

teoría & derecho

REVISTA DE PENSAMIENTO JURÍDICO

LA IGNORANCIA DE LA LEY NO EXCUSA DE SU CUMPLIMIENTO

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La ignorancia de la ley no excusa de su cumplimiento

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Directed by Jesús Delgado and Manuel Atienza

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IGNORANTIA LEGIS AND LEGAL CERTAINTY

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ABSTRACT

This paper revolves on the principle *ignorantia legis non excusat* as a challenge to the value of legal certainty. This principle commits us to accept that norms will be *prima facie* enforced or have effects no matter if ignored by its addressees or by those in whose interests they will have an impact. Thus, if we want the legal practice to meet the requirements of a Constitutional Rule of Law state, we should necessarily conclude that Law should meet certain conditions for the purposes of making its knowledge available to everybody. A less formalist understanding of the value of legal certainty might eventually be the answer to this challenge.

KEY WORDS

Ignorantia legis, Legal certainty, Predictability, Formalism, Rule of Law.

IGNORANCE OF THE LAW AND DEFAULT RULES

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ABSTRACT

This paper deals with the relationship between the rule *ignorantia legis non excusat* and the default rules. The author addresses the meaning of that ancient rule, the concept of default rules, its purpose in the legal system and some of the general issues raised by them. Furthermore, she explores the application of the rule in accordance with the premise by which the ignorance of the law does not excuse its obedience to three specific institutions primarily configured through default rules: the contractual norms, the matrimonial system and the intestacy statute.

KEY WORDS

Ignorance of the law, Default rules, Purposes, Contractual defaults, Marriage defaults, Inheritance defaults.

RULE OF LAW AND IGNORANCE OF LAW. ON THE PRINCIPLE *IGNORANTIA LEGIS
NON EXCUSAT*

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ABSTRACT

The principle *ignorantia legis non excusat* is generally recognized in Western legal systems though its justification is far from clear. This work recalls the various attempts to justify this principle, including the very negation of its rationale, and proposes an analysis that shows the limited scope of the principle in current legal order and, in these terms, its reasonable justification.

KEYWORDS

Ignorance of the Law, Legal security, Justice

IGNORANCE OF THE LAW EXCUSES NO ONE (BUT SOMETIMES ACTUALLY IT DOES)

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ABSTRACT

Ignorance of the law excuses no one is one of the most recurrent legal aphorisms. But does it remain good law? We argue in this paper that to ascertain the normative value of «ignorance of the law excuses no one» requires going beyond doctrinal rhetoric, and in particular, setting aside the fictions, meta-fictions and assumptions on the basis of which a full assessment of the real value of the aphorism, which should take seriously the complexity of the legal system, is frequently avoided. We start by dissecting the structure and effects of the paradigmatic types of legal norms. We then consider what should be understood by subjective ignorance of the law, and what implications should be drawn when ignorance is actually ascertained. We conclude that the fact that «ignorance of the law excuses no one» is enshrined in Section 6.1 of the Spanish Civil Code does not make the aphorism less indeterminate and, consequently, less irrelevant in actual legal practice. The same conclusion should be extended to the reference that can be found in the same Section of the Code to errors in law and in fact, and to their normative implications. Moreover, the framework regulation of nullity and its exceptions, contained in Section 6.3 of the Spanish Civil Code, does not alter the specific effects that are to be assigned to ignorance of the law according to specific legal provisions.

KEY WORDS

Ignorance of the law, Theory of legal norms, Binding character and effectiveness of legal norms, Errors in law and in fact, Nullity: rule and exceptions.

PUBLIC REASON AND DUTY OF CIVILITY: THE MORAL AND POLITICAL
JUSTIFICATION OF THE PRINCIPLE *IGNORANTIA IURIS NON EXCUSAT*

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ABSTRACT

The essay searches for a particular reason to justify the old principle *ignorantia iuris non excusat* within the framework of a democratic and constitutional state. It assumes that John Rawls' political philosophy provides one of the most coherent explanations of this framework. Hence, it examines some crucial Rawlsian concepts: the «pragmatic» starting point, the fact of pluralism, the public reason approach and the duty of civility. It concludes that these concepts justify a constraint on the kind of arguments a citizen may rely on in any social conflict: we must use relevant and legitimate reasons, and exclude reasons coming from our conception of the good. Rawls identifies this set of public arguments with «fair terms of cooperation», norms and rules enacted by the political procedure. It means every citizen must show a degree of caution and vigilance, and search for enough information on the content of law. The final section of the article deals with the problems related to the content and scope of this duty.

KEY WORDS

Pluralism, Public reason, Duty of civility, Duty of information, Mistake in law.

THE IGNORANCE OF THE UNLIMITED LIABILITY PRINCIPLE AND ITS STRICT APPLICATION TO THE MORTGAGE DEBTOR IN A CRISIS' CONTEXT: IS IT A LEGAL AND FAIR SOLUTION?

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ABSTRACT

In this paper we analyse some of the explanations about the ignorance of the law rule, with the scope to connect it with the so-called «eviction problem». Such research opens many questions and it also leads us to the conclusion that the strict application of article 1.911 of the Civil Code to all kind of mortgage debtors is unfair. Therefore, we explore some possibilities that might allow us to find a solution to the described situation. Specifically, we will study the use of the good faith and the abuse of rights principles by the Courts in order to reject the foreclosure proceedings when the mortgaged good has already been sold to the creditor (bank) for an amount that does not cover the total owed sum.

KEYWORDS

Ignorance of the law, Justice, Unlimited liability, Eviction; Foreclosure; Good faith; abuse of the law

IGNORANCE OF THE LAW, MISTAKE AND JUDICIAL PROTECTION OF
CONSUMER'S RIGHTS: THE PUZZLE OF COLLECTIVE ACTIONS IN THE CODE OF
CIVIL PROCEDURE

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ABSTRACT

This paper analyses the role of the ignorance of the law and the mistake of law or of fact in the context of Consumer collective redress. In essence, Consumer law is designed to protect the rights and interests of the weakest party, i.e. consumers and users. Nevertheless, when access to justice of consumers and users is exercised via collective actions launched by consumers and users associations (art. 11 of the Spanish Code of Civil Procedure), the fragmented procedural and substantive legal framework may lead to cases in which even the fundamental rights of consumers and users considered individually —access to justice or due process— could be violated due to the application of the *res judicata* effect or the *lis pendens* reply.

KEY WORDS

Ignorance of the law, Mistake of law, Mistake of fact, Consumer law

IGNORANCE OF LAW, ERROR OF LAW AND DUTIES CONSUMER INFORMATION

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ABSTRACT

It is difficult to identify a direct relationship between the principle that «ignorance of the law does not excuse compliance» and the duties of consumer information laws impose generically for the government and specificity entrepreneurs and professionals. But such taxation could be seen as a positive manifestation the duty of those to reduce the level of ignorance of the rules by citizens as consumers and users. However, If we start from the basis that the error of the law is a manifestation of that principle, and it is assumed that contractually error of law is identified with the error of consent, then the relationship between these issues appears more clarity.

KEY WORDS

Ignorance of the law, Error of law, Duties of information, Error in the contractual consent, Ineffectiveness

THE IGNORANCE OF THE LAW OF THE NOTARY: SPECIFICATIONS AND LEGAL CONSEQUENCES

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ABSTRACT

Spanish Law envisages a genus of notarial liability in case of inexcusable ignorance of the Law, which, conversely, means that it is recognized *de facto* the existence of a sphere of «excusable ignorance» of the notary. This regulation may be seen as inadmissible if we consider both the excellent training of the Notaries as the fact that they are public officials and, consequently, have the duty to know the Law. However, with the aim to avoid this hurdle, scholars and Courts have carried out a strict interpretation of the rule, consisting on linking the waiver of liability of the notary to the existence of a question of law particularly controversial, contentious and complex.

KEY WORDS

Ignorance of Law, Mistake, Notaries, Tort Law.

THE DEBATE ABOUT POLITICAL LIBERALISM: TWO OPINIONS

Tomás S. Vives Antón y Manuel Jiménez Redondo

ABSTRACT

John Rawls' kantian conception of Justice «political, not metaphisica» is here reexamined by T.S Vives and M. Jiménez Redondo, concluding both in a coincident partial appraisal of their view on liberalism. The sole meaningful difference between these two authors concerns justification. For professor Vives, assesing the problem from a wittgensteinian approach, when something is valued as fair/just by the common sense of pluralistic democracies it cannot be matter of a subsequent justification. However Prof. Jiménez Redondo states that from the fact of pluralism should follow a categorical justification (in kantian terms). But it's not clear if that difference between the two professors is merely conceptual or only emphatical.

KEY WORDS

Common sense of justice, Veil of ignorance, Impartiality, Envy, Social cooperation, Basic liberties, Liberalism, Libertarianism, Communitarism, Equality, Equalitarism, Primary goods

CRIMINAL POLICY OF THE PRESENT CONTINUOUS

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ABSTRACT

The progressive acceleration of Criminal Law in our State is much more than a difficulty in interpreting in a coherent way the whole Penal System: it involves, by its peculiar characteristics and the type of society it is addressed, a conception of time that, dynamite any possibility of meditation on the legislative products. The Criminal Policy, in this sense, becomes a vain attempt to shed light on a continuous and blind exercise of the politic power.

KEY WORDS

Reform of the Penal Code, Mass media, Criminal Policy, Historical thinking, Minors, Terrorism.

THE SUSPENSION OF THE ENFORCEMENT OF CUSTODIAL PENALTIES IN THE
ORGANIC LAW 1/2015

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ABSTRACT

The Organic Law 1/2015 of 30 March came into force on 1st July 2015, amending the Organic Law 10/1995 of 23 November of the Criminal Code. This legal standard, among other significant amendments in the criminal law, has deeply changed the institution of the enforcement of custodial penalties' derogation. Consequently, we consider of particular interest to conduct an analysis of those changes. In this study, both, the new forms of replacement as well as those ones that the legislator has not seen fit to change will be examined with the aim to have a complete view of this institution.

KEY WORDS

Probation, Custodial Punishment, Penology, Expulsion, Foreigners, Crime.

STUDY ON THE LEGALITY OF AERIAL SPRAYING OF ILLICIT CROPS IN SITUATIONS OF ARMED CONFLICT: A LOOK INTO THE SITUATION IN COLOMBIA

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ABSTRACT

On 14 May 2015, after more than thirty years of aerial spraying of illicit crops in large areas of the territory of Colombia, the National Drug Council decreed that from 1 October 2015 such aerial spraying will not be continued. This work is a study on the lawfulness of such operations under international humanitarian Law, in light of the fact that they can be directed against (i) those individuals growing illicit crops; (ii) the illegal crops as such; or (iii) non-protected persons or objects located in or adjacent to illicit crops.

KEYWORDS

Aerial Spraying, Illicit crops, Glyphosate, Colombia, International humanitarian Law, Protected persons, Protected objects, Military objective, Proportionality, Collateral damage, Military advantage.