] Although the parties in Mexico are bound in accordance to goof faith, costumes and the law, any legal stipulation that was freely agreed upon will be enforced as it was understood and accepted by the parties. [37]

The difference in the level of judicial involvement in the contractual relations in Mexico and Brazil is a direct product of the different theories of the nature of contracts. Since Brazil considers contract to have a social function, the consent of the parties is not the only reviewable issue. Brazilian judges can review contracts in order to protect societal interests. In Mexico the judges are greatly limited by the principle of the freedom to contract as governmental involvement is exactly what the liberal model is designed to avoid. The different involvement of judges in reviewing contracts is the direct consequence of following different theories of the nature and purposes of contracts.

C. Consumer rights

Through specialized legislation, the Brazilian the Brazilian consumers received additional protection. [38] The Consumer Protection Code offers safeguards for consumers who are at a disadvantage when contracting with businesses and service providers. The judicially enforceable protections overlap with any other contractual rights (Batista de Almeida, 2000, pp.44-45). [39] Contract terms in Brazil are interpreted in the manner most favorable to the consumer and any abusive contract clause are null and void. [40] The code also disallows clauses that shift the burden of proof, bind the consumer to arbitration or provisions that negatively affect the contractual balance. [41]

In Mexico the Consumers Protection Law regulates consumer transactions; however, this legislation does not offer similar guarantees in consumer contracts. Further, instead of creating substantive rights or allowing a greater involvement of the courts, the law offers protection trough the involvement of a federal agency. This law does not create

[34] Decision 70007162027 decision of the Judge Luis Augusto Coelho Braga of the Tribunal de Justicia del Estado de Rio Grande do Sul, 16/09/2003
[35] C.C. article 317
[36] C.C. article 1795
[37] C.C article 1796.
[38] C.D.C. article 1.
[39] C.D.C. article 7
[40] C.D.C. article 51 § IV.
[41] C.D.C. article 47, 51 and 51§§ VI, VII, X and XVI.

new judicial remedies for consumer and instead channels consumer-related controversies to mandatory mediation with a federal administrative agency.[42]

E. Class actions.

The Brazilian Consumers Protection Code has enacted judicial procedures allowing class action claims for individual damages.[43] This modification has empowered consumers to go to court *en masse* against private business and corporations and is the strongest remedy against generalized abuse in consumer contracts." (Gidi, 2003, p.332).

Unlike Brazil, Mexico's consumer protection law does not allow class actions in either the arbitration procedures or at trial. After a recent Constitutional modification, there is a constitutional mandate to enact legislation allowing class actions to reach federal courts but this won't necessarily be available for contractual disputes.[44]

V. CONCLUSION

Despite a common origin, Mexican and Brazilian contractual legislations are now very different. While Brazilian law has departed from the liberal model and gravitated towards a collectivist model, Mexican contractual legislation still adheres to the freedom of contract principle and the liberal model. The different understanding of the function and origin of contracts and the greater expansion of consumer rights in Brazil have broadened the differences between the two countries' contractual law. Understanding these differences is of great importance for any entity contracting in both nations as well as for anyone proposing modifications to the existing contract regulation in these Latin American nations.

[42] L.F.P.C. articles 111 and 117.
[43] C.D.C. tittle 3.
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