

### How to cite this article:

Yáñez Rebolledo, M. P. (2023). Estudio sobre la nueva teoría de las obligaciones y los contratos. *MLS Law and International Politics*, 2(2), 6-18. doi: 10.58747/mlslip.v2i2.2190.

## STUDY ON THE NEW THEORY OF OBLIGATIONS AND CONTRACTS

María Paz Yáñez Rebolledo

Miguel de Cervantes University (Chile)

[pazyre@gmail.com](mailto:pazyre@gmail.com) - <https://orcid.org/0009-0002-6754-0864>

**Abstract.** The study on the new theory of obligations and contracts, arising from the reform of the French civil code in 2016, aims to analyze new paradigms to propose innovations in Chilean law. This research had a qualitative, exploratory approach. The methods used were legal dogmatics, analysis-synthesis and inductive method. The technique used was academic documentary theory, gathering information from books, theses and articles of legal relevance. The result obtained answered the research question "Do the international principles and norms studied have an impact on Chilean legislation?", these produce the birth of the new theory of obligations and contracts. Some examples are mentioned, such as contractual remedies, breach of contract exception and theory of unforeseeability. This work considered the reform of the French civil code on obligations and contracts, the Vienna Convention on contract law, the principles of European contract law and the Latin American principles of contract law. In addition, from the perspective of the Chilean market economy, it is related to the changes, product of the social crisis, pandemic, new contract models in the economy, information technology and smart contracts. The main contribution of this study is to invite the Chilean legal world to replicate the actions of countries such as France, to create legal modifications in legislation that could be dictated and applied in Chile in the near future.

**Key words:** French civil code, obligations, contracts.

## ESTUDIO SOBRE LA NUEVA TEORÍA DE LAS OBLIGACIONES Y LOS CONTRATOS

**Resumen.** El estudio sobre la nueva teoría de las obligaciones y los contratos, surgida a partir de la reforma del código civil francés del año 2016, tiene como objetivo analizar nuevos paradigmas para proponer innovaciones en la legislación chilena. Esta investigación tuvo un enfoque cualitativo, de carácter exploratorio. Los métodos utilizados fueron la dogmática jurídica, análisis-síntesis y método inductivo. La técnica que se utilizó fue teórica documental académica, recopilando información de libros, tesis y artículos de relevancia jurídica. El resultado obtenido respondió a la pregunta de investigación ¿los principios y las normas internacionales estudiadas, impactan la legislación chilena?, estos producen el nacimiento de la nueva teoría de las obligaciones y los contratos. Se mencionan algunos ejemplos, como los remedios contractuales, excepción de contrato no cumplido y teoría de la imprevisión. Este trabajo consideró la reforma del código civil francés en materia de obligaciones y contratos, la convención de Viena de los derechos de los contratos, los principios del derecho contractual europeo y los principios latinoamericanos de los derechos de los contratos. Además, desde la perspectiva de la economía de mercado chileno, se relaciona con los cambios, producto de la crisis social, pandemia, de los nuevos modelos de contratos en la economía, tecnología de la información y los contratos inteligentes. El principal aporte de este

estudio consiste en invitar al mundo jurídico chileno a replicar las acciones de los países como Francia, a crear modificaciones legales en la legislación y pudieran dictarse y aplicarse en Chile, en un futuro próximo.

**Palabras clave:** Código civil francés, obligaciones, contratos.

## Introduction

A number of changes have taken place in international law with respect to the law of obligations and contracts. These changes are reflected in this study on the new theory of obligations and contracts, arising from the 2016 reform of the French civil code, which was considered a convenient and relevant study for the updating of the Chilean legal standard.

First, the French Civil Code of 1804, the reform of the French Civil Code of 2016 through Ordinance 2016-131 of February 10, 2016, the United Nations Convention on Contracts for the International Sale of Goods, the principles of European contract law and the Latin American principles of contract law were studied, whose starting point was the principle of good faith, autonomy of the will, binding force and the relative effect of contracts, to then analyze new paradigms.

This study was an original and pertinent project, since there have been no proposals for major legal reforms or modifications on the subject in Chile. In France, with the reform of the civil code in 1804, new paradigms were included, such as, for example, the exception of unfulfilled contracts or the greater intervention of the judge in contracts.

Chile is going through an excellent time to review its civil and commercial legislation. After important reforms in criminal, family and labor procedural matters, it is necessary to propose a new legislation according to the times, convenient as a consequence of social crises, changes in the economy, changes in technology, the pandemic and smart contracts; therefore, it is a timely study.

