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**САВЧЕНКО В. О.**

кандидат юридичних наук, доцент

доцент кафедри цивільно-правових дисциплін юридичного факультету

науковий співробітник Оксфордського університету

E-mail: [savchenko.viktor@gmail.com](mailto:savchenko.viktor@gmail.com)

ORCID: <https://orcid.org/0000-0001-7104-3559>

Харківський національний університет імені В.Н. Каразіна

м. Харків, 61022, майдан Свободи,

м. Оксфорд, Велика Британія, OX1 1PT, вул. Сент-Еббі

## МЕХАНІЗМИ ВПЛИВУ НА СВОБОДУ ВОЛІ: ЦИВІЛЬНО-ПРАВОВИЙ КОНТЕКСТ

**АНОТАЦІЯ.** *Вступ.* У статті досліджено основні механізми впливу на свободу волі в контексті цивільного права. Ці механізми включають неусвідомлення значення своїх дій та неможливість їх контролювати, помилки, обман, примус, насильство та вплив складних обставин. Метою даного дослідження є визначення механізмів впливу на свободу волі та значення такого впливу в цивільному праві. Методи: в основі дослідження знаходиться доктринальний метод, який застосовується для аналізу існуючих правових принципів, норм та законодавства щодо свободи волі та недоліків волі в цивільному праві. Дослідження також спирається на порівняльний підхід, вивчаючи правові концепції та судові справи з різних юрисдикцій, включаючи право Німеччини, Великої Британії та ЄС. Крім того, стаття включає погляди з філософії права, посилаючись на теорії І. Канта та Ф. Савіні, щоб забезпечити контекст і критичний аналіз правових доктрин.

*Короткий зміст основних результатів дослідження.* Автор підкреслює, що свобода волі, прийняття рішень та свобода думки є основою, на якій існує приватне право. У статті досліджено основні механізми виникнення дефектів волі в цивільному праві, які включають неусвідомлення значення своїх дій, невміння їх контролювати, помилки, обман, примус, насильство та вплив складних обставин. Автор підкреслює, що якщо вільне волевиявлення особи піддається зовнішньому впливу, це є підставою для оспорювання або визнання правочину недійсним. Автор доводить, що свобода волі не є абсолютною, оскільки правомірне встановлення меж свободи волі пов'язане з нормативними обмеженнями, а право визначає правила поведінки.

*Висновки.* Свобода вибору, прийняття рішень та свобода думки є основою приватного права. Воля особи є недоторканою, оскільки протиправний вплив на неї породжує правові наслідки, від визнання правочинів недійсними, до кримінальної відповідальності. Правові норми впливають лише на зовнішню форму свободи волі (волевиявлення), конкретизуючи умови та механізми участі у правовідносинах та визначаючи права та обов'язки. Внутрішня форма свободи волі не може бути предметом правових обмежень.

**КЛЮЧОВІ СЛОВА:** *свобода волі, дефекти волі, вади волі, правочин, примус, недійсність.*

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### 1. Introduction

Free will is the main criterion for participation in legal relations, and it is the basis for such legal principles as discretion, voluntariness and equality, among others.

Freedom of choice, decision-making and freedom of thought are the foundations of private law. These criteria are necessary to enter into contracts, exercise rights, and consent to medical intervention, among other things. A person's will

is inviolable because any unlawful influence upon it gives rise to legal consequences, from recognising transactions as invalid to criminal liability. The scientific doctrine has attempted to identify mechanisms that affect free will from the standpoint of medicine, psychiatry, psychology, economics, sociology, philosophy and law. However, there is no established concept for understanding interference with free will and its significance for private law relations.

The logic of analysing this issue determines the structure of the study. In the first part, we define the concept and meaning of influence on free will and examine the ways and consequences of such influence. In the following sections, we explore the classical mechanisms that can vitiate a transaction, making it invalid:

1) transactions made by a person with legal capacity who, at the time of their commission, did not realise the significance of their actions and could not control them;

2) transactions made under the influence of mistake;

3) transactions made under the influence of deceit;

4) transactions made under the influence of duress; and

5) transactions made under the influence of grave circumstances.

Such a comprehensive approach allows for a holistic coverage of the issues under study.

Status of the issues being studied. Various aspects of the influence on free will in civil law have been the subject of scholarly research. The philosophical and historical foundations of the issue were laid in the works of I. Kant [23] and F. Savigny [27]. General legal problems of defects of will were considered by P. Sławicki [29]. Individual mechanisms of influence have been analysed by numerous scholars, including: deceit, studied by V. Krat [4] and D. Shvets [11]; mistake, examined by I. Lavrinenko [5] and R. Aleksey [1]; duress, with its legal signs defined by D. Zaitsev and O. Zaitsev [3]; and grave circumstances, considered in the work of O. Belyanovich [2]. The Roman law context of duress has also been studied by researchers such as R. Zimmermann [37].

However, a comprehensive analysis that systematises these classical mechanisms within a unified civil law framework remains a relevant task.

This study aims to analyse the primary mechanisms that impair free will in civil law, including lack of awareness, mistake, deceit, duress, and grave circumstances. The research clarifies the legal significance of these "defects of will" as grounds for challenging or invalidating transactions.

## **2. Legal understanding of the impact on free will**

Free will allows parties to enter into private relations and create new rights and obligations. A departure from the legal ideal of free will is of fundamental importance for private law relations. It may be grounds for declaring a transaction invalid due to defects of will.

The legal idea of free will is a part of the legal ideology that reflects the ability of a person to consciously, freely and independently make and implement decisions on participation in legal relations by taking actions or omissions, exercising subjective rights and fulfilling obligations, as well as the ability to bear legal responsibility for them. It is the basis for the formation of law, its principles and legal regulation. In the simplest sense, free will is the ability to make decisions and take actions or not to act.

The legitimate establishment of the boundaries of free will is associated with normative restrictions since the law defines the rules of behaviour. However, legal norms only affect the external form of free will (expression of intent) by specifying the conditions and mechanisms for participation in legal relations and establishing rights and obligations. The internal structure of free will (exercised through the right to freedom of thought) cannot be subject to legal restrictions. This position contradicts the ideas of I. Kant, who substantiated the independence of the will from any law other than the law of morality [23]. He believed that external factors, such as the law, cannot restrict free will because only one's own reason is a measure of it. This can be illustrated by the following example: the law requires a written form for a real estate sale and purchase agreement, but the parties, knowing this, deliberately enter into an oral contract. Alternatively, instead of a car purchase and sale agreement, the parties enter into a gift agreement, and the payment for the car is transferred unofficially (in cash, without paying taxes). Free will allows parties to a legal relationship to violate the law intentionally. Formally, the parties have achieved their goal - one party will receive money, and the other will receive the right to own and use the property.

