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DOCTRINAL APPROACHES IN MODERN CONTRACT LAW

Açar sözlər: müqavilə, doktrinal təhlil, müqavilə azadlığı, vicdanlılıq, standart şərtlər, standart forma müqavilələr, münasibət (relational) müqavilə nəzəriyyəsi, Azərbaycan, beynəlxalq xüsusi hüquq.

Ключевые слова: договор, доктринальный анализ, свобода договора, добросовестность, стандартные условия, договоры присоединения, теория реляционного договора, Азербайджан, международное частное право.

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Contract law is often presented as the legal language of private autonomy: individuals and businesses organize cooperation through agreements whose binding force is typically respected by courts. Yet modern practice reveals persistent tensions. Many transactions are concluded through standard form contracts drafted by repeat players; consumers and small enterprises frequently negotiate under information asymmetry; and cross-border commerce introduces choice-of-law and enforcement uncertainty. These realities force a doctrinal question: what justifies enforcing a contract when the bargaining process, the content of the terms, or the

surrounding social context undermines the idealized picture of fully informed and equal consent?

Doctrinal approaches offer different answers. Some prioritize form and expressed intention; others emphasize the economic function of exchange, the protection of legitimate reliance, or the relational character of long-term cooperation. Mapping these approaches is practical as well as theoretical: doctrinal choices influence how judges interpret ambiguous terms, control unfair clauses, allocate risk, and respond to changed circumstances.

The article proceeds in two steps. First, it outlines major doctrinal models used to explain the binding force and limits of contracts. Second, it applies the resulting framework to Azerbaijani private law by separating (i) a descriptive account of statutory architecture from (ii) a normative evaluation of tensions that appear in practice. The comparative references are selective: they clarify concepts and highlight doctrinal options rather than proposing direct legal transplants.

Contract doctrine is not a single, uniform theory. It consists of competing narratives that are often combined in legislation and adjudication.

Formalist thinking treats contract as the crystallization of private will. In the classical civil-law tradition, will theory—often associated with Savigny—grounds contractual obligation in the autonomy of the parties and the idea that legal enforcement respects self-authored commitments. Interpretation aims to reconstruct

expressed intention, and judicial intervention is exceptional: the law's legitimacy lies in protecting freedom of contract and legal certainty [7, s.55–67].

The strength of formalism is predictability. By privileging text, form, and declared intent, it stabilizes expectations. Its weakness appears when the empirical conditions for meaningful consent are absent—particularly where standard terms, information asymmetry, or cognitive limits weaken the connection between signature and genuine choice.

Anti-formalism challenges the assumption that contractual outcomes are the neutral product of equal bargaining. Realist and critical approaches emphasize that the background rules of property, tort, and procedure—and the institutional setting of markets—shape what parties can meaningfully choose. Strict adherence to form may entrench structural inequality; courts may need to control abuse of rights, deception, or exploitation. An interest-oriented critique, associated with Rudolf von Jhering's later work, similarly treats contract and private law as instruments for reconciling competing interests rather than as the mechanical enforcement of abstract will [8].

Anti-formalism does not deny the value of autonomy. It treats autonomy as a social achievement that depends on transparency, fair bargaining conditions, and access to remedies.

Functionalism accounts assess contract rules by the practical purposes they serve: facilitating exchange, allocating risk, and reducing transaction costs. Interpretation becomes a tool for sustaining the deal the parties reasonably attempted to make, rather than mechanically reproducing literal wording.

Functionalism is influential in commercial settings, where business expectations and trade usage often matter more than abstract moral accounts. However, an exclusively functional lens

can underplay distributional concerns and may inadequately address power imbalances in consumer or employment contexts.

Relational contract theory, most prominently developed by Ian Macneil, argues that many agreements cannot be understood as isolated exchanges. Long-term cooperation—supply chains, franchise networks, construction projects, credit relationships—operates through trust, adaptation, and informal norms. The written contract is only one governance device among others [6].

Relational theory highlights duties of cooperation and reasonableness, and it treats renegotiation and adjustment as normal rather than exceptional. The challenge is to translate relational insights into legal standards that remain predictable and do not invite unconstrained judicial discretion.

Modern systems rarely adopt a single model. Instead, they combine respect for contractual freedom with general standards—good faith, honesty, fairness, and reasonableness—that function as safety valves. Comparative instruments such as the UNIDROIT Principles expressly articulate good faith and fair dealing as a baseline of contractual conduct and prohibit its exclusion. These standards connect the enforcement of private agreements to broader principles of legal legitimacy and social cooperation [5, art. 1.7].

