



THE LAW AND CONTRACT: WHICH ONE IS IN A HIGHER LEGAL POSITION?

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Abstract

This article examines the relationship between law and contract within the civil law systems of Uzbekistan, Russia, Ukraine, and the United States. The study explores how the principles of freedom of contract and supremacy of law interact in regulating civil and commercial relations. Drawing on legislative acts, judicial practice, and academic literature, the author analyzes the temporal effect of laws, the scope of contractual autonomy, and the legal consequences of contractual violations. The comparative analysis demonstrates that, despite differences in legal systems, all jurisdictions strive to maintain a balance between contractual flexibility and legal stability. Special attention is given to how courts interpret and apply these principles in practice to ensure fairness and predictability in contractual relations.

Keywords: Law, contract, civil law, contractual freedom, supremacy of law, Uzbekistan, Russia, Ukraine, United States, civil code, comparative law, legal stability, judicial practice, contractual liability.

Introduction

Uzbekistan

In the civil law system, law and contract are closely interconnected, and their relationship ensures the stability of economic and legal relations within society. A contract is one of the primary sources of civil turnover, whereas the law establishes the general regulatory framework for these relations. According to Article 353 of the Civil Code of the Republic of Uzbekistan, a contract is defined as an agreement between two or more persons to establish, modify, or terminate civil rights and obligations. This provision highlights the



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main features of contracts - voluntariness, consensual formation, and the creation of legal consequences¹.

Furthermore, Article 354 of the Civil Code of the Republic of Uzbekistan stipulates that individuals and legal entities are free to make contracts. This principle is referred to as the “freedom of contract.” It allows the parties to conclude contracts not specifically provided for by law, if they do not contradict the general legal order.

Supremacy of Law and Its Temporal Effect

Article 4 of the Civil Code of Uzbekistan sets forth the rules governing the temporal application of laws. It establishes that laws do not have retroactive force, meaning they apply only to legal relations arising after their entry into force. However, if a law expressly provides otherwise, it may also apply to relationships established earlier.

Therefore, if legislative changes occur after a contract is concluded, the new provisions do not automatically alter the terms of the existing contract. Only if the law explicitly states that it applies to previously concluded contracts will such changes take effect.

Relationship Between Law and Contract

From a legal standpoint, the relationship between law and contract is based on two key principles:

1. Supremacy of Law: If the contractual terms contradict the legal norms, such provisions are invalid.

2. Freedom of Contract: When the law allows parties a choice (a dispositive norm), they may establish their own rules through mutual agreement. For example, Article 333 of the Civil Code of Uzbekistan provides rules on liability for breach of obligations. It stipulates that in business activities, a party that fails to perform its obligations is liable unless it can prove the existence of force majeure circumstances. Nevertheless, a different procedure may be established by law or by contract.

¹ Civil Code of the Republic of Uzbekistan, August 29, 1996.



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Practical Example: Judicial Application

The Resolution of the Plenum of the Supreme Economic Court of Uzbekistan No. 306 dated December 23, 2016 (paragraph 2.3) provides practical guidance on this issue. It instructs courts that even if a construction contract lacks essential terms, the claim cannot be dismissed if the actual performance of the work is proven. However, in such cases, penalties, interest, or damages cannot be applied. It is also specified that this rule does not apply to contracts concluded in violation of public procurement procedures².

The Russian Federation

In Russia, both law and contract are fundamental sources of civil law. Contracts serve as key instruments of economic turnover, while laws provide the general regulatory framework for these relations. The balance between the two ensures both flexibility and stability in the Russian legal system.

Legal Nature of the Contract (Article 420 of the Civil Code of the Russian Federation)

Under Article 420 of the Civil Code, a contract is defined as an agreement between two or more persons to establish, modify, or terminate civil rights and obligations. This provision reflects the core principles of contractual relations in Russian law - voluntariness, equality, and autonomy of will.

The principle of "autonomy of will" allows the parties to conclude any agreement not prohibited by law. Article 421 of the Civil Code enshrines the "freedom of contract."

Balance Between Supremacy of Law and Freedom of Contract

The Russian legal system recognizes two main principles:

1. Supremacy of Mandatory Norms: If a contract contradicts the mandatory provisions of the law, it is invalid (Article 168 of the Civil Code).

2. Freedom Within Dispositive Norms: Where the norm is dispositive, the parties are free to modify it or establish different arrangements.

² Resolution of the Plenum of the Supreme Economic Court of Uzbekistan, No. 306, December 23, 2016.



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Article 422 of the Civil Code further provides that contracts must comply with the law in effect at the time of their conclusion. If a new law is adopted later, it applies to existing contracts only when expressly stipulated³.