If the parties comply with the law, they also do so at their discretion, by their own decision, guided by the norms of morality and ethics. The basis of legal norms is made up of moral norms, the source of which is natural law; law and justice are equal, and justice consists of giving back what someone is lawfully entitled to [30, p. 70]. The law should reflect established practices and moral and ethical paradigms, adjusting them only when necessary. However, legal norms still define the boundaries of free will, forcing participants in legal relations to make decisions within the framework of normative prescriptions. In this matter, Kant's theory is more philosophical than practical and legal because, from a normative point of view, transactions that violate the law's

requirements (defects of form, will, etc.) are rendered void or voidable.

However, influencing free will in other ways is prohibited, as it interferes with the autonomy and consciousness of decision-making that gives rise to rights and obligations. Such influence contradicts legal principles, particularly the doctrine of good faith and fair dealing. For example, the German Civil Code stipulates that any legal act contrary to accepted standards of good behaviour, as well as any legal action by which a person takes advantage of the need, weakness or inexperience of another person to induce that person to promise or agree to provide them or a third party with property interests in exchange for something that is provided that is so disproportionate to the performance in return that it constitutes exploitation, is invalid [14, Art. 138].

### 3. Not realising the significance of actions

A transaction is a free expression of will to create civil rights and obligations. Parties to a contract must be aware of the consequences of their actions, so the principle of free will is essential for participation in civil legal relations. If a person's free will is subject to external influence, this is grounds for challenging the transaction or declaring it invalid.

As P. Sławicki wrote: 'a declaration of will is an essential element of legal activity submitted to induce specified legal effects. The legal system, however, identifies certain situations that can render legal actions defective, violating specific legal norms. An example of such regulations is the defect in a declaration of will, in the case of which a performed legal act is regarded as invalid or may be voidable through revocation by one party from the legal effects of this legal activity [29, p. 181].

The lack of awareness of the significance of one's actions and the inability to control them relate to a person's internal state, which affects their free will. Although these processes are internal and occur in a person's mind, their causes can be external influences. This state can be caused by a nervous shock, temporary mental disorder, alcohol and drug intoxication, or severe pain, etc. An essential condition is the absolute inability of a person at the time of the transaction to understand the significance of their actions and control them [6].

Court practice proceeds from the fact that evidence of absolute incapacity must be sufficient to prove that the person was not aware of their actions. Evidence of mental illness, intoxication, etc., is not enough. An example is a decision where the court dismissed a claim for invalidation

of a life care contract. The plaintiff's arguments were based on the fact that his sister was taking narcotic analgesics as a result of a severe illness and, therefore, could not be aware of her actions at the time of the agreement. An expert examination established her limited ability to understand the significance of her actions. The court found that the case file did not confirm the absolute inability to understand the significance of her actions at the time of the contract [9]. The fact of having an illness and using narcotic analgesics does not in itself indicate a lack of awareness of one's actions. In court, it must be proven that the person's will was defective at the time of participation in the legal relationship.

Consider another example. A pregnant woman is admitted to a maternity hospital. Of her own free will, she signs a waiver for the use of painkillers, caesarean section, vacuum extraction and other assistive technologies. These documents are marked with the expectation of normal labour. However, after 9 hours of trying to give birth, the doctor suggests using painkillers, and the woman agrees. We can assume that, at this point, the patient is tired and experiencing severe stress and pain. That is, the consciousness of making this decision may be questionable. After the anaesthetic is administered, the woman still cannot give birth on her own, and the doctor suggests that she agree to a caesarean section. An even more tired woman, under the influence of stress and medication, signs consent for medical intervention. This raises questions about whether she is fully aware of her actions. Is there a case of "absolute incapacity" here? The case law generally holds that while the circumstances are stressful, they do not negate the legal validity of the consent given, distinguishing it from legally recognised coercion.

A different situation arises when an agreement is entered into while under the influence of alcohol or drugs. Intoxication affects a person's will and ability to perceive circumstances and act objectively. However, the fact of intoxication is not enough to invalidate a transaction. The intoxication must be severe enough for a contract to be voidable, and the intoxicated party must try to rescind the contract within a reasonable period of regaining their full consciousness and recognising their mistake in entering the contract [34]. The state of intoxication affects the will and compliance with the principle of free will. However, two conditions must be met to invalidate a transaction: (1) the level of intoxication must be sufficient for the person to be unaware of their actions, and (2) the person must seek to terminate the contract.

Otherwise, any contract concluded by an intoxicated person would have to be declared invalid. Such a position is recognised as erroneous and may create a legal collapse. For example, a person could not order a taxi, buy coffee, or do other similar activities. All small domestic transactions made by a person while intoxicated should be declared invalid. A more correct position would be to invalidate only transactions involving real estate or those with substantial consequences. However, even in this case, it is necessary to consider the person's desires and interests after regaining the ability to realise their actions. For example, suppose a person in a state of severe intoxication purchased a lottery ticket and won a significant amount of money. In that case, such a transaction will be valid because it was concluded in that person's interests. If a person, unaware of their actions, went to a casino and lost all their fortune, they may challenge the transaction.

Crucially, a person's state of unconsciousness must not be caused by the intentional actions of another person. In particular, it is unlawful to deliberately intoxicate another person to make them enter into a contract. In this case, there is an external, exploitative influence on the other person's free will. In this context, the example of a casino is relevant again, as it is common for casinos to offer complimentary alcoholic beverages to make visitors lose control of their actions. On the other hand, such a practice cannot be qualified as coercion because the consumption of alcoholic drinks and participation in gambling are voluntary. However, the beneficiary of the benefit is the person who had an interest in the counterparty's lack of will and took advantage of it.

Transactions committed by a legally capable individual who, at the time of the transaction, did not realise the significance of their actions and could not control them arise from a mismatch between the internal will and the expression of intent. Such cases are the basis for bilateral restitution and compensation for non-pecuniary damage.

#### **4. Mistakes**

When entering into a transaction under the influence of a mistake, the subject's will corresponds to the choice made. Still, it is formed by ideas that do not conform to reality regarding the circumstances essential for the transaction's conclusion [5, p. 231]. A mistake means to be wrong about or to fail to recognise something or someone [25].

