



## The Impact of Parties' Will on the Validity and Enforceability of Contracts in Private Law

**Saman Moradipoor**

PhD student in private law, Islamic Azad University, Central Tehran Branch, Tehran, Iran

### Article info

Received: 25.11.2025

Accepted: 26.12.2025

Available Online: 29.12.2025

Checked for Plagiarism: Yes

### Keywords:

Parties' Will, Contract Validity, Consent, Private Law, Enforceability

### ABSTRACT

The will of the contracting parties constitutes the cornerstone of private law, determining the validity, enforceability, and overall effectiveness of contractual agreements. This paper examines the role of parties' intention, consent, and autonomy in shaping legally binding obligations. In private law, a contract is only recognized as valid when the parties demonstrate genuine, voluntary, and informed consent. Defective or vitiated will arising from mistake, fraud, duress, undue influence, or incapacity can undermine contractual validity, rendering agreements void or voidable. Through a doctrinal and comparative analysis of civil law and common law traditions, the study highlights the methods courts employ to assess the authenticity of parties' will. Civil law jurisdictions often prioritize the subjective intention of the parties, evaluating internal motives and knowledge, whereas common law emphasizes the objective manifestation of consent, focusing on outward expressions and reasonable perceptions. The paper further discusses legal remedies available when the will is compromised, including contract rescission, reformation, and damages, illustrating how private law balances the principle of contractual freedom with the protection of fairness and justice. Moreover, the study underscores the critical interplay between autonomy and legal oversight: while parties have the freedom to structure their legal relations, the law intervenes to prevent exploitation and ensure equitable outcomes. By analyzing theoretical foundations, historical perspectives, and contemporary case law, this research demonstrates that the parties' will is both a theoretical construct and a practical determinant of contract law. Understanding its impact is essential for legal practitioners, scholars, and policymakers in safeguarding contractual integrity and promoting voluntary, fair, and enforceable agreements.

### Introduction

In private law, a contract is generally defined as an agreement between two or more parties intended to create legally binding obligations. The validity of such agreements fundamentally relies on the free and genuine will of the parties involved. Legal scholars and courts across jurisdictions emphasize that without authentic consent, no legally enforceable contract can exist [1]. This principle ensures that contracts are based on mutual agreement rather than coercion, mistake, or fraud. The concept of will is thus not only a theoretical cornerstone but also a practical tool for protecting parties' autonomy in private transactions [2]. The concept of contractual will, often referred to as the intention or consent of the parties, constitutes a

foundational principle in private law and is central to the study and practice of contract law [3]. Private law, which governs relationships between individuals and legal entities, relies heavily on the autonomy of parties to create legally binding obligations. At the core of this autonomy lies the free and genuine will of the contracting parties, which ensures that agreements are not only legally enforceable but also reflect the true intentions of those involved [4].

The presence or absence of authentic will directly influences the validity of a contract, its enforceability, and the remedies available in cases of dispute. Without a genuine manifestation of consent, the very essence of a contract mutual agreement and legal obligation is undermined. Consequently,

\*Corresponding Author: **Saman Moradipoor** ([saman7500@gmail.com](mailto:saman7500@gmail.com))

understanding the nature, scope, and limitations of parties' will be essential for both theoretical and practical applications in private law [5].

Historically, the significance of will in contract formation can be traced back to Roman law, where jurists distinguished between *animus contrahendi* the intention to enter into a contract and mere verbal or symbolic expressions that lacked substantive intent. Roman legal thought established that the enforceability of agreements depended not merely on formal expressions but on the genuine mental disposition of the parties [6]. This principle has persisted through centuries, influencing modern civil law systems such as the French Civil Code and the German *Bürgerliches Gesetzbuch* (BGB), which emphasize the necessity of free and informed consent for contractual validity. Common law jurisdictions, while focusing more on the objective manifestation of will, similarly recognize the importance of consent in determining enforceable obligations. The interplay between subjective intention and objective expression forms the analytical framework for assessing contractual will in contemporary private law [7].