Indeed, this study is appropriate, since international legal figures that exist in doctrine and are widely accepted by the Chilean legal community were studied, but since they are not incorporated into legislation, they lack practical application for those who see in them a possible legal solution to be applied by the courts of justice to their cases.

Also, this study is significant, since it benefits the legal community, law professors, legal researchers, lawyers, judges, legislators and, mainly, society and its citizens, since in the face of existing social changes, it will allow proposing a regulation for new legal figures that, to date, do not exist in Chilean legislation.

On the other hand, to achieve the purposes of the research, a qualitative, exploratory and non-experimental research approach was used, with legal research methods and documentary theoretical techniques. An analysis of principles, concepts, new relevant figures, doctrine, legislation and jurisprudence of international and national origin was carried out to structure this research.

The main contribution of this study consists of inviting the Chilean legal world to replicate the actions of countries such as France, to create legal modifications in legislation that could be dictated and applied in Chile in the near future. The result will provide legal solutions with a new model of law of obligations and contracts, proposed in this work for future studies, with great theoretical value, since it will generate new knowledge and new reforms. Innovating in law is a challenge, but this impulse is necessary to develop the proposed topic, create original knowledge, disseminate and thus produce a social benefit.

Therefore, it was concluded that studying this subject, proposing reforms and updating the legal model of the Chilean civil code is a transcendental justification for developing this important topic and thus enriching the legal literature.

Its antecedents are the reform of the French civil code, the Vienna convention on international sales contracts, the principles of European contract law and the development of Latin American principles of contract law.

This research hopes to have an impact on Chilean civil and commercial legislation, as it could encourage Chilean legal researchers to update the principles and create rules containing new paradigms, such as contractual remedies, force majeure, termination for breach, forced execution, the regulation of the theory of unforeseeability, among others, to be systematized and applied during the life of a contract. It could also serve as a model by incorporating the rule that accepts the reduction of the price by the obligee during the execution, including the process of conclusion of the contract, under cases of force majeure or fortuitous event, or change of circumstances. It is considered necessary to modernize the perspective and powers of the judge, providing new legal knowledge for them, allowing them to incorporate these reforms in their sentences.

The proposed categories were researched, during the period from the years 2015 to 2022, at the international and national level; the main books, codes, theses and articles of indexed journals, on the main civil and commercial matters.

From the reform of the French civil code, the new law of obligations and contracts was born. Savaux (2016) pointed out that this reform started with the "Catalá Project" (2006), on reform of the law of obligations and prescription and the "Terré Project" (2009) on contract law, civil liability and general regime of obligations and other. The author justified the change to make a civil code "more intelligible and predictable" (p.719), his aim being to increase legal certainty, strengthen the attractiveness of French law and ensure contractual justice. As a result, ordinance no. 2016-131 of February 10, 2016 was issued, which came into force on October 1, 2016.

In addition, Latin American doctrinarians developed their thesis on principles and rules of an innovative nature, which were analyzed as background to this research, called the Latin American principles of obligations and contracts.

Several international and national researches will be presented, as state of the art, in studies on the new theory of obligations and contracts. National and international theses and scientific articles from 2015 onwards were reviewed. The main countries where research and conference speeches were found were Argentina, Chile, Colombia, Ecuador, Spain, France, Mexico and Peru.

Of the international authors, Professor Savaux (2016) in the journal article "The New French Law of Obligations and Contracts", expressed the following: "Ordinance No. 2016-131 of February 10, 2016, has culminated a process of reform of the French law of obligations and contracts, which represents the biggest change in this area since the promulgation of the 1804 civil code" (p. 715). It proposes a challenge to legislations to update themselves in accordance with the French civil code or to enter into competition with other legal systems. Indeed, this author delivered a historical summary of the beginning of the reform, analyzed the new text of ordinance number 2016-131, dated February 10, 2016 and mentioned the new legal institutions that are regulated.

For his part, Cabrillac (2016) in his work "The New French Contract Law", addressed "the economic and social needs of contracts" (p. 59). The author shows the contractual organization and flexibility, the protection of the weaker party and the theory of

unforeseeability. Cabrillac proposed that the reform breaks with French legal tradition, allowing the judge to review the contract in case of imbalances.

Professor Felipe Tabares Cortes (2017) conducted a study on the reform of the French civil code. In his work, he noted: "The French executive issued ordinance No. 2016-131 of February 10, 2016 reforming the law of contracts and the regime and proof of obligations" (p. 155). The author describes the main axes of the reform of the French civil code, from motives, content, genesis and necessity of the reform, as well as the evolution of contract law and contract formation: conclusion, validity, sanctions, nullity and expiration. According to Tabares Cortes, this reform respects contract rights, but takes care of the legal traffic.