In the context of civil rights, a mistake refers to a person's misconception about the

consequences and results of their actions. In this case, the internal will and expression of will may be consistent, but they aim to achieve a biased goal. Thus, the mistake distorts the person's will and interferes with their interests. Mistakes can arise from a person's internal perceptions, false beliefs, or a lack of education or information, etc. For example, in *Griffith v. Brymer*, at 11:00 a.m. on June 24, 1902, the plaintiff entered into an oral agreement to hire a room to view the coronation procession on June 26. A decision to operate on the King, which rendered the procession impossible, was taken at 10 am on 24 June. Wright J held the contract void. The agreement was made on a mis-supposition of facts which went to the whole root of the matter, and the plaintiff was entitled to recover his £100 [21].

Fundamentally, a mistake occurs when a party's actions do not align with their true intentions or interests. When entering into a contract, a person seeks to obtain a particular benefit, but it becomes impossible to satisfy the need due to a mistake.

A mistake can occur due to illness. For example, a person with COVID-19 suffers from a defective sense of smell. Unaware of their condition, the customer buys a fragrance. Due to their false perception of the scent, the buyer makes a mistake. Customers may be directed to purchase a perfume with a specific smell that turns out to be incorrect. A similar example can be given regarding legal relations for purchasing more expensive goods. For example, a trader buys a large consignment of grapes, flowers, and other goods to produce products. Being in a state of poor health, the buyer makes a mistake, misperceiving the quality characteristics of the goods. In this case, we see a defect in the buyer's will.

A mistake can also result from another person's actions. In this case, the mistake becomes a mechanism influencing free will. The mistake cannot result from malice, as it should be qualified as a fraudulent misrepresentation in this case. Another person's actions may lead to an erroneous decision. It is not about intent but whether the person was aware that they were providing false information.

In *Cooper v. Phibbs*, a similar case was considered: an uncle told his nephew, not intending to misrepresent anything, but being in fact in a mistake, that he (the uncle) was entitled to a fishery. After the uncle's death, the nephew, acting in the belief of the truth of what the uncle had told him, agreed to rent the fishery from the uncle's daughters. However, the fishery belonged to the nephew himself.

The House of Lords held that the mistake was only to make the contract voidable. Lord Westbury said, "If parties contract under a mutual mistake and misapprehension as to their relative and respective rights, the result is that that agreement is liable to be set aside as having proceeded upon a common mistake" on such terms as the court thought fit to impose; and it was so set aside [16].

The parties entered the contract based on a misconception of their legal status rather than an intent to mislead. In this case, the misunderstanding was a crucial condition for concluding the contract. Nevertheless, the agreement was concluded because of the mistake

that formulated the parties' will. The mistake affected free will and became the relevant mechanism. Although a mistake creates a defect of will, not every mistake is grounds for rescission and restitution. If any mistake were sufficient grounds for termination, counterparties could abuse this possibility by relying on a misunderstanding of the contractual terms.

This position is partially implemented in the legislation of various countries by enshrining the right to return goods of good quality.

Regardless of the circumstances, the buyer may return the goods if they have changed their mind, made a mistake, or for any other reason (see example in Figure 1).

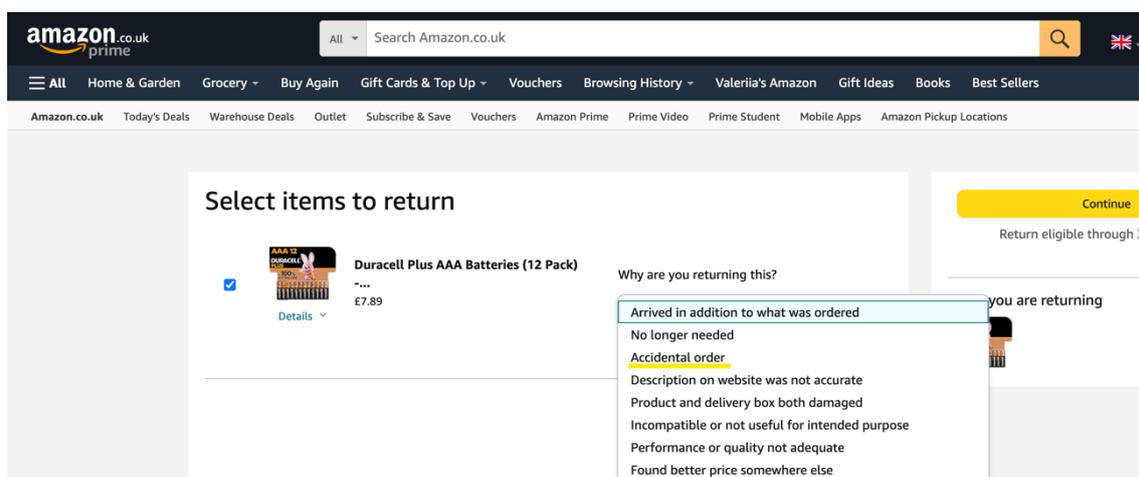


Figure 1. Accidental order.

For a mistake to be recognised as a ground for reviewing a transaction due to its inconsistency with the will of the counterparties, the mistake must be material, be of significant importance to the person who made the transaction and be recognised by the other parties to the legal relationship. I. Lavrinenko makes the correct conclusions: 1. the content of the materiality of a mistake must have a subjective-objective characteristic, but its form must always be objective, i.e. objectively determinable by law; 2. the subjective element of the materiality of a mistake must correspond to its objective component; 3. only under such conditions will there be a two-way dialectical relationship between these elements, which will make it easy to take into account the interests of an individual subject and the turnover as a whole [5, p. 232].

F. Savigny divided mistakes into genuine and false [27, pp. 263-264]. A genuine mistake is associated with a misconception or a misunderstanding of the circumstances. This mistake is associated only with subjective circumstances that influenced the will. For example, the buyer purchased a product because of a misunderstanding

of its characteristics. In such cases, the rule on the possibility of returning goods of good quality within a specified period is recognised as relevant. A mistake of fact, in this context, is an accidental expression of will when a person did not intend to participate in legal relations but created new rights and obligations due to chance. A classic example of this situation is the fictional case of the Trier Wine Auction. I. Herman, a lawyer present at the Trier Wine Auction, invented this case. It is a well-established practice at auctions to raise your hand to express your intention to bid. I. Herman offered a case when an auction visitor saw a man he knew and greeted him by raising his hand. Seeing this, the host awarded the visitor a bid. This bid was the last one, so the auctioneer closed the auction and demanded payment from the visitor. The visitor stated that he had no intention of purchasing the item and was unaware of the auction rules; his actions were not an expression of his will to enter into a contract [22].

This case is fictional, so we do not have a court decision. However, legal doctrine has offered several views on this situation. Thus, K.-W. Canaris insisted that there is no expression of

will in this case, as it violates private autonomy [15]. In contrast, J. Ellenberger noted that it is necessary to focus on the external behaviour of a party to legal relations, even if it does not coincide with that person's motivation [18]. In such cases, the principle of fairness should be applied. This involves establishing whether the party to the legal relationship could have read the auction rules and whether it could have assumed that its actions would create legal consequences.