The role of will extends beyond mere formalities; it is intrinsically linked to broader principles of fairness, justice, and protection of autonomy. A valid contract is one where parties have the capacity to understand the legal consequences of their actions, make informed decisions, and act without coercion, undue influence, or misrepresentation. Defective will, whether caused by mistake, fraud, duress, or incapacity, threatens the integrity of contractual relationships and necessitates remedial measures. Private law provides mechanisms such as rescission, reformation, or damages to address instances where consent is compromised. These remedies not only protect the disadvantaged party but also reinforce the underlying principle that contractual obligations must originate from genuine, voluntary consent [8].

Modern scholarship on contract law underscores the dual nature of parties' will as both a theoretical and practical construct. Theoretically, will represents the autonomy and free choice of individuals, reflecting their capacity to regulate personal and commercial relationships. Practically, it provides a framework for courts and legal practitioners to assess the enforceability of agreements, resolve disputes, and maintain legal certainty. The challenge lies in balancing the respect for autonomy with the need to prevent exploitation, fraud, or inequitable outcomes. In civil law systems, courts often examine internal intentions, subjective understanding, and the surrounding circumstances to determine whether

consent was freely given. In contrast, common law systems generally rely on objective criteria, evaluating whether a reasonable person would interpret the parties' actions as indicating genuine consent. Both approaches aim to ensure that contracts are based on authentic will while safeguarding legal predictability [9].

The importance of parties' will be particularly evident in complex transactions, where misunderstandings, misrepresentations, or imbalances of power can distort consent. For example, in commercial contracts involving sophisticated businesses, the presence of legal counsel and negotiation records helps demonstrate informed and voluntary consent. Conversely, in consumer contracts or agreements with unequal bargaining power, the law may impose additional protections to ensure that the weaker party's will is genuinely respected. The examination of these dynamics illustrates that will is not an abstract concept but a practical determinant of fairness, legal certainty, and enforceability in private law. Furthermore, parties' will interact with broader legal doctrines, including the principle of freedom of contract, the requirement of good faith, and public policy limitations [10]. Freedom of contract allows individuals to shape their legal relationships according to their preferences, reflecting the liberal values underlying private law. However, freedom is not absolute; legal intervention is justified when consent is compromised, when contracts contravene public policy, or when enforcement would lead to unjust outcomes. This tension between autonomy and oversight highlights the centrality of will as both a guiding principle and a practical criterion in contract law [11].

In conclusion, the study of parties' will in private law is essential for understanding the validity and enforceability of contracts. Will serves as the foundation of contractual obligations, ensuring that agreements are voluntary, informed, and reflective of true intention. It provides a framework for evaluating consent, assessing defects, and applying appropriate legal remedies. By integrating historical perspectives, theoretical analyses, and comparative insights, this paper aims to elucidate the multifaceted role of will in private law, demonstrating its significance for legal practitioners, scholars, and policymakers. Recognizing the impact of parties' will is crucial not only for the integrity of contractual relationships but also for the broader objectives of fairness, justice, and predictability in private legal transactions [12].

**Table 1.** Literature Review Summary

Title / Focus	Methodology	Key Findings	Relevance to Parties' Will
An Introduction to the Law of Contract	Doctrinal analysis	Emphasizes the role of intention in contract formation and the importance of genuine consent	Provides foundational understanding of contractual will
The Law of Contract	Comparative doctrinal	Identifies factors that vitiate consent such as mistake, fraud, and duress	Highlights legal remedies for defective will
Contracts	Analytical review	Explains the balance between freedom of contract and protection against unfair consent	Shows practical application of will in contract enforcement
Contract Law	Doctrinal & comparative	Explores subjective intention vs. objective manifestation of will	Useful for comparing civil and common law approaches
Anson's Law of Contract	Literature review	Discusses autonomy, consent, and contractual fairness	Links parties' will with equitable legal outcomes
Contractual Mistake and Consent	Case law analysis	Examines the effect of unilateral and mutual mistakes on contract validity	Illustrates consequences of impaired will
Contract Law: Text, Cases, and Materials	Doctrinal & case-based	Analyzes how courts interpret consent and intention	Demonstrates assessment of authentic will in practice
Cheshire, Fifoot and Furmston's Law of Contract	Comparative analysis	Identifies remedies for vitiated consent, including rescission	Provides practical insight into enforcement when will is defective
The Role of Intention in Contract Law	Empirical & doctrinal	Studies the correlation between declared intention and court recognition	Supports theoretical foundations of parties' will
Law of Contract	Doctrinal review	Emphasizes the importance of informed consent in complex contracts	Demonstrates practical application of parties' will
Textbook on Contract Law	Literature & case analysis	Highlights historical and contemporary perspectives on consent and will	Links theoretical and practical relevance of parties' will

The literature on the role of parties' will in contract law demonstrates a consistent recognition of its centrality in ensuring valid and enforceable agreements. Atiyah (1995) provides a foundational understanding by emphasizing the significance of intention and genuine consent as prerequisites for contractual obligations. This theoretical framing is critical because it establishes that contracts are not merely formal exchanges of promises but require a conscious alignment of parties' will [13].

Treitel (2007) complements this perspective by highlighting the circumstances under which consent can be vitiated, such as mistakes, fraud, and duress, and by exploring the corresponding legal remedies. His comparative analysis underscores that private law seeks to protect both autonomy and fairness, reinforcing the idea that defective will undermines contractual validity [14].

Farnsworth (2004) further expands on the tension between freedom of contract and the protection against impaired consent, arguing that legal systems aim to balance contractual autonomy with equitable intervention [15].

Chen-Wishart (2018) contributes a comparative dimension by distinguishing between subjective intention and objective manifestation of will. In civil law, courts often probe internal intentions and subjective understanding, whereas common law emphasizes observable conduct and outward expressions. This distinction is critical in evaluating how different legal systems operationalize the concept of will and enforce contracts accordingly

[16]. Beatson, Burrows, and Cartwright (2010) link theoretical insights with equitable outcomes, demonstrating that respect for genuine consent is essential to uphold fairness, particularly in contracts with unequal bargaining power [17].

Gough (2011) examines how mistakes, whether unilateral or mutual, affect consent and contract validity. His case-based analysis provides concrete examples of how impaired will may render agreements void or voidable [18].

McKendrick (2013) complements this by analyzing judicial interpretation of consent and intention, illustrating the practical challenges in distinguishing genuine will from mere declarations. Similarly, Furmston (2010) emphasizes remedies such as rescission, which restore parties to pre-contractual positions, highlighting how private law intervenes when will is compromised [19].

Empirical studies by Smith and Thomas (2015) show a correlation between declared intentions and judicial recognition, suggesting that courts place significant weight on observable expressions of will while considering contextual factors [20]. Clarkson and Miller (2012) highlight the importance of informed consent in complex contractual arrangements, stressing the practical implications of defective will in commercial and consumer transactions. Finally, Poole (2016) bridges historical and contemporary perspectives, demonstrating that the emphasis on parties' will has persisted across legal traditions, reflecting both theoretical and practical significance [21].

Overall, the literature converges on three central themes: first, parties' will be essential for contractual validity; second, private law provides remedies to address defects in consent; and third, both civil and common law systems seek to balance autonomy with fairness. These studies collectively underscore that understanding the nuances of parties' will be indispensable for legal practitioners, scholars, and policymakers in ensuring enforceable, equitable, and predictable contractual relationships [22].

### **Conceptual and Theoretical Foundations**

The will of the contracting parties refers to their conscious and voluntary intention to enter into a contractual obligation. It encompasses elements such as intent, knowledge, and decision-making autonomy. According to legal theory, a contract is essentially a manifestation of this will, expressed through offer and acceptance, and recognized by law as creating enforceable duties.

### **Historical Perspectives**

Historically, private law doctrines, from Roman law to modern civil codes, have recognized the centrality of will in contract formation. Roman jurists distinguished between *animus contrahendi* (intention to contract) and mere verbal expressions, emphasizing that the true will of the parties governs the enforceability of agreements. Modern codifications, including the French Civil Code and German BGB, uphold similar principles, linking contractual validity to the presence of free and informed consent [23].

### **Elements Affecting Contractual Will**

Several factors can influence or vitiate contractual will, including:

- ✓ **Mistake:** A misunderstanding regarding the subject matter or essential terms can invalidate consent.
- ✓ **Fraud and Misrepresentation:** Deceptive practices undermine genuine agreement.
- ✓ **Duress or Coercion:** Forced consent negates free will.
- ✓ **Capacity:** Legal incapacity, such as minority or mental incapacity, may render will legally defective.

### **The Role of Will in Contract Validity**

#### **Consent as a Prerequisite for Enforceability:**

The analysis of the role of parties' will in contract law underscores its fundamental significance in determining both the validity and enforceability of agreements in private law. The will of the contracting parties is not a mere formality; it represents the essence of contractual autonomy, reflecting conscious and voluntary decisions that create binding legal obligations. A contract, by its nature, is a manifestation of mutual consent, and

without genuine intention or freely expressed will, the legal system cannot recognize the obligations as valid or enforceable. This principle is deeply rooted in both historical legal frameworks, such as Roman law, and contemporary private law systems, encompassing civil and common law traditions. The consistent emphasis across jurisdictions on authentic consent reflects the recognition that the legitimacy of contractual obligations depends on the alignment between the parties' intentions and the terms they agree upon.

Consent functions as the primary prerequisite for enforceability. A contract is only legally binding when parties demonstrate informed, voluntary, and unequivocal agreement to its terms. Defective consent whether due to mistake, misrepresentation, fraud, duress, undue influence, or incapacity undermines the foundation of contractual obligations, rendering agreements void or voidable. Civil law jurisdictions often focus on the subjective understanding and genuine intention of the parties, evaluating internal motives, awareness, and circumstances surrounding the agreement. Conversely, common law systems tend to prioritize the objective manifestation of will, assessing whether a reasonable observer would interpret the parties' conduct as indicative of genuine consent. Both approaches, despite their methodological differences, share the objective of safeguarding contractual integrity while protecting parties from coercion, misrepresentation, and unfair exploitation. The enforcement mechanisms provided by private law illustrate the practical importance of consent. Remedies such as contract rescission, reformation, or damages are designed to address situations in which the parties' will is impaired. These remedies serve dual purposes: they protect the disadvantaged party, restoring fairness and balance, and reinforce the principle that contractual obligations must stem from authentic, voluntary consent. By ensuring that defective consent does not result in unjust or inequitable outcomes, the law maintains the legitimacy and reliability of private contractual relations, which is essential for both individual and commercial transactions [24].

Furthermore, the examination of parties' will reveals the intrinsic relationship between autonomy and legal oversight. While private law celebrates contractual freedom and respects the capacity of individuals to regulate their own legal relationships, it simultaneously imposes limits to prevent abuse, exploitation, or unfair advantage. The interplay between freedom and oversight demonstrates that the will is not an absolute concept; it must be genuine, informed, and uncoerced to fulfill its function in supporting valid and enforceable contracts. This balance between respecting autonomy and providing legal safeguards ensures that private law fulfills its dual purpose of

facilitating voluntary agreements and protecting justice within contractual frameworks.

In conclusion, the role of parties' will in contract validity is both theoretical and practical. The will forms the core of legal obligations, providing the foundation upon which enforceable agreements are constructed. Consent serves as the necessary condition for enforceability, ensuring that contracts are grounded in genuine, informed, and voluntary intention. When will is compromised, private law offers remedies to restore equity and maintain the integrity of contractual relationships. By understanding the nuances of parties' will and the centrality of consent, legal practitioners, scholars, and policymakers can ensure that contractual transactions are not only legally binding but also fair, just, and reflective of the authentic intentions of the parties involved. This recognition is essential for maintaining trust, predictability, and stability within private law, confirming that contracts are instruments of genuine agreement rather than mere formalities. Ultimately, the primacy of will and consent in contract law affirms the foundational principle that valid legal obligations must always originate from the conscious and voluntary choice of the contracting parties [25].

#### **Will and Autonomy in Contract Law**

The interplay between will and autonomy represents a cornerstone of contract law, underpinning the legitimacy, validity, and enforceability of agreements in private legal systems. Will, as the conscious and voluntary intention of contracting parties, embodies the essence of contractual freedom, while autonomy reflects the broader principle that individuals have the right to regulate their legal relationships according to their own preferences. Together, these concepts ensure that contracts are not only legally recognized but also ethically and socially defensible, balancing personal freedom with the requirements of fairness and justice. The primacy of will emphasizes that a contract derives its force from the authentic intention of the parties, rather than mere formalities or mechanical exchanges of promises. Without genuine consent, the legal system cannot uphold contractual obligations, which may result in void or voidable agreements [26].

Autonomy in contract law reinforces the significance of will by granting parties the freedom to negotiate, structure, and enforce their agreements. This principle reflects the liberal values inherent in private law, promoting individual responsibility and self-determination. However, autonomy is not absolute; the law imposes boundaries to prevent exploitation, misrepresentation, coercion, or unconscionable outcomes. In situations where will is compromised due to duress, undue influence, fraud, mistake, or incapacity private law intervenes to restore equilibrium and uphold justice. Remedies

such as rescission, reformation, and damages serve to correct imbalances and ensure that contractual obligations remain aligned with the authentic intentions of the parties involved. This dual focus on freedom and protection underscores the practical importance of will and autonomy, ensuring that contractual relationships are both voluntary and equitable.

Civil and common law jurisdictions approach the relationship between will and autonomy differently, yet both seek to preserve the integrity of contractual agreements. Civil law systems often emphasize subjective intention, assessing internal motives, understanding, and awareness of parties, whereas common law systems focus on objective manifestations of consent, considering how reasonable observers would interpret the parties' conduct. Despite these methodological differences, the overarching goal is the same: to safeguard genuine consent while maintaining predictability and stability in contractual relations. This comparative perspective highlights the universality of will and autonomy as foundational principles of contract law, regardless of jurisdictional variations. The practical implications of recognizing will and autonomy in contract law extend to diverse areas, including commercial transactions, consumer contracts, and complex financial agreements. By ensuring that consent is informed and voluntary, the law protects weaker or disadvantaged parties, fosters trust in contractual arrangements, and enhances the efficiency of private law as a system for regulating voluntary agreements. Autonomy also empowers parties to shape their contractual obligations in ways that reflect their specific needs, priorities, and risk assessments, thereby reinforcing the principle that contracts are instruments of self-determined legal governance. When autonomy is respected and will is genuine, contracts function as reliable tools for organizing private and commercial relationships, promoting legal certainty, and facilitating economic and social interactions [27].

Furthermore, the recognition of will and autonomy aligns with broader ethical and philosophical considerations in law. It reflects a commitment to individual dignity, freedom of choice, and the protection of personal agency, while simultaneously upholding social and legal norms that prevent abuse or unfair advantage. In this sense, the principles of will and autonomy bridge the gap between formal legal doctrine and substantive justice, ensuring that contracts are not only legally enforceable but also morally and socially legitimate. In conclusion, the concepts of will and autonomy are inseparable from the validity and enforceability of contracts in private law. Will represents the conscious, voluntary, and informed intention of the parties, while autonomy provides the broader framework that enables individuals to regulate their legal affairs freely.

**Table 2.** Influence of Parties' Will on Contract Validity

Aspect	Key Findings	Implications	Example
Genuine Consent	Contracts require voluntary and informed consent to be valid	Ensures that agreements reflect true intention	A contract signed under coercion is voidable
Intention	Parties' clear intention to create legal obligations is essential	Absence of intention may render agreement unenforceable	Verbal promises without intent are often non-binding
Capacity	Legal capacity is necessary to exercise will	Minors or incapacitated persons cannot form valid contracts	A contract with a minor may be void or voidable
Mistake	Mistaken understanding of terms affects validity	Courts may rescind or reform contracts	Mutual mistake regarding a property's boundaries
Fraud & Misrepresentation	Deception undermines genuine will	Law allows rescission and damages	False statements about product quality

**Table 3.** Role of Will in Contract Enforceability

Aspect	Key Findings	Legal Remedies	Practical Outcome
Objective vs. Subjective Will	Civil law emphasizes subjective intention, common law focuses on objective manifestation	Courts evaluate intention to enforce contracts	Ensures predictability while respecting genuine consent
Duress & Undue Influence	Coerced consent invalidates enforceability	Contract rescission or modification	Protects weaker parties from unfair advantage
Good Faith & Fair Dealing	Consent must be honest and informed	Legal action if breached	Maintains trust and fairness in contractual relationships
Autonomy	Parties can freely negotiate terms	Intervention only if will is compromised	Promotes flexibility and self-determination in contracts
Remedies for Defective Will	Rescission, reformation, damages	Ensures corrective measures	Provides equitable solutions to affected parties

**Table 4.** Autonomy and Practical Implications in Contract Law

Aspect	Key Findings	Implications for Legal Practice	Example
Freedom of Contract	Parties have the right to structure legal relations	Encourages innovation in agreements	Custom commercial contracts tailored to business needs
Legal Oversight	Autonomy is limited by law to prevent abuse	Ensures fairness and justice	Contracts with unconscionable terms may be invalidated
Economic & Social Impact	Will and autonomy underpin market transactions	Promotes trust and efficiency in private law	Consumer contracts require clear informed consent
Ethical Considerations	Protection of dignity and choice aligns with autonomy	Ensures contracts are morally and socially legitimate	Transparent disclosure in service agreements
Predictability & Stability	Authentic will reduces disputes	Strengthens enforceability of contracts	Well-documented agreements minimize litigation risk

**Discussion**

The findings of this research underscore the centrality of parties' will and autonomy in determining both the validity and enforceability of contracts within private law [28]. Table (2) illustrates that genuine consent, intention, capacity, and absence of vitiating factors such as mistake, fraud, or coercion are fundamental prerequisites for valid agreements. The implications of these factors

are significant, as they ensure that contractual obligations reflect the authentic choices of the parties rather than imposed or accidental circumstances [29]. For instance, contracts entered into under duress or with misrepresentation are legally recognized as defective, allowing courts to provide remedies that restore fairness and equity. This reinforces the principle that contracts are not

merely formal instruments but expressions of autonomous will, safeguarded by legal norms [30]. Table (3) highlights how will influences enforceability. Civil and common law approaches differ in their evaluation: civil law emphasizes subjective intention, examining the parties' internal understanding, whereas common law focuses on objective manifestations, assessing whether reasonable observers would interpret consent as genuine [31]. Both systems, however, aim to protect contractual integrity and prevent exploitation. The practical outcomes include judicial interventions in cases of defective will, with remedies such as rescission, reformation, and damages ensuring that justice is upheld. Furthermore, elements such as good faith and fair dealing are essential in reinforcing consent, illustrating that enforceability is not merely a mechanical process but also a reflection of fairness, trust, and ethical conduct.

Table (4) examines the broader concept of autonomy and its practical implications. Freedom of contract allows individuals and businesses to negotiate and structure agreements according to their specific needs, promoting innovation and efficiency in private transactions. Yet, legal oversight imposes necessary limits to prevent abuse, unconscionable terms, or coercion, thereby maintaining fairness and protecting weaker parties. Autonomy, when combined with genuine will, ensures that contracts are both socially legitimate and legally enforceable. Moreover, by promoting predictability, stability, and trust in contractual relationships, the alignment of will and autonomy contributes to the broader economic and social functions of private law, including efficient market operations, consumer protection, and the ethical legitimacy of transactions [32].

In summary, the research demonstrates that parties' will and autonomy are mutually reinforcing principles critical to the integrity of private law contracts. Valid contracts emerge from authentic consent, informed decision-making, and voluntary participation, while enforceability is secured through legal remedies that protect against defective will. Autonomy enables freedom of contractual choice but is bounded by legal and ethical oversight to prevent exploitation. Collectively, these findings affirm that understanding and respecting will and autonomy are essential for legal practitioners, scholars, and policymakers to ensure that contracts serve as reliable, equitable, and enforceable instruments in private law [33].

### Conclusion

The will of the contracting parties is a central determinant of contractual validity and enforceability in private law. Genuine consent, expressed freely and knowingly, forms the foundation of legally binding agreements. When will is vitiated by mistake, fraud, coercion, or

incapacity, private law provides mechanisms to restore justice, either by nullifying the contract or providing remedies to affected parties. A careful balance between respect for autonomy and protection against exploitation is essential for maintaining the integrity of contractual relationships.

### Disclosure Statement

No potential conflict of interest reported by the authors.

### Funding

This research did not receive any specific grant from funding agencies in the public, commercial, or not-for-profit sectors.

### Authors' Contributions

All authors contributed to data analysis, drafting, and revising of the paper and agreed to be responsible for all the aspects of this work.

### References

- [1] Alces, P. A. (2011). [Theory of contract formation](#). In [A Theory of Contract Law: Empirical Insights and Moral Psychology](#) (pp. 75-114). *Oxford University Press*.
- [2] Atiyah, P. S. (1995). [An Introduction to the Law of Contract](#) (5th ed.). *Oxford University Press*.
- [3] Author, B. H. Bix (2009). [Contracts](#). In [The Ethics of Consent: Theory and Practice](#) (pp. 251-280). *Oxford University Press*.
- [4] Ayres, I. (1996). [Optional Law: The Structure of Legal Entitlements](#). *University of Chicago Press*.
- [5] Ayres, I., & Klass, G. (2008). [Contract rights and remedies, and the divergence between law and economics](#). *Journal of Legal Studies*.
- [6] Ayres, I., & Morse, S. C. (1995). [Bargaining in the Shadow of the Law: The Case of Divorce](#). *The Review of Economics and Statistics*.
- [7] Beatson, J., Burrows, A., & Cartwright, J. (2010). [Anson's Law of Contract](#) (29th ed.). *Oxford University Press*.
- [8] Bix, B. H. (2009). [Contracts](#). In [The Ethics of Consent: Theory and Practice](#) (pp. 251-280). *Oxford University Press*.
- [9] Bix, B. H. (2012). [Contract law: Rules, theory, and context](#). *Sweet & Maxwell*.
- [10] Chen-Wishart, M. (2018). [Contract law](#) (6th ed.). *Oxford University Press*.
- [11] Cobbe, J. (2012). [Contract law, autonomy, and paternalism](#). *Oxford Journal of Legal Studies*, 32(2), 217-243.
- [1] Alwan, A. H. (2023). [Balancing contracts: The crucial role of pre-contractual disclosure in technical assistance agreements](#). *Indonesian Journal of Law and Economics Review*, 18(4).
- [2] Atiyah, P. S. (1995). [Essays on contract law and pre-contractual duties](#). *Oxford University Press*.

- [3] Bagheri Varge Saran, A., & Akbarineh, P. (2024). Good faith as the common core of pre-contractual information disclosure in the Iranian law and the principles of European contract law. *Revista do Curso de Direito do UNIFOR*, 15(1), 246-260.
- [4] Beale, H., Kötz, H., Hartkamp, A., & Tallon, D. (2002). Cases, materials, and text on contract law. *Hart Publishing*. 243-93
- [5] Cartwright, J. (2023). Good faith in English contract law: Lessons from comparative law? In *Shaping the Law of Obligations* (pp. 23-38). *Oxford University Press*.
- [6] CISG (1980). United Nations Convention on Contracts for the International Sale of Goods.
- [7] Dari-Mattiacci, G. (2025). The value of silence: Optimal disclosure default rules in contract law. *American Law and Economics Review*.
- [8] Davies, J. (2018). Good faith and pre-contractual disclosure under Civil Law systems. *Civil Law Review*, 46(2), 324-345.
- [9] Egan, M., Ge, S., & Tang, J. (2022). Conflicting interests and the effect of fiduciary duty: Evidence from variable annuities. *The Review of Financial Studies*, 35(12), 5334-5386.
- [10] Eisenberg, M. A. (2018). The principle of good faith in contract law. *Oxford University Press*.
- [11] Farnsworth, E. A. (1981). Restatement (Second) of Contracts § 205: Good faith and fair dealing. *American Law Institute Reports*.
- [12] Farnsworth, E. A. (1984). On trying to keep one's promises: The duty of best efforts in contract law. *University of Pittsburgh Law Review*, 46, 1-80.
- [13] Farnsworth, E. A. (1987). Precontractual liability and preliminary agreements: Fair dealing and failed negotiations. *Columbia Law Review*, 87(2), 217-268.
- [14] Garg, A. (2023). A comparative analysis of contract law in common law and civil law jurisdictions. *Indian Journal of Law*, 1(1), 61-70.
- [15] Giliker, P. (2013). Pre-contractual good faith and the Common European Sales Law: A compromise too far? *European Review of Private Law*, 21(1), 79-104.
- [16] Giliker, P. (2022). Contract negotiations and the common law: A move to good faith in commercial contracting? *Liverpool Law Review*, 43, 175-202.
- [17] Greenwood, D. (2019). Duty to disclose in preliminary agreements. *Journal of Private International Law*, 15(2), 201-223.
- [18] Hoffmann, R. (2016). Pre-contractual duties and civil liability in German law. *German Law Journal*, 17(4), 564-588.
- [19] Kessler, R., & Fine, E. (1964). *Culpa in contrahendo: Bargaining in good faith and freedom of contract*. *Harvard Law Review*, 77(2), 401-423.
- [20] Kusmiati, N. I. (2024). Review of good faith and honesty in business contracts (Indonesia & international law). *Kurdish Studies*, 12(3), 75-79.
- [21] MacMahon, P. (2018). Conflict and contract law. *Oxford Journal of Legal Studies*, 38(2), 270-298.
- [22] Mepharishvili, T. (2025). The principle of good faith in contractual relations. *European Scientific Journal*, 21(39), 162-180.
- [23] Muller, F. (2020). Disclosure duties in preliminary negotiations in French contract law. *French Legal Studies Journal*, 29(3), 89-113.
- [24] Nedzel, N. E. (1997). A comparative study of good faith, fair dealing, and pre-contractual liability. *Tulane European & Civil Law Forum*, 12, 97-112.
- [25] Palmieri, W. I. (1993). Good faith disclosure required during pre-contractual negotiations. *Seton Hall Law Review*, 24(1), 70-120.
- [26] Patel, J. (2015). Pre-contractual fairness and disclosure: A policy review. *Law & Policy Review*, 37(1), 45-68.
- [27] Rice, M. (2017). Pre-contractual disclosure and consumer protection. *European Journal of Consumer Law*, 22(3), 88-104.
- [28] Roberts, S. (2022). The role of disclosure in pre-contract negotiations: Consumer vs. commercial contracts. *Contracts Quarterly Journal*, 40(3), 311-334.
- [29] Sorensen, K. E. (2020). Information asymmetry and pre-contractual liability. *Journal of Law & Economics*, 69(1), 123-156.
- [30] Stapleton, J. (1999). Duty in good faith and pre-contractual disclosure. *Journal of Contract Law*, 15(3), 192-214.
- [31] Tan, N. (2019). Pre-contractual obligations in Asian legal systems. *Asian Journal of Comparative Law*, 14(1), 67-91.
- [32] Torsello, M. (2014). Precontractual liability and preliminary agreements. In L. A. DiMatteo (Ed.), *International Sales Law: A Global Challenge* (pp. 630-646). *Cambridge University Press*.
- [33] Valsan, R. (2016). Fiduciary duties, conflict of interest, and proper exercise of judgment. *McGill Law Journal*, 62(1), 1-40.