Azerbaijan's Civil Code adopts the civil-law architecture of contract while embedding modern protective mechanisms. Several provisions are central to the doctrinal picture.

At the level of general principles, the Code requires subjects of civil relations to exercise their rights and duties in good faith (Civil Code, art. 5.3) and lists freedom of contract among the foundational principles of civil legislation (art. 6.1.5). It also clarifies that persons acquire and exercise civil rights according to their will and may freely determine contractual terms that do

not contradict legislation (art. 6.2). At the level of contract doctrine, Article 390 frames “müqavilə azadlığı” (freedom of contract) by allowing parties to conclude contracts and define their content, while requiring compliance with mandatory (imperative) norms (art. 390.1–390.2) [1].

Taken together, these provisions reflect a balanced legislative stance: contractual freedom is a principal framework, but it is not absolute autonomy. The interpretive and remedial role of good faith becomes especially important where bargaining is uneven or where contractual performance is delayed.

The Civil Code contains detailed rules on “müqavilələrin standart şərtləri,” corresponding to standard form contracting. Article 418 regulates the incorporation of standard terms; Article 419 excludes unusual clauses that the other side could not reasonably foresee; and Article 419.2 adopts a contra proferentem rule: ambiguities in standard terms are interpreted against the party that proposed their inclusion. Article 420 identifies categories of invalid standard terms used against individuals who are not engaged in entrepreneurship [1].

These civil-law mechanisms are complemented by consumer protection policy. Public guidance issued through the consumer protection portal stresses that clauses restricting statutory consumer rights are invalid and may trigger enforcement. Doctrinally, the interaction between Civil Code control of standard terms and consumer-law invalidity rules provides a structured way to protect parties in a relatively weaker bargaining position without abandoning freedom of contract as a baseline [9].

The Code also addresses issues that frequently arise in litigation: the effect of a contract’s duration and the consequences of delay. Article 399.3 allows parties to stipulate that expiry of the contract term ends contractual obligations; Article 399.4 clarifies that expiry does not re-

lease parties from liability for breaches committed before expiry. In payment disputes, Article 445.7 provides for statutory interest for delayed monetary performance [3; 4].

Judicial practice has applied these rules in a doctrinally structured way. The Supreme Court’s Bulletin reports cases relying on the Constitutional Court’s legal position on the interpretation of Civil Code Articles 399.3–399.4 and on the statutory consequences of late payment under Article 445.7, illustrating how textual rules on duration and delay are operationalized in adjudication.

The descriptive structure above leaves open normative questions. Two tensions are particularly visible: (i) the scope of judicial intervention through good faith and standard-term control, and (ii) the interaction between domestic doctrine and cross-border contracting.

A formalist reading might treat good faith as a narrow interpretive principle. A modern reading treats it as a substantive constraint that polices opportunism and protects legitimate expectations. Azerbaijani doctrine can support this view because good faith is framed as a duty on all subjects of civil relations (art. 5.3), not merely as an interpretive preference [1].

Normatively, this aligns enforcement with standards of honesty, fairness, and reasonableness. It provides a vocabulary for courts to respond to situations where a party uses literal wording to defeat the contract’s purpose, to impose surprising standard terms, or to exploit informational asymmetry. The legitimacy of such intervention depends on disciplined reasoning: findings of bad faith should be tied to concrete behavior (concealment of material information, contradictory conduct, abuse of a discretionary right), rather than to abstract moral discomfort.

Standard form contracts are the default instrument of mass markets. The Civil Code’s framework (Arts. 418–420) therefore performs

a dual function. First, it preserves efficiency by allowing drafting and incorporation of pre-set terms. Second, it constrains one-sided drafting by excluding unexpected clauses, interpreting ambiguity against the drafter, and invalidating certain categories of unfair terms in consumer settings.

Comparatively, this resembles the logic of European controls on unfair terms. Doctrinally, the key question is how the control is applied in practice. A defensible approach is incremental: courts should begin with incorporation and transparency (whether the other party had a real opportunity to learn the terms), then move to interpretation and invalidity only when a clause defeats legitimate expectations or statutory protections.

Cross-border transactions raise a further doctrinal layer. Azerbaijan's Law on Private International Law endorses party autonomy: the parties may choose the law applicable to the contract as a whole or to its parts (art. 24.1–24.3). Yet the regime limits choice of law where it would circumvent imperative rules: a choice that leads to non-application of the contract's "imperativ normalar" is invalid (art. 24.4). In practice, this means that a choice-of-law clause will not necessarily displace Azerbaijani mandatory consumer protections or other imperative norms [2, art. 24].

This reflects a broader doctrinal point. Even when private autonomy is strong, modern systems preserve a zone of non-derogable protec-

tions serving public interests—market integrity, consumer welfare, and equality of bargaining power. The doctrinal challenge is to articulate these limits in a way that remains foreseeable for commercial actors, so that cross-border contracting stays flexible and legally secure.

CONCLUSION

Doctrinal approaches show that contract law is not only a technical system of rules but also a normative project. Formalism protects certainty and expressed intention; anti-formalism and functionalism expose the social and economic conditions that make consent meaningful; and relational theory captures the governance needs of long-term cooperation. Azerbaijani contract law reflects this pluralism. Its statutory framework strongly endorses freedom of contract while embedding good faith duties and detailed controls of standard form contracting. These mechanisms are complemented by consumer protection policy and by a private international law regime that supports party autonomy subject to mandatory limitations.

For Azerbaijani doctrine, the central task is to preserve contractual freedom as the baseline while ensuring that enforcement remains legitimate in light of honesty, fairness, and reasonableness. A clearer separation of descriptive analysis from normative evaluation, combined with careful use of comparative insights, can strengthen both scholarship and adjudication—and help anticipate future developments in its legal evolution.

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MÜASİR MÜQAVİLƏ HÜQUQUNDA DOKTRİNAL YANAŞMALAR

XÜLASƏ

Müqavilə hüququ müasir iqtisadi dövriyyənin əsas hüquqi mexanizmlərindən biridir və iradə azadlığı ilə sosial ədalət tələbləri arasında balansın qorunmasını tələb edir. Məqalədə müasir müqavilə hüququndakı əsas doktrinal yanaşmalar (formalizm, antiformalizm, funksionalizm və əlaqəli müqavilə nəzəriyyəsi) sistemləşdirilir və bu yanaşmaların müqavilə öhdəliklərinin qanuniliyi, müddələrin şərh və məhkəmə müdaxiləsinin sərhədləri baxımından nəyi izah etdiyi göstərilir. Müqayisəli perspektivdə Savigny-nin iradə nəzəriyyəsi, von Jhering-in maraq yönümlü tənqidi və Macneil-in əlaqəli müqavilə modeli qısa şəkildə təqdim olunur.

Daha sonra bu çərçivə Azərbaycan hüququna tətbiq edilir: Mülki Məcəllənin 5.3-cü maddəsindəki vicdanlılıq prinsipi, 6.1.5 və 6.2-ci maddələrdə müqavilə azadlığı və iradə azadlığı prinsipləri, eləcə də 390-cı maddədə “müqavilə azadlığı” müddəaları vurğulanır. Standart şərtlərə dair 418–420-ci maddələr (o cümlədən 419.2-ci maddədə müddələrin əklif etmiş tərəfin ziyanına (əleyhinə) şərh olunması qaydası) və istehlakçı hüquqlarını məhdudlaşdıran müddələrin etibarsızlığına yanaşma praktiki baxımdan təhlil olunur. Məqalədə həmçinin şəxsi beynəlxalq hüquqda tərəf azadlığının (tətbiq olunan qanunun seçimi) sərhədləri və məcburi normaların rolu diqqətə çatdırılır.

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ДОКТРИНАЛЬНЫЕ ПОДХОДЫ В СОВРЕМЕННОМ ДОГОВОРНОМ ПРАВЕ

РЕЗЮМЕ

Договорное право является одним из основных правовых механизмов современного экономического оборота и требует баланса между свободой воли и требованиями социальной справедливости. В статье систематизируются ключевые доктринальные подходы в современном договорном праве (формализм, антиформализм, функцио-

нализм и теория реляционных (отношенческих) договоров) и показывается, что именно эти подходы объясняют с точки зрения легитимности договорного обязательства, толкования условий и пределов судебного вмешательства. В сравнительной перспективе кратко представлены волевая теория Савиньи, ориентированная на интересы критика фон Иеринга и реляционная модель договора Макнейла.

Далее предложенная рамка применяется к азербайджанскому праву: выделяются требование добросовестности в статье 5.3 Гражданского кодекса, принципы свободы договора и свободы воли в статьях 6.1.5 и 6.2, а также положения о «свободе договора» в статье 390. С практической точки зрения анализируются статьи 418–420 о стандартных условиях (в том числе правило статьи 419.2 о толковании против стороны, предложившей условия) и подход к недействительности условий, ограничивающих права потребителей. В статье также подчеркиваются пределы автономии воли (выбора применимого права) в международном частном праве и роль императивных норм.

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