Since civil legal relations are based on free will, entering into any transaction requires the coordination of internal and external intentions, as well as an awareness of one's actions. If these two elements of free will are inconsistent, there is a deformation of the will and the possibility of restitution. Savigny's concept of a 'false mistake' is closely related to the concept of "aberration", which is committed without the participation of consciousness when a person does not give their actions legal significance because they are mechanical and cannot be considered an expression of will [13, p. 28].

The above position complies with CESL rules: a mistake of fact or law gives the mistaken party a right to avoid the contract if the mistake is fundamental and if it is either a common mistake or a mistake caused by the other party in one way or another [26, Art. 48(1)]. In common law, if one party misunderstands the other's intention about the terms of the contract, it may result in there being no contract because there is no agreement between the parties. However, the mistaken party may still be bound if, objectively, it has so conducted itself that the other party reasonably believed it to agree [31].

The commission of transactions by a person unaware of their actions and under the influence of a mistake has many similarities. Both circumstances create defects of will, but they are mostly related to the subject whose will is deformed. R. Aleksey notes that we cannot speak of abuse in these cases since there is no intent in the parties' actions; their will was formed due to the influence of internal factors that depend on the person [1, p. 56].

### 5. Deceit

In a legal context, deceit is often termed fraudulent misrepresentation. It is a mechanism of influence on the counterparty's free will that involves the deliberate provision of false information to persuade them to enter into legal relations. This act is expressly prohibited by law, and its consequences may include the invalidation of a contract, compensation, or even criminal liability. However, under specific circumstances, when a party wilfully or negligently deceives a counter-

party at the pre-contractual stage, liability for damages may occur under the law (culpa in contrahendo or dolus in contrahendo, i.e. negligent or wilful misconduct during negotiations) [31, p. 12]. Deceit as a mechanism of impact on free will has been known since Roman law, in which dolus in contrahendo (and other varieties of dolus) was seen as contrary to the principle of bona fide.

The purpose of deceit is to influence another person's will, to paralyse or distort it for the onset of legal consequences that could not have occurred without it. V. Krat emphasises that deceit is a deformation of the will influenced by the unlawful behaviour of another person, aimed at forming the intention of another person to commit a transaction, relying on a false idea of the essential circumstances [4, p. 191]. In simple terms, deceit is understood as aliud simulare, aliud agree (to pretend to do one thing and act differently) [36].

Deceit requires several conditions: intent and a motive for gain. It is a direct influence on another person's will. It is based on the assumption that if the counterparty had been provided with complete, accurate information, they would have refused to participate in the legal relationship. In other words, the interested person does not initially plan to fulfil the contract terms agreed upon by the parties. This gives rise to a violation of a whole set of civil and contract law principles.

A classic example of misrepresentation is providing false information about the characteristics of the contract subject, such as quality, quantity, composition, or place of production. A typical example is *Esso Petroleum v Mardon*. Esso's experienced representative informed Mardon that Esso estimated the throughput of petrol at a particular site would reach 200,000 gallons in the third year of operation, persuading Mardon to enter into a three-year tenancy agreement. Mardon did all that could be expected of him as a tenant, but the site was not good enough to achieve a throughput of more than 60,000 gallons. Mardon lost money and was unable to pay for the petrol supplied. Esso claimed possession of the site and the money due. Mardon claimed damages regarding the representation, alleging that it amounted to (1) a warranty and (2) a negligent misrepresentation [19].

This case concerns the potential for deliberately providing false information that exaggerates the valuable qualities of the contract subject matter. Similar issues arise daily and can be isolated or eventually develop into a pattern, ultimately leading to "professional" fraud.

D. Shvets distinguishes between two forms of deception: 1. Active actions are cases when the

counterparty states false facts about the transaction and its elements, denies defects, exaggerates, commits forgery, etc.; 2. Passive actions refer to instances where the counterparty deliberately fails to disclose facts it knows, such as failing to provide complete documentation, concealing information, and remaining silent regarding the essential terms of the transaction [11, p. 107].

Based on the above, we can agree with the following conclusions: 1. Deceit involves intentional, guilty actions of a party to a transaction aimed at assuring the other party of specific properties of the transaction or the occurrence of such consequences, which are impossible; 2. A mistake is an erroneous representation of the circumstances of the transaction; 3. In the case of deception, the transaction results are known and desired by one of the parties, while in the case of mistake, both parties may misunderstand the nature of the transaction [33, p. 108].

Deceit is the manipulation of another person's will, its formation to fulfil one's own objectives and satisfy one's own interests. Deceit is always an unlawful act, but it may be associated with the actions of a third party. Consider a situation where A sells goods to B. Person A is not the property owner but conceals this information (deceit). B becomes the wrongful owner (and is unaware of it) and sells the goods to C. Person C also becomes the unlawful owner. The relationship between A and B arose as a result of the fraudulent misrepresentation. The relationship between B and C emerged as a result of a mistake. Regarding property reclamation, these two scenarios will have two different types of legal consequences.

## 6. Duress

Duress is a threat of harm made to compel a person to act against their will or judgment, especially a wrongful threat made by one person to induce a manifestation of seeming assent by another person to a transaction without genuine volition [20].

The threat of violence, which constitutes duress, constitutes a severe interference with freedom, creating artificial conditions for participation in legal relations. Although there are different types of violence (physical, sexual, domestic, and economic), the legal concept of duress is primarily concerned with physical or mental influence on another person to satisfy one's interests.

D. Zaitsev and O. Zaitsev cite six elements of duress: 1) it is an active behaviour - action. It is impossible to commit an act of duress by omission; 2) it is used intentionally and is accompanied by appropriate motivation, which is based on ignoring human rights and freedoms; 3) the action necessarily violates the right to inviolability; 4)

the purpose is to induce another person to enter into a transaction; 5) there is a coercive influence that is carried out against the will of the victim, with the use of coercion against them; 6) it results in harm to life, health, etc. [3, p. 60].

For example, when a person enters into a transaction under duress or enters into a forced marriage, their free will is vitiated. Such an approach is already considered close to the normative system, as violating free will in these cases would have fundamental legal consequences. This situation also occurs in criminal law, in particular when someone is deprived of their freedom by rape, murder, theft or other forms of violence. In these cases, free will is denied not because the past causally determines the future but because the perpetrator deprives the victim of their will or the right to choose an action. According to compatibilists, the perpetrator forces the victim, thereby denying the victim's free will. Thus, the only thing that matters is that the individual's choice is based on their desires and preferences, not being imposed by some external (or internal) force.