Liability for Breach of Obligations (Article 401 of the Civil Code)

A debtor is liable for non-performance unless they can prove the absence of fault. Force majeure (“непреодолимая сила” in Russian) circumstances may exempt a party from liability, though business risks such as market shortages or lack of funds are not considered force majeure⁴.

However, in entrepreneurial activity, such circumstances are recognized only as situations that are impossible to prevent (for example, the absence of goods in the market, lack of funds, and similar situations are **not** considered force majeure).

Judicial Practice

The Plenum of the Supreme Court of Russia, in its Resolution No. 49 of December 25, 2018, emphasized that:

- Courts should give priority to the parties' will if the contract does not contradict dispositive norms;

- Contracts violating mandatory norms are fully or partially invalid;

- Even in the absence of a formal contract, actual performance may constitute a “de facto contract” (“фактический договор” in Russian)⁵.

For instance, in construction disputes, the courts have allowed recovery for completed works even when the contract was declared void (Supreme Arbitration Court decision, July 15, 2014, No. BAC-7564/14)⁶.

³ Commentary to the Civil Code of the Russian Federation, Ed. by E.A. Sukhanov, Moscow: Statut, 2022.

⁴ Civil Code of the Russian Federation (Parts I, II, III).

⁵ Resolution of the Plenum of the Supreme Court of the Russian Federation No. 49, December 25, 2018.

⁶ Decision of the Supreme Arbitration Court of Russia, July 15, 2014, No. BAC-7564/14.



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Ukraine

In the Ukrainian civil law system, the concept of the contract also plays an important role. While parties are free to define their mutual rights and obligations through a contract, this freedom is not unlimited. The law acts as both a guarantor of contractual freedom and a framework that introduces certain restrictions. The **Civil Code of Ukraine (CCU)** and judicial practice establish the legal boundaries of these relationships.

Definition and Legal Foundations

- **Article 626** of the Civil Code of Ukraine defines a contract as “an agreement between one or more persons aimed at establishing, altering, or terminating civil rights and obligations.”
- **Article 14(1)** provides that civil rights and obligations may also arise from actions prescribed by legislative acts.

Thus, the contract is recognized as a **source of civil relations** in Ukrainian law.⁷.

Freedom of Contract and Its Limitations

1. Principle of Freedom

- Article 627 of the Civil Code of Ukraine provides that parties are free to enter into a contract at their own discretion, choose their counterparties, and determine the terms of the agreement.
- Legal scholarship also emphasizes that the principle of **freedom of contract** plays an important role in Ukrainian law.

2. Limitations

- However, contractual freedom is **not absolute**. Article 6(3) of the Civil Code of Ukraine specifies the provisions of civil law that cannot be deviated from by agreement of the parties.

⁷ Civil Code of Ukraine, January 16, 2003, No. 435-IV.



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- Scholarly analysis distinguishes two main models of restriction:

- (1) **Direct prohibitions imposed by the state.**
- (2) **Evaluative standards** such as *fairness*, *responsibility*, and *impartiality*, which serve as state-enforced requirements.

For example, there exists a type of contract known as a “**public contract**”, under which a business is obliged to provide certain goods or services to any person who applies for them. This is stipulated in **Article 633** of the Civil Code of Ukraine⁸.

Supremacy of Law and Temporal Application

Article 3(1) of the Civil Code of Ukraine provides that civil rights and obligations may also arise from actions prescribed by legislative acts.

The issue of how the law affects contractual relations and whether new legislation applies to pre-existing relationships is also being addressed in Ukraine. For instance, there are specific provisions in the Civil Code that regulate the **temporal application of laws**.

Relationship Between Law and Contract

1. Supremacy of Law

Although the parties are free to determine the terms of their contract, if those terms contradict the requirements of the law (mandatory norms), the provisions of the law prevail. For example, Article 627(3) of the Civil Code of Ukraine includes the phrase “*unless otherwise provided by law.*”

2. Contractual Freedom and Legal Stability

While contracts ensure flexibility in market relations, the law guarantees legal stability and protection. This balance is also essential in the Ukrainian legal system to maintain the consistency of legal relations.

Legislative changes do not immediately or automatically affect existing contracts — the terms effective at the time of conclusion generally remain valid

⁸ Civil Code of Ukraine, January 16, 2003, No. 435-IV.



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unless the law provides otherwise. For instance, contracts concluded before the repeal of the Commercial Code may continue to remain in force.

Practical and Scholarly Issues

Scholarly works in Ukraine have also analyzed the **obligation to perform a contract**. For example, Article 629 of the Civil Code of Ukraine establishes the duty of the parties to fulfill their contractual obligations.

In Ukrainian legal practice, changes in legislation have led to significant updates in the field of contract law — for instance, the **abolition of the Commercial Code** aims to regulate contractual relations under a **single legal framework**, namely the Civil Code of Ukraine.

The United States

The legal system of the United States belongs to the **Anglo-Saxon (common law)** tradition, in which the institution of the **contract** occupies a central place. **Contract law** is an independent branch of law developed through state-enacted normative legal rules and judicial decisions. In the United States, the relationship between law and contract is based on the **principle of freedom**, although this freedom is regulated by **legal boundaries**⁹.

Legal Nature of the Contract

According to American law, a contract is defined as “an agreement between two or more parties made with the intention of creating legal obligations.” This definition is set forth in **Restatement (Second) of Contracts, §1**. Contract law in the United States is primarily based on judicial precedents developed by the courts. The **freedom of contract** is recognized as a general principle, which means that parties are free to make contracts voluntarily and to determine their own terms. However, this freedom must not conflict with **law, moral standards, or public order**¹⁰.

⁹ Corbin, Arthur. *Corbin on Contracts* (Westlaw, 2020).

¹⁰ Restatement (Second) of Contracts (American Law Institute, 1981).



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Supremacy of Law and Division Between Federal and State Law

In the United States, contract law is not federal but is primarily governed by state law. Each state has its own legal rules on contracts, although their fundamental principles are largely similar. The **Uniform Commercial Code (UCC)** is recognized as the unified legal document regulating contracts. Article 2 of the UCC governs contracts for the **sale of goods**. For example, under UCC §2-204(1): “*A contract for the sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.*¹¹” This provision demonstrates the flexibility of contract formation, while at the same time, the law maintains control over the substance of contracts - especially for the purpose of protecting consumers

Relationship Between Law and Contract

Two guiding principles define this relationship:

- 1. Freedom of Contract:** Parties are free to determine the content of their contracts.
- 2. Supremacy of Law:** No contract may contravene law, morality, or public policy.

Restatement (Second) of Contracts §178 states that a contract is void if it violates law or public policy. For instance, illegal contracts - such as those involving bribery or gambling - are unenforceable.

Judicial Practice

In the United States, the practical interpretation of contract law is reflected in several landmark court cases.

- 1. Hamer v. Sidway (1891), 124 N.Y. 538:** In this case, the court held that for a “promise” to be legally binding, one of the parties must give up a legal right or privilege. This decision established the **principle of consideration**, meaning that a contract requires something of value to be exchanged between the parties¹².

¹¹ Uniform Commercial Code (UCC), Article 2 – Sales.

¹² Hamer v. Sidway (1891), 124 N.Y. 538



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2. Williams v. Walker-Thomas Furniture Co. (1965), 350 F.2d 445 (D.C. Cir.): In this case, the court developed the concept of an “**unconscionable contract.**” It held that if a contract is excessively one-sided, causes severe harm to one party, or violates standards of fairness, it may be declared **invalid**¹³.

Modification of Contracts and the Temporal Effect of Laws

In the United States, a new law or regulatory act does not have retroactive effect. If a new law is enacted after a contract has been concluded, it does not apply to contracts made earlier, unless the law explicitly provides otherwise. However, in certain cases, courts may apply new laws to previously concluded contracts if those laws are deemed to concern matters of **public interest**¹⁴.

General Legal Analysis

As a result of the analysis, it can be emphasized that in the civil law of every country, the relationship between law and contract is based on the balance of two fundamental principles - **freedom of contract** and **supremacy of law**. In the U.S. legal system, **freedom of contract** is widely recognized but limited by the principle of “**freedom within the rule of law.**” Judicial precedents serve as the primary legal source in this field.

In **Ukrainian civil law**, parties are also free to enter into contracts; however, this freedom is restricted by **mandatory legal norms** and **laws protecting consumer rights**. In recent years, there has been a clear trend toward the **modernization of contract law**.

The **Russian Federation’s** legal system, based on the principle of “**legal freedom and normative stability,**” requires that contracts be concluded in accordance with the law. Dispositive norms allow the parties to determine their relationship through mutual agreement.

In **Uzbek civil law**, the relationship between law and contract is built on similar principles: while **freedom of contract** grants parties broad rights, the **law** limits

¹³ Williams v. Walker-Thomas Furniture Co., 350 F.2d 445 (D.C. Cir. 1965).

¹⁴ Farnsworth, E. Allan. Contracts (Aspen Publishers, 4th ed., 2004).



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these rights within the framework of **mandatory provisions**. Judicial practice plays a crucial role in maintaining this balance.

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