Ruiz, A., & Vargas, I. (Eds.). (2018). A synthesis of the international conferences on the updating of the law of obligations and contracts, incorporating topics of modernization of new rights and obligations with case law. In *Jornadas Internacionales sobre Actualización del Derecho de Obligaciones y Contratos*, May 31 and June 1, 2018, University of Murcia (pp. 1,051-1,084).

Professor Luis Tolosa Villabona (2017), in his article "De los principios del derecho obligacional y contractual contemporáneo", is devoted to the analysis of some essential hermeneutic principles that have a definite normative scope in the rational exercise of obligatory and contractual relations, including both contractual and extra-contractual ones, in a globalized world.

Furthermore, the author points out that these principles are fundamental in the legal framework to ensure balance and equity in economic relations. Its objective is to prevent abuses by powerful economic groups or by parties involved in the contractual or obligatory bond that occupy a dominant or preeminent position over the other party. It also advocates a real contractual balance that favors the protection of consumer rights throughout the economic cycle. All this is framed in a context of rational use of natural resources in an inclusive, supportive and humanized manner (Tolosa, 2017, p. 13).

Argentine lawyer Giménez Corte (2016) has written an article entitled "Autonomy of Will, Practices, Usages and Customs, and the Regime of International Contracts. From the old commercial and civil codes to the new Argentine civil and commercial code". This paper provides an example of the practices carried out in Argentina, its experience in the regulation of private law and how it can be applied in other countries. Giménez Corte (2016) proposes to analyze the regulation of international contracts in the commercial code and the civil code, and to compare this old legal regime with that proposed in the new Argentine civil and commercial code, which came into force in mid-2015 (p. 1).

As an example of the creation of new paradigms, there is the article by Opazo (2019) entitled "Algunas consideraciones en torno al contrato de transporte marítimo bajo régimen de conocimiento de embarque chileno desde la perspectiva del nuevo derecho de la contratación". The author, Mario Opazo (2019), expresses that "the so-called new contract law, mainly arising from the United Nations Convention on Contracts for the International Sale of Goods (CISG), has meant a change in the way of conceiving the contract, the breach and the way of structuring contractual remedies for breach" (p. 33).

Professor Lis Paula San Miguel Pradera (2016) has written about Latin American principles of contract law, noting that this article addresses the current status of such principles (p. 991).

On the other hand, Professor Ana María Quintana (2017), in her article entitled "The modernization of the law of obligations, an experience for Latin America", presents a reflection

on the progress made in Latin America in the modernization of legal systems in private law (p. 1).

The pandemic that began in 2020 has also had consequences on the rights and obligations established in the contracts. Ricardo Pazos Castro, PhD in civil law (2020), in his scientific article entitled "The response of the French law of obligations and contracts to the COVID-19 pandemic", analyzes how the pandemic has affected various aspects of social life, including contractual activity. The author presents the theory of unforeseeability and force majeure, and how they are applied in practical cases arising during the pandemic, such as tourism contracts, extensions of terms and expenses related to the lease of premises (p. 47).

Professor Jairo Cieza Mora, from Peru, in his article entitled "El Covid-19, el desequilibrio contractual y la excesiva onerosidad de la prestación" (2020), addresses the issue of the COVID-19 pandemic as an extraordinary and unforeseeable event. In this sense, the author argues that it is possible to apply the remedy of hardship. However, unlike other legal systems, Cieza Mora considers that "the first measure to be taken by the contracting parties is renegotiation, i.e., reaching an agreement that seeks to mitigate the harmful effects of the events that altered the original contractual equilibrium, which would be in line with the principle of good faith in the execution of contracts" (p. 41).

Professor Waldo Sobrino (2020) has written a text entitled "Contracts, neurosciences and artificial intelligence", which offers an innovative perspective related to the use of "smart contracts". The author suggests the need for an in-depth analysis of this issue in order to protect the most vulnerable. Sobrino proposes a protective look towards citizens, arguing that this issue should be addressed as part of the social changes and the impact of new technologies on civil law, especially with regard to the common law of contracts.

This work is complemented by the article by Rodrigo Momberg Uribe, Ph.D. (2015), entitled "La reforma al derecho de obligaciones y contratos en Francia. A preliminary analysis". The author examines the need, relevance and content of the reform of the law of obligations and contracts in commemoration of the 200th anniversary of the French civil code. In this study, the importance of researching, updating and modifying the Chilean rules on obligations and contracts is raised, given that the country's civil code has remained without significant changes since its enactment. The preparation of legal reforms in this area is suggested for Chile (p. 121).

In addition, González Lagos and Novani Correa (2016) conducted a thesis entitled "Some problems of termination for breach in contemporary contracting", which analyzes the proposal of the new contract law and its relevance in the context of uniform law (p. IV).

On the other hand, Maria Paz Levy (2018), in her dissertation for the degree of Bachelor of Laws and Social Sciences, addressed the topic "The new French law of obligations and contracts under Ordinance 2016-131 of February 10, 2016". In her conclusions, the author discussed various aspects, such as contractual remedies in general, the exception of unperformed contract, the contractual concept of force majeure, the new contractual remedies established in French law and the application of the law over time (Levy, 2018, p. 3).

In Chile, Professor Carlos Alcalde (2019) reviews a book written by the professors of the University of Chile, Hugo Cárdenas and Ricardo Reveco, which presents the legal tools available to the creditor for the satisfaction of its credit, i.e., contractual remedies. The author points out that the work begins with a doctrinal introduction, dealing with contractual liability in Chile and at a comparative level (hard-law and soft-law) (first part). Then, the issue of contractual remedies before the debtor's default (part two) and after the debtor's default (part three) is discussed. Finally, how these remedies are affected when the debtor is in insolvency (part four) is discussed (p. 923).

During 2019, Professors Iñigo de la Maza and Álvaro Vidal-Olivares conducted an analysis on the remedy of suspension of performance or exception of unfulfilled contract in Chile. In their summary, they emphasized that the factual assumption of this contractual remedy was examined, as well as its particular conditions. In addition, the effects of this figure and the relationship it has with other remedies for non-compliance were considered (De la Maza & Vidal, 2019, p. 1).

In addition, Professor Ramón Domínguez Águila (2020) wrote an article entitled "El incumplimiento recíproco en un contrato bilateral, la resolución del contrato y la excepción de contrato no cumplido". In this article, the author describes and analyzes recent Supreme Court case law that addresses the issue of the validity of the termination of a contract in cases of reciprocal breaches by the parties. In addition, it reviews the opinion of the national doctrine on the subject and exposes the majority position of this and of the jurisprudence, which recognizes the possibility of terminating a contract in cases of reciprocal breaches (Domínguez, 2020, p. 365).

In the development of this research, we have encountered cases of serendipity. The following can be mentioned as articles of interest: COVID-19 pandemic, force majeure and alteration of circumstances in contractual matters by Professors Varsi Rospigliosi, Rosenvald and Torres Maldonado (2020). These authors state that the declaration of a state of emergency due to the COVID-19 pandemic requires an analysis of the validity of contractual relations and how these may be affected by extraordinary, unforeseeable and irresistible events that prevent the performance of services. They also address the cases in which the alteration of circumstances may lead one of the parties to request the judge to compose the content of the agreed performance or to terminate the contract (Varsi et al., 2020, p. 29).

Professor Ricardo Pazos Ramos (2020) presented the paper "The response of the French law of obligations and contracts to the COVID-19 pandemic". This paper highlights that the French law of obligations and contracts has numerous institutions to deal with the difficulties that may arise, among which the theory of "unforeseeability" and force majeure stand out. However, in view of the limitations of the ordinary regime and in order to provide a quick solution to certain urgent problems, some extraordinary rules have been enacted. This paper explores both the general institutions and the exceptional measures adopted (Pazos, 2020, p. 49).

In relation to price reduction, Professor Pamela Prado López (2015) addressed the issue of "Quantification of price reduction in *quanti minoris action*". According to the author, in the context of national law and specifically in the Chilean civil code, there is no system of calculation applicable to the action of price reduction (p. 617). In spite of offering an exhaustive analysis of this issue, it should be noted that Chilean legislation does not regulate this subject.

Regarding default resolution and forced execution, Professor Claudia Mejías Alonzo (2016) conducted a critical analysis of the effects attributed to default resolution in her paper entitled "A critical review of the effects of default resolution and a proposed solution". The author questioned the consistency between retroactivity and the rules generally applied to this institution. According to Mejías (2016), there is a legal vacuum in this matter that could be addressed by applying civil law principles, in particular, unjust enrichment, to provide solutions in line with the resolution as a protection mechanism for the creditor affected by the default (p. 271).

On the other hand, José Maximiliano Rivera Restrepo (2017) wrote an original article entitled "La propuesta de modernización del código civil español en materia de obligaciones y contratos de la comisión general de codificación, sección civil, en lo que se refiere al derecho de opción del acreedor por incumplimiento contractual". In this study, the author analyzed the

Spanish proposal to modernize the civil code in relation to obligations and contracts, focusing on the right of option and examining how this proposal could eventually guide reforms in the Spanish law of obligations. Rivera Restrepo points out that there are two perspectives in the process of unification of European private law: the Anglo-Saxon and the continental view (p. 249).

In this way, the tension between the two perspectives will be addressed.

In the thesis of Dámaso García Undurraga (2020) entitled "Analysis of the theory of unforeseeability" of the Universidad Gabriela Mistral, it is mentioned that "Our civil code in general, and in matters of contracts, strongly follows in its current of inspiration the French civil code, a country that historically was reluctant to unforeseeability" (p. 6).

In an article written by Professor Fernando Hinestrosa (2020) on the theory of unforeseeability, the concept of revision or the way in which the judge intervenes in the contract due to a supervening imbalance is highlighted. The author states that "The problem lies in the tension between two basic principles of contract law: the firmness of the commitment and its intangibility, and the fairness of transactions or contractual justice. how can they be reconciled? The response has varied over time, depending on the strength of conflicting interests and social sensitivity" (Hinestrosa, 2020, p. 12).

On the other hand, in a study conducted by Jonathan Andrés Chaves Romero (2016) of the Catholic University of Colombia, entitled "Main risks between seller and buyer in the international sales contract according to international regulations: a study of the 1980 Vienna Convention on the international sales contract", it is mentioned that "The international sales contract for goods is the ideal instrument for commercial transactions between parties domiciled in different countries. Although it shares similarities with local commercial relations, in an international context it acquires particularities due to cultural diversity, educational and linguistic background, which influences the clauses of the contract" (Chaves Romero, 2016, p. 6).

Professor Eduardo Andrés Calderón Marengo (2017) entitled "Regulatory application of the international sale of goods" of the Universidad Centroamericana. This article analyzes five fundamental technical aspects of the international sale of goods through a critique of the 1980 United Nations Vienna Convention. According to the author, "The efforts made in recent decades to achieve the unification of the legal regime applicable to the international sale of goods in Europe and Latin America have been truly important and have advanced rapidly, taking into account the growth of trade and the elimination of borders in the exchange of goods and services" (Calderón Marengo, 2017, p. 57).

In 2020, Alvaro Vidal Olivares and Gonzalo Severin Fuster (editors and scientific coordinators) presented a work entitled "The harmonization of contract law in Latin America: Latin American principles of contract law", from a European law perspective.

Since the end of the 20th century, the harmonization of private law, especially in the area of contract law, has been a widely debated topic both in academia and on the institutional agenda of various international organizations. Notable examples worldwide include the work done by the United Nations Commission on International Trade Law (Uncitral) and the International Institute for the Unification of Private Law (Unidroit), which resulted in the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the Unidroit Principles of International Commercial Contracts (IPCC). At the regional level, the process of harmonization of private law in the European Union is considered the most relevant example (Vidal and Severino, 2020, p. 45).

In the study "Los principios latinoamericanos de derecho de los contratos: Nature, purposes and projections" conducted by Professor Momberg (2018), it is noted that these principles represent the most recent instrument of contract law at the regional level. In addition to the purposes commonly attributed to uniform or harmonized law instruments, the Principles can also serve functions such as promoting the study of comparative law in Latin America, making Latin American contract law visible in the context of comparative law studies, and promoting contract law reform in the region. The paper highlights a description of the context and history of Latin American principles of contract law (Momberg, 2018, p. 51).

In the article "An Overview of Latin American Principles of Contract Law," author Wilson (2018) presents findings on Latin American principles in areas such as contract rights, the notion of contract, formation, performance and breach (p. 351).

The contribution of Professors Pizarro, De la Maza and Vidal materialized in the publication of "Los Principios Latinoamericanos del Derecho de los Contratos" (Pizarro, 2018) and "Hacia un Derecho latinoamericano de los Contratos: Latin American principles of contract law" (De la Maza and Vidal, 2020).

The author María Ithurria (2021), in her article "Principios Latinoamericanos de Derecho de los Contratos: where is the Latin American?", published in the Blog Chileno de Derecho Comparado, in Revista Latin American Legal Studies, Volume 9 (2021), pages 295-299, criticizes Latin American principles. According to Ithurria, three problematic points are addressed: first, a methodological problem related to the countries represented is pointed out; then, a problem derived from a method that only considers rules, jurisprudence and doctrine is highlighted; finally, the lack of a synthesis that identifies the Latin American cultural identity is questioned (p. 295). Despite the criticisms, this study offers a new point of view on the subject.

Professors Jaime Alcalde Silva and José Miguel Embid Irujo (2018) wrote the book "La modernización del derecho mercantil. Studies on the occasion of the sesquicentennial of the commercial code of the republic of Chile (1865-2015)". This book has the participation of several relevant authors in the legal field and addresses issues related to research. It develops the history of the commercial code in Chile and lays the foundations for the study of a new commercial code through the study commission for a new commercial codification. This project is the result of a collaboration agreement signed between the Ministry of Justice and the University of Chile, whose objective is to compile and systematize, in the form of a bill, the provisions related to the matter that are currently scattered in different legal bodies, making the necessary adjustments (Alcalde Silva & Embid Irujo, 2018, p. 324).

With regard to obligations, there are numerous relevant legal theses and scientific articles. Within the time period reviewed, the work "La modernización del derecho de las obligaciones, una experiencia para Latinoamérica" by Ana María Quintana Cepeda, published in 2017, stands out.

## **Method**

This research used an exploratory and non-experimental qualitative research approach, with legal research methods and documentary theoretical technique. In order to know the theoretical legal context of the proposed topic, documents were collected from primary and secondary sources that included doctrine, jurisprudence and norms in a specific period, with correspondence of variables without intervention and categories to explain the study.



As for the methods used in this work, legal dogmatics, the systematic method, the method of analysis-synthesis and the inductive method were applied. In addition, independent study variables were categorized and ordered, such as the reform of the French civil code on obligations and contracts, the Vienna Convention on international sales and purchases, the principles of European contract law and the Latin American principles of contract law. These variables were related to the dependent categories of the civil code and the commercial code. The exegetical method was used to analyze the current norms, while hermeneutics and legal logic were used to explain the proposed theory and propose solutions through a legal-projective process.

As for the phases of the study, the research topic was delimited and focused solely on the reform of the French civil code on obligations and contracts, the Vienna Convention on international sales and purchases, the principles of European contract law and the Latin American principles of contract law. The problem statement was established with the objective of proposing new paradigms.

The methodological design, methods and techniques used to collect data were defined. Data obtained from various documentary sources were analyzed and interpreted. For data collection, a documentary research technique was used that included access to bibliographic databases, national and international libraries, digital research journals, books by relevant authors, legal scientific articles and theses.

The research adopted a theoretical approach using the analytical method to decompose the elements collected and to study and analyze them separately. Likewise, the research had a synthetic approach with the purpose of generating general propositions based on the results of the study.

In general, a historical framework was established delimiting the facts related to the reform of the French civil code since its enactment in 2016. The geographical framework focused mainly on Europe, specifically France, Latin America and its impact on Chile. The time frame of the study was defined from 2015 to 2022. The theoretical, conceptual, contextual and legal framework was also established.

According to the qualitative approach and the documentary theoretical techniques used in this legal research, it can be concluded that the modifications made by the countries mentioned in this article have provided a new perspective on the need for changes in international legislation. Therefore, it is imperative to make these updates to Chilean legislation, which will ultimately require an update of Chile's civil code and commercial code.

## **Results**

Consequently, Professors Savaux, Cabrillac and Tabares explained the need for the reform of the French civil code, which led to the emergence of the new law of obligations and contracts. Professor Mario Opazo Gonzalez explored the new contract law, which has arisen mainly from the United Nations Convention on Contracts for the International Sale of Goods, representing a competition for French law at the European level.

Professors Lis Paula San Miguel Pradera and Ana María Quintana, in their search for new paradigms, focused on the modernization of the law of obligations and contracts as an experience for Latin America. In addition, examples were found of the application of these new models of the new theory of obligation and contracts developed by professors Ricardo Pazos Castro and Jairo Cieza Mora.

Important Chilean authors explored in this research include María Paz Levy and professors Rodrigo Momberg Uribe, Carlos Alcalde Araya, Iñigo de la Maza, Álvaro Vidal-Olivares and Ramón Domínguez Águila.

Accordingly, Professors Carlos Pizarro Wilson, Iñigo de la Maza and Alvaro Vidal offer a proposal that seeks to inspire the necessary legal reforms based on Latin American principles of contract law and, in this way, update the Chilean civil code. However, in a later article, Professor María Jesús Ithurria reflected on and discussed the methodology and origin of the proposal presented by the professors, arguing that the cultural origin of these principles does not correspond to a Latin American perspective.

Doctrinally, multiple categories of principles have been developed both in Chile and abroad, such as contractual remedies, the exception of unfulfilled contract, contractual force majeure, price reduction, termination for breach of contract, forced execution and the theory of unforeseeability. From a Chilean perspective, it is necessary to analyze and incorporate these principles into the country's legal culture.

In addition, it is important to note that there are indications of possible reforms to the civil code in relation to the theory of unforeseeability, as well as reforms to the Chilean commercial code, and there is currently a committee in charge of addressing these issues. These signs become relevant due to national and international events, such as the social crisis, the health crisis and new forms of recruitment.

In conclusion, the results described above have an impact on Chilean legislation, suggesting the need to study, propose updates and modifications to the Chilean civil code and commercial code.

### **Discussion and conclusions**

It is the duty to contribute to the development and promotion of updated legal knowledge in the country. For this reason, I have developed this article based on my doctoral thesis on the 2016 legislative reform of the French civil code. Using the legal technique and reviewing the legal literature, I have managed to obtain a vision of the international and national context, as well as the updates in other countries and the paradigms of the new theory of the law of obligations and contracts, with the objective of promoting a change in the legal culture in Chile.

The results obtained demonstrate the urgent need to update the Chilean civil and commercial code, always taking into account the Chilean legal culture and current events. It is important to mention that the cultural, social and legal factors of a country must prevail when making modifications to its legal norms, since it is the people who will be affected by the results of such modifications.

Indeed, there are precedents and studies on the reform of French civil law, the Vienna Convention on Contracts for the International Sale of Goods, the principles of European contract law and the Latin American principles of contract law, which have led to the creation of the new law of obligations and contracts.

Important categories include contractual remedies, the exception of unperformed contract, contractual force majeure, price reduction, termination for breach, forced performance and the theory of unforeseeability.

The main authors have worked with doctrine and jurisprudence, using analytical, interpretative and reflective methodologies.

However, there were no records of modifications made to Chilean civil legislation, except for a bill related to the theory of unforeseeability. The existence of a Study Committee for the reform of the Chilean commercial code was noted.

Therefore, it is necessary to continue studying how the new law of obligations and contracts impacts Chilean civil and commercial law, since in the future it will be necessary to make legal modifications to update Chilean legislation.

In conclusion, this paper proposes changes based on the new law of obligations and contracts for Chile, based on the Chilean legal culture and the new paradigms discovered. These changes will be of great help to lawyers, legislators, judges and citizens in general.

### References

- Alcalde Araya, C. (2019). Remedios contractuales - Cláusulas, acciones y otros mecanismos de tutela del crédito. *Revista chilena de derecho*, 46(3), 923-926. <https://dx.doi.org/10.4067/S0718-34372019000300923>
- Cabrillac, R. (2016). El nuevo derecho francés de los contratos. *Themis Revista de Derecho*, 70, 59-66.
- Calderón Marengo, E. (2017). *Aplicación normativa de la compraventa internacional de mercaderías*. Universidad Centroamericana, Nicaragua.
- Chaves Romero, J. A. (2016). *Los principales riesgos entre vendedor y comprador en el contrato de compraventa internacional según la normatividad internacional: un estudio de la Convención de Viena de 1980 sobre el Contrato de Compraventa Internacional*. [Degree work]. Catholic University of Colombia.
- Cieza Mora, J. (2020). El Covid-19, el desequilibrio contractual y la excesiva onerosidad de la prestación. *Gaceta Civil & Procesal Civil*, 82, 41-86.
- De la Maza-Gazmuri, I., & Vidal-Olivares, A. (2019). La excepción de contrato no cumplido. Algunas cuestiones relativas a su supuesto de hecho y consecuencias jurídicas. *Universitas*, 137.
- Domínguez Águila, R. (2020). Incumplimiento recíproco en contrato bilateral, resolución del contrato y excepción de contrato no cumplido. *Revista de Derecho Universidad de Concepción*, 88(248), 366-372. <https://doi.org/10.29393/RD248-22EERD10022>
- García Undurraga, D. (2020). Análisis de la Teoría de la Imprevisión [Tesis pregrado, Universidad Gabriela Mistral].
- Giménez-Corte, C. (2016). Autonomía de la voluntad, prácticas, usos y costumbres, y el régimen de los contratos internacionales. De los antiguos Código de Comercio y Código Civil al nuevo Código Civil y Comercial argentino. *Jurisprudencia Argentina*. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2814315](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2814315)
- González Lagos, F., & Novani Correa, S. (2016). *Algunos problemas de la resolución por incumplimiento en la contratación contemporánea*. [Undergraduate thesis]. Universidad de Chile.
- Hinestrosa, F. (2020). Teoría de la imprevisión. *Revista de Derecho Privado*, 39, 9-29. <https://doi.org/10.18601/01234366.n39.02>
- Ithurria, M. (2021). Principios Latinoamericanos de Derecho de los Contratos: ¿Dónde está lo latinoamericano? *Latin American Legal Studies*, 9, 295-299.
- Levy, M. (2018). *El nuevo derecho francés de obligaciones y contratos en virtud de la ordenanza 2016-133 de 10 de febrero de 2016*. [Undergraduate thesis]. Universidad de Chile.

- Mejías Alonzo, C. C. (2016). Una revisión crítica de los efectos de la resolución por incumplimiento y una propuesta de solución. *Ius et Praxis*, 22(1), 271-322. <https://dx.doi.org/10.4067/S0718-00122016000100009>
- Momberg Uribe, R. (2015). La reforma al derecho de obligaciones y contratos en Francia: un análisis preliminar. *Revista chilena de derecho privado*, 24, 121-142. <https://dx.doi.org/10.4067/S0718-80722015000100003>
- Momberg Uribe, R. (2018). Los principios latinoamericanos de Derecho de los contratos: Naturaleza, fines y proyecciones. *Revista Latin American Legal Studies*, 2, 51-66.
- Opazo González, M. (2019). Algunas consideraciones en torno al contrato de transporte marítimo bajo régimen de conocimiento de embarque chileno desde la perspectiva del nuevo derecho de la contratación. *Revista Chilena de Derecho Privado*, 32, 33-70.
- Pazos Ramos, R. (2020). La respuesta del Derecho de obligaciones y contratos francés ante la pandemia de COVID-19. *Revista de Derecho Civil*, VII (2), 47-74. <http://nreg.es/ojs/index.php/RDC ISSN 2341-2216>
- Pizarro Wilson, C. (2018). Un vistazo general a los Principios Latinoamericanos de Derecho de los Contratos. *Revista de Derecho Privado*, 35, 351-368. <https://doi.org/10.18601/01234366.n35.13>
- Prado López, P. (2015). La cuantificación de la rebaja del precio en la acción quanti minoris. *Ius et Praxis*, 21(1), 617-649. <https://dx.doi.org/10.4067/S0718-00122015000100018>
- Quintana, A. (2017). La modernización del derecho de las obligaciones, una experiencia para Latinoamérica. *Revista de Derecho Privado*, 57, 1-19. <http://dx.doi.org/10.15425/redepriv.57.2017.03>
- Rivera Restrepo, J. M. (2017). La Propuesta de Modernización del Código Civil Español en materia de Obligaciones y Contratos de la Comisión General de Codificación, Sección Civil, en lo que se refiere al derecho de opción del acreedor por incumplimiento contractual. *Revista de la Facultad de Derecho*, 42, 180-198. <https://dx.doi.org/10.22187/rfd201719>
- Ruiz, A., & Vargas, I. (Eds.). (2018). Jornadas Internacionales sobre Actualización del Derecho de Obligaciones y Contratos, May 31 and June 1, 2018, University of Murcia. ADC, vol. LXXI, fasc. III, 1051-1084.
- San Miguel, L. (2016). Los Principios latinoamericanos de derecho de los contratos: una revisión crítica. Jornadas de discusión y análisis. Madrid, June 16-17, 2016. Real Academia de Jurisprudencia y Legislación. ADC, vol. LXIX, fasc. III, 991-1038.
- Savaux, E. (2016). El nuevo derecho francés de obligaciones y contratos. ADC, vol. LXIX, fasc. III, 715-741.
- Sobrino, W. (2020). Contratos, neurociencias e inteligencia Artificial. *La ley*.
- Tabares, C. (2017). La reforma del Código Civil Francés. Un proemio al cambio estructural de los principios de derecho privado del Código Napoleónico. *Revista Verba Iuris*, 12(38), 155-169.
- Tolosa, L. A. (2017). De los principios del Derecho Obligacional y Contractual contemporáneo. *Estudios Socio-Jurídicos*, 19(2), 13-61. <http://dx.doi.org/10.12804/revistas.urosario.edu.co/sociojuridicos/a.5701>
- Varsi Rospigliosi, E., Rosenvald, N., & Torres Maldonado, M. A. (2020). La pandemia de la covid-19, la fuerza mayor y la alteración de las circunstancias en materia contractual. *Acta bioethica*, 26(1), 29-36. <https://dx.doi.org/10.4067/S1726-569X2020000100029>
- Vidal, Á., & Severin, G. (2020). *La armonización del derecho de contratos en Latinoamérica: los principios latinoamericanos de derecho de los contratos. Una mirada desde el derecho europeo*. Editorial Thomson Reuters.

**Date received:** 06/06/2023  
**Revision date:** 13/09/2023  
**Date of acceptance:** 13/09/2023