In the case of duress, a person's will is distorted to avoid even more severe consequences. However, there are cases of conditional coercion, when a party enters into legal relations under conditions that restrict the principle of freedom of contract. Such situations are associated with the presence of a weaker party to the agreement. Depending on the circumstances, such a party may be an individual consumer, a creditor, or a person entering into a relationship with an entity that holds a monopoly position in the market, among others. This is most relevant for adhesion agreements, where one party determines the terms of the contract, and the other only accepts them. The other person's free will is limited to accepting or rejecting the offer, without the right to influence the content of the contract. However, such cases should not be considered coercion, as the parties voluntarily decide to participate in legal relations. A contractual term that has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract to the detriment of the consumer [17, Art. 3]. A term shall always be regarded as not individually negotiated where it has been drafted in advance, and the consumer has, therefore, not been able to influence the substance of the term, particularly in the context of a pre-formulated standard contract [17, Art. 3].

Participation in legal relations through threats violates the fundamental right to freedom, which prohibits coercion and pressure on an individual's decision-making. The right to liberty

means a person is free from external interference in their activities, except for legal restrictions [8]. It is precisely because of this position that we recognise all mechanisms of influence on free will as threats to fundamental human rights and civil law principles.

Determining the existence of coercion requires establishing a particular set of facts. First, it must be proven that the person made the decision only because of a real threat. Secondly, to determine whether there is duress, we should look at the effect of the action on the person's state of mind - if the action made the person feel that there is no reasonable choice other than to enter into a contract [35].

In *Barton v. Armstrong*, we can see the following content: A (the former company chairman) threatened B (the managing director) with death if he did not agree to purchase A's shares in the company. There was some evidence that B thought the proposed agreement was a satisfactory business arrangement from his point of view and that of the company. B executed a deed on behalf of the company, carrying out the contract. He sought a declaration that the deed was executed under duress and was void. The Privy Council held that if A's threats were "a" reason for B's executing the deed, he was entitled to relief even though he might have entered into the contract if A had uttered no threats to induce him. The onus was on A to prove that his threats contributed nothing to B's signing decision [12].

Coercion occurs when a party participates in a legal relationship because of the threat of harm from the other party (or its affiliates). There must be a direct causal link between the consent to participate in legal relations and the threat of negative consequences in case of refusal. If B was planning to purchase the company's shares even without A's threats, then A's actions cannot be considered coercion, and the transaction will be regarded as valid.

Coercion as a mechanism of influence on free will is associated with *metus causa*. This legal construct relates to a transaction's commission through fear and threats [28, p. 220]. Still, we have to agree with R. Zimmermann that 'metus causa is not to be understood from the point of view of either the extortioner or the person who has been compelled to act, but from the position of whoever acquires something based on duress: irrespective of whether he was himself responsible for the other party's predicament, whether he is merely exploiting it or whether he has acted in good faith' [37]. This brings us to the last traditional mechanism of influence on free will - grave circumstances.

## 7. The impact of a grave circumstance

Grave circumstances influence the commission of exploitative transactions, making people make unfavourable decisions. The deformation of free will is justified because people are aware of the harmful nature of the legal relationship, but are forced to accept the terms to satisfy their interests. Under normal circumstances, people would not have agreed to such a binding transaction. This concept is closely related to the common law doctrines of unconscionability and undue influence, where one party exploits the vulnerability of another.

Grave circumstances may include a severe illness of the person, their family members or relatives, the death of the breadwinner, the threat of losing housing or the threat of bankruptcy, and other circumstances that require a transaction to be made to eliminate or reduce the threat [7].

For example, A sells an apartment for 10% of its market value because he urgently needs money to pay for a surgical procedure. A's interest is to receive the money. From this perspective, this transaction aligns with the law and the principle of freedom of contract (the parties have determined the value themselves). However, under normal circumstances, A would not have sold the property for such a low price. In other words, the agreement was concluded only due to the influence of grave circumstances. Although the contract was entered into at the seller's will, his decision was influenced by external events. If A had agreed on the same terms and conditions without the influence of grave circumstances, there would have been no deformation of will, and the transaction would have been valid.

Some academics emphasise that transactions made under the influence of a problematic circumstance do not have defects of will or expression of will. Otherwise, the unique composition of their invalidity would be different from the rules on the legal consequences of a transaction made under the influence of mistake, fraud, or duress [2, p. 108]. However, the person's will was formulated under grave circumstances that could impair their ability to make an objective decision, giving rise to the statutory possibility of challenging such transactions. This is particularly relevant if another party deliberately creates the problematic circumstances in the legal relationship. For example, A killed the breadwinner of B, after which B sold A an apartment on unfavourable terms. A's actions created grave circumstances and became a mechanism that influenced B's free will. This again refers us to the *metus causa*.

Grave circumstances are not always grounds for challenging a transaction, but may

have consequences in the form of agreeing to unfair terms. For example, in EU law, challenging circumstances are not considered an unfair contractual term [17, Art. 3].

By contrast, Art. 233 of the Civil Code of Ukraine states that a transaction made by a person under the influence of a grave circumstance and on highly unfavourable terms may be declared invalid by a court, regardless of who initiated the transaction [10, Art. 233].

If the transaction was made under the influence of grave circumstances, it is possible to raise the question of its invalidity. This is because such a transaction does not align with the counterparty's valid will. Under normal circumstances, a party to a legal relationship would never agree to unfavourable terms. For example, in a sale and purchase agreement, the seller's interest is not just to transfer ownership for a fee but to maximise profit. If a sale and purchase agreement is entered into under the influence of grave circumstances, it is not in the seller's interest. It is essential to recall that the grave circumstances necessitated the con-

tract being entered into on less favourable terms. If the agreement is concluded on regular terms, it will not be considered challengeable, even in grave circumstances.

If a transaction is challenged, the party must prove that the agreement was concluded unfairly due to grave circumstances. The problematic nature of establishing grounds for terminating a contract concluded under the influence of grave circumstances is that it was ostensibly entered into voluntarily.

At first glance, such an agreement appears to reflect the will of the parties, which necessitates additional proof of the impact on the free will of the counterparties. Freedom of contract remains a potent legal principle.

In contrast, broad qualifying tenets, such as a requirement of good faith, a general law of unfair competition or a general theory of the abuse of rights, remain rejected as principles, even if particular examples of each can be identified either in so many words or in terms of functional equivalence [36].

Table 1. Some mechanisms influencing free will.

Mechanism	Description	Legal Consequences	Example
<b>Lack of Capacity</b>	Inability to understand the significance of one's actions due to an internal state (e.g., severe intoxication, mental disorder).	Voidable contract, bilateral restitution, potential damages.	Signing a contract while severely intoxicated.
<b>Mistake</b>	Misconception about circumstances essential to the transaction	Voidable contract, rescission and restitution	Buying a product based on a misunderstanding of its characteristics.
<b>Deceit (Fraudulent Misrepresentation)</b>	Intentional provision of false information to induce a transaction.	Voidable contract, rescission and restitution, potential damages, potential criminal liability.	Misrepresenting the quality of goods to induce a sale.
<b>Duress</b>	A threat of harm used to compel a party to enter into a contract.	Voidable contract, rescission and restitution, damages, potential criminal liability.	Forcing someone to sign a contract under threat of physical violence.
<b>Grave Circumstances (Unconscionability)</b>	External pressures leading a vulnerable party to agree to highly unfavourable terms.	May be set aside by a court, rescission and restitution.	Selling property far below market value due to urgent need for money for a medical operation

## 8. Summary

Freedom of choice, decision-making, and freedom of thought are the foundations of private law. Without these criteria, entering into contracts, exercising rights, and consenting to medical intervention, among other things, is impossible. A person's will is inviolable because unlawful influence on it gives rise to legal consequences, from

the invalidation of transactions to criminal liability.

The legal idea of free will is a part of the legal ideology that reflects the ability of a person to consciously, freely and independently make and implement decisions on participation in legal relations by performing actions or omissions, exercising subjective rights and fulfilling obliga-

tions, as well as the ability to bear legal responsibility for them. It is the basis for the formation of law, its principles and legal regulation.

Although free will is fundamental to understanding legal capacity, it is not absolute. The legitimate establishment of the limits of free will is associated with normative restrictions, as the law defines the rules of behaviour. However, we believe that legal norms affect only the external form of free will (expression of intent) by specifying the conditions and mechanisms for participation in legal relations and establishing rights and obligations. The internal structure of free will

(exercised through the right to freedom of thought) cannot be subject to legal restrictions.

The main mechanisms for creating a vitiated will in civil law are the failure to realise the significance of one's actions, the lack of ability to control them, making mistakes, fraudulent misrepresentation, duress, and the influence of grave circumstances.

Further research should pay special attention to alternative, little-studied mechanisms of influence on free will: medications, pain, marketing, neuro-linguistic programming, propaganda, and others.

### СПИСОК ВИКОРИСТАНИХ ДЖЕРЕЛ

- 1.Алексій Р. В. Зловживання свободою договору в деяких правочинах з вадами волі. *Юридичний науковий електронний журнал*. 2019. Вип. 1. С. 55–58.
- 2.Белянич О. Деякі питання застосування статті 233 Цивільного кодексу України. *Вісник господарського судочинства*. 2015. № 1. С. 105–115.
- 3.Зайцев Д., Зайцев О. Ознаки правочинів, вчинених під впливом насильства. *Проблемні питання правоохоронної та правозахисної діяльності в контексті євроінтеграційних тенденцій*. Одеса: ОДУВС, 2021. С. 59–60.
- 4.Крат В. І. Недійсність правочинів, учинених під впливом обману. *Часопис Київського університету*. 2012. № 3. С. 189–192.
5. Лаврінченко І. Визнання недійсним правочину, вчиненого особою під впливом помилки. *Юридичний бюлетень*. 2018. Т. 1, № 7. С. 228–248.
- 6.Постанова Судової палати у цивільних справах Верховного Суду України №6-1531цс16 від 28 вересня 2016 р.
- 7.Постанова Пленуму Верховного Суду України «Про судову практику розгляду цивільних справ про визнання правочинів недійсними». №9 від 6 листопада 2009.
- 8.Рішення Конституційного суду України Про відповідність Конституції України (конституційності) третього речення частини першої статті 13 Закону України «Про психіатричну допомогу» у справі №2-рп/2016 від 1 червня 2016.
- 9.Рішення Шевченківського районного суду м. Запоріжжя по справі 336/1398/18 від 6 травня 2020 р.
- 10.Цивільний кодекс України : Кодекс України від 16.01.2003 № 435-IV : станом на 4 жовт. 2025 р. URL: <https://zakon.rada.gov.ua/laws/show/435-15#Text>.
- 11.Швець Д.В. Обман (шахрайство) як підстава визнання правочину недійсним. *Проблеми цивільного права та процесу : тези доповідей учасників науково-практичної конференції, присвяченої 95-й річниці від дня народження О.А. Пушкіна* (м. Харків, 22 травня 2020 р.). Харків: Панов - ХНУВС, 2020. С. 105-108.
- 12.Barton v Armstrong [1976] AC 104. UK House of Lords. 12 February 1975. URL: <https://vlex.co.uk/vid/barton-v-armstrong-and-others-809589333>.
- 13.Brinz A. Lehrbuch der Pandekten. Auflage 2. Erlangen ; Leipzig : Deichert, 1892. Vol. 4. 549 p.
- 14.Bürgerliches Gesetzbuch (BGB) : Цивільне уложення Німеччини в редакції від 2 січня 2002 р. (BGBl. I S. 42, 2909; 2003 I S. 738), зі змінами, внесеними Законом від 10 серпня 2021 р. (BGBl. I S. 3515). URL: <https://www.gesetze-im-internet.de/bgb/>.
- 15.Claus-Wilhelm C. Urteilsanmerkung zu BGH, Urteil vom 07.06.1984 - IX ZR 66/83. *Neue Juristische Wochenschrift*. 1984. P. 2281.
- 16.Cooper v Phibbs (1867) LR 2 HL 149. UK House of Lords. 31 May 1867. URL: <https://www.bailii.org/uk/cases/UKHL/1867/1.html>.
- 17.Council Directive 93/13/EEC of 5 April 1993 On unfair terms in consumer contracts // Official Journal of the European Union. – 1993. – L 95/29.
- 18.Ellenberger J., Palandt kommentar zum BGB mit Nebengesetzen. Inkl. WEG-Reform und COVID-19. Einführung. Munich: C.H. Beck. 2021. P. 3216.
- 19.Esso Petroleum v Mardon [1976] QB 801. UK Court of Appeal (Civil Division). 4 February 1976. URL: <https://www.bailii.org/ew/cases/EWCA/Civ/1976/4.html>.
- 20.Garner, B. A. (Ed.). Black's law dictionary. 11th ed. St. Paul, MN: Thomson Reuters, 2019. 2110 p.
- 21.Griffith v Brymer (1903) 19 TLR 434. UK High Court (King's Bench Division). 11 May 1903. URL: <https://www.swarb.co.uk/griffith-v-brymer-kbd-1903/>.
- 22.Hermann I. Die willenserklärung im tatbestande des rechtsgeschäfts. Jena: Verlag von Gustav Fischer, 1899. 109 p. URL: <https://archive.org/details/20161025161014384/page/n57/mode/2up>.
- 23.Kant, I. Critique of pure reason. London: Penguin Classics, 2007. 784 p.
- 24.Michał S. Natural law theory and its benefits: arguments for adopting new classical natural law theory based on a priority of persons. *Prawo i więź*. 2023. Vol. 46, no. 3. P. 53–76. URL: <https://doi.org/10.36128/PRIW.VI46.743>.
- 25.Mistake. Cambridge dictionary. English dictionary, translations & thesaurus. URL: <https://dictionary.cambridge.org/dictionary/english/mistake>.
- 26.Proposal for a regulation of the European Parliament and of the Council on a Common European sales law (CESL). Brussels, 11.10.2011. (CESL, Art 48(1))
- 27.Savigny F. System des heutigen Romischen Rechts, 3-d ed. Berlin: Veit & Co. 1840. 492 p.
- 28.Schulz F. IV. Die lehre vom erzwungenen rechtsgeschäft im antiken römischen recht. *Zeitschrift der Savigny-Stiftung für rechtsgeschichte. Romanistische Abteilung*. 1922. Vol. 43, no. 1. P. 171–261. DOI: <https://doi.org/10.7767/zrgra.1922.43.1.171>.

29. Sławicki P. Defects of a declaration of will on the grounds of the Code of Obligations 1933. *Review of Comparative Law*. 2013. No. 18. P. 181 – 198.
30. Sopiński M. Natural law theory and its benefits: arguments for adopting new classical natural law theory based on a priority of persons. *Prawo i Więź*. 2023. No. 3. Vol. 46. P. 53–76. DOI: <https://doi.org/10.36128/PRIW.VI46.743>.
31. Smith v Hughes (1870) LR 6 QB 597. UK Court of Queen's Bench. 6 June 1871. URL: <https://www.bailii.org/ew/cases/EWHC/QB/1871/J59.html>.
32. Swedish contract law. Modern, reliable and user-friendly. Stockholm: Swedish Arbitration Association. 21 p. URL: <https://nysba.org/NYSBA/Sections/International/Events/2019/Stockholm/Coursebook/Swedish%20Contract%20Law%20-%20Danielsson.pdf>
33. Tserkovna, O., Rulevskyi, M. Free will as a condition for the validity of law. Influence of Integration Trends on the Development of National Law. Odesa: Odesa State University of Internal Affairs, 2019. – P. 106–108.
34. What is contractual capacity? Meaning, definition & examples. *Juro*. URL: <https://juro.com/learn/contractual-capacity>
35. What makes a contract invalid? Ironclad. URL: <https://ironcladapp.com/journal/contracts/what-makes-a-contract-invalid/>.
36. Whittaker S. Unfair terms in commercial contracts and the two laws of competition: French law and English law contrasted. *Oxford Journal of Legal Studies*. 2019. Vol. 39, no. 2. P. 404–434. DOI: <https://doi.org/10.1093/ojls/gqz003>.
37. Zimmermann R. Metus and dolus. The law of obligations: Roman foundations of the civilian tradition. 1996. P. 651–677. DOI: <https://doi.org/10.1093/acprof:oso/9780198764267.003.0021>.

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## V.O. SAVCHENKO

PhD in Law, Docent; Associate Professor,  
Department of Civil Law Disciplines, Faculty of Law  
Research Fellow, University of Oxford

E-mail: [savchenko.viktor@gmail.com](mailto:savchenko.viktor@gmail.com)

ORCID: <https://orcid.org/0000-0001-7104-3559>

V. N. Karazin Kharkiv National University  
Kharkiv, 61022, Svobody square, 4  
Oxford, UK, OX1 1PT, St. Ebbe's Street

## MECHANISMS INFLUENCING FREE WILL: A CIVIL LAW CONTEXT

**ANNOTATION.** *Introduction.* The paper examines the main mechanisms that influence free will in the context of civil law. These mechanisms include a lack of awareness of the significance of one's actions or the inability to control them, mistakes, fraudulent misrepresentation, duress, and the influence of grave circumstances. This study aims to determine the mechanisms that affect free will and the significance of such influence in civil law. Methods: The author primarily uses a doctrinal legal research method to analyse existing legal principles, rules, and legislation related to free will and vitiated consent in civil law. The research also employs a comparative approach, examining legal concepts and cases from various jurisdictions, including German, UK, and EU law. Additionally, the paper incorporates perspectives from legal philosophy, referencing the theories of I. Kant and F. Savigny, to provide context and critical analysis of the relevant legal doctrines.

*Summary of the main results of the study.* The author emphasises that free will, decision-making and freedom of thought are fundamental to the existence of private law. The paper examines the main mechanisms leading to a vitiated will in civil law, which include a lack of awareness of the meaning of one's actions, inability to control them, mistakes, fraudulent misrepresentation, duress, and the influence of grave circumstances. The author emphasises that if a person's free will is subject to external influence, this provides grounds for challenging or setting aside the transaction. The author argues that free will is not absolute, since the legitimate boundaries of free will are defined by normative restrictions, and the law determines the rules of behaviour.

*Conclusions.* Freedom of choice, decision-making and freedom of thought are the foundation of private law. A person's will is inviolable, as unlawful influence on it triggers legal consequences, from recognising transactions as invalid to criminal liability. Legal norms affect only the external manifestation of free will (expression of intent), by stipulating the conditions and mechanisms of participation in legal relations and determining rights and obligations. The internal aspect of free will cannot be subject to legal restrictions.

**KEYWORDS:** *free will, vitiated will, defective consent, transaction, contracts, duress, invalidity.*

## REFERENCES

1. Alexiy R. V. Abuse of freedom of contract in some transactions with defects of will. Legal scientific electronic journal. 2019. P. 55–58. (in Ukrainian)
2. Belyanevich O. Some issues of application of Article 233 of the Civil Code of Ukraine. Bulletin of economic proceedings. 2015. No. 1. P. 105–115. (in Ukrainian)
3. Zaitsev D., Zaitsev O. Signs of transactions committed under the influence of violence. Problematic issues of law enforcement and human rights activities in the context of European integration trends. Odesa: ODUVS, 2021. P. 59–60. (in Ukrainian)
4. Krat V. I. Invalidity of transactions committed under the influence of fraud. Journal of the Kyiv University. 2012. No. 3. P. 189–192. (in Ukrainian)
5. Lavrinenko I. Invalidation of a transaction committed by a person under the influence of a mistake. Legal Bulletin. 2018. Vol. 1, No. 7. P. 228–248. (in Ukrainian)

6. Resolution of the Judicial Chamber for Civil Cases of the Supreme Court of Ukraine No. 6-1531ts16 dated September 28, 2016(in Ukrainian)
7. Resolution of the Plenum of the Supreme Court of Ukraine “On the Judicial Practice of Considering Civil Cases on Recognizing Transactions as Invalid”. No. 9 dated November 6, 2009. (in Ukrainian)
8. Decision of the Constitutional Court of Ukraine On the compliance with the Constitution of Ukraine (constitutionality) of the third sentence of part one of Article 13 of the Law of Ukraine “On Psychiatric Care” in case No. 2-рп/2016 dated June 1, 2016. (in Ukrainian)
9. Decision of the Shevchenkivskyi District Court of Zaporizhzhia in case 336/1398/18 dated May 6, 2020. (in Ukrainian)
10. Civil Code of Ukraine: Code of Ukraine dated January 16, 2003 No. 435-IV: as of October 4, 2025. URL: <https://zakon.rada.gov.ua/laws/show/435-15#Text>. (in Ukrainian)
11. Shvets D.V. Fraud (fraud) as a basis for declaring a transaction invalid / Problems of civil law and process: abstracts of reports of participants of the scientific and practical conference dedicated to the 95th anniversary of the birth of O.A. Pushkin (Kharkiv, May 22, 2020). Kharkiv: Panov - KhNUVS, 2020. P. 105-108. (in Ukrainian).
12. Barton v Armstrong [1976] AC 104. UK House of Lords. 12 February 1975. URL: <https://vlex.co.uk/vid/barton-v-armstrong-and-others-809589333>.
13. Brinz A. Lehrbuch der Pandekten. Auflage 2. Erlangen ; Leipzig : Deichert, 1892. Vol. 4. 549 p.
14. Bürgerliches Gesetzbuch (BGB) : Цивільне уложення Німеччини в редакції від 2 січня 2002 р. (BGBl. I S. 42, 2909; 2003 I S. 738), зі змінами, внесеними Законом від 10 серпня 2021 р. (BGBl. I S. 3515). URL: <https://www.gesetze-im-internet.de/bgb/>.
15. Claus-Wilhelm C. Urteilsanmerkung zu BGH, Urteil vom 07.06.1984 - IX ZR 66/83. Neue Juristische Wochenschrift. 1984. P. 2281.
16. Cooper v Phibbs (1867) LR 2 HL 149. UK House of Lords. 31 May 1867. URL: <https://www.bailii.org/uk/cases/UKHL/1867/1.html>.
17. Council Directive 93/13/EEC of 5 April 1993 On unfair terms in consumer contracts // Official Journal of the European Union. – 1993. – L 95/29.
18. Ellenberger J., Palandt kommentar zum BGB mit Nebengesetzen. Inkl. WEG-Reform und COVID-19. Einführung. Munich: C.H. Beck. 2021. P. 3216.
19. Esso Petroleum v Mardon [1976] QB 801. UK Court of Appeal (Civil Division). 4 February 1976. URL: <https://www.bailii.org/ew/cases/EWCA/Civ/1976/4.html>.
20. Garner, B. A. (Ed.). Black's law dictionary. 11th ed. St. Paul, MN: Thomson Reuters, 2019. 2110 p.
21. Griffith v Brymer (1903) 19 TLR 434. UK High Court (King's Bench Division). 11 May 1903. URL: <https://www.swarb.co.uk/griffith-v-brymer-kbd-1903/>.
22. Hermann I. Die willenserklärung im tatbestande des rechtsgeschäfts. Jena: Verlag von Gustav Fischer, 1899. 109 p. URL: <https://archive.org/details/20161025161014384/page/n57/mode/2up>.
23. Kant, I. Critique of pure reason. London: Penguin Classics, 2007. 784 p.
24. Michał S. Natural law theory and its benefits: arguments for adopting new classical natural law theory based on a priority of persons. *Prawo i więź*. 2023. Vol. 46, no. 3. P. 53–76. DOI: <https://doi.org/10.36128/PRIW.VI46.743>.
25. Mistake. Cambridge dictionary | English dictionary, translations & thesaurus. URL: <https://dictionary.cambridge.org/dictionary/english/mistake>.
26. Proposal for a regulation of the European Parliament and of the Council on a Common European sales law (CESL). Brussels, 11.10.2011. (CESL, Art 48(1))
27. Savigny F. System des heutigen Romischen Rechts, 3-d ed. Berlin: Veit & Co. 1840. 492 p.
28. Schulz F. IV. Die lehre vom erzwungenen rechtsgeschäft im antiken römischen recht. Zeitschrift der Savigny-Stiftung für rechtsgeschichte. *Romanistische Abteilung*. 1922. Vol. 43, no. 1. P. 171–261. DOI: <https://doi.org/10.7767/zrgra.1922.43.1.171>.
29. Sławicki P. Defects of a declaration of will on the grounds of the Code of Obligations 1933. *Review of Comparative Law*. 2013. No. 18. P. 181 – 198.
30. Sopiński M. Natural law theory and its benefits: arguments for adopting new classical natural law theory based on a priority of persons. *Prawo i więź*. 2023. No. 3. Vol. 46. P. 53–76. DOI: <https://doi.org/10.36128/PRIW.VI46.743>.
31. Smith v Hughes (1870) LR 6 QB 597. UK Court of Queen's Bench. 6 June 1871. URL: <https://www.bailii.org/ew/cases/EWHC/QB/1871/J59.html>.
32. Swedish contract law. Modern, reliable and user-friendly. Stockholm: Swedish Arbitration Association. 21 p. URL: <https://nysba.org/NYSBA/Sections/International/Events/2019/Stockholm/Coursebook/Swedish%20Contract%20Law%20-%20Danielsson.pdf>
33. Tserkovna, O., Rulevskyi, M. Free will as a condition for the validity of law. Influence of Integration Trends on the Development of National Law. Odesa: Odesa State University of Internal Affairs, 2019. P. 106–108.
34. What is contractual capacity? Meaning, definition & examples. *Juro*. URL: <https://juro.com/learn/contractual-capacity>
35. What makes a contract invalid? Ironclad. URL: <https://ironcladapp.com/journal/contracts/what-makes-a-contract-invalid/>.
36. Whittaker S. Unfair terms in commercial contracts and the two laws of competition: French law and English law contrasted. *Oxford Journal of Legal Studies*. 2019. Vol. 39, