Análise econômica dos contratos bancários: reflexos das ações revisionais no comportamento do mercado e na instabilidade do capital financeiro [

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text (article)

Analítica

More than just a legal transaction, the contract allows the instrumentalization of trade in an efficient way, reducing the uncertainties arising from the asymmetry of information between the parties. In other words, the contract optimizes the allocation of resources in a logical and rational way, avoiding market failures. The relativization of the pacta sunt servanda principle through the interference of the judiciary in private agreements has repercussions on the behavior of economic agents, increasing the instability of financial capital and generating negative externalities, making the social cost of a legitimate default superior to any private benefits expected by the claimant. The revision lawsuits increase uncertainty and socialize the cost of default by generating a collective loss for consumers. In this sense, the Economic Analysis of the Law demonstrates that the claim to do justice in the concrete case, through the revision of supposedly abusive contractual clauses, reinforces the expectation of agents in Brazil, that failure to comply with agreements effectively compensates. The result is an increase in default rates and, logically, in interest rates, leading to instability in the money market and financial capital, one of the main factors responsible for balancing savings and investment in the country. The conclusion, therefore, is that judicial decisions should not substitute for the will of the parties, especially when they are derived from deliberate and predictable choices, otherwise the economic system will be destabilized and the resource allocation rationality will be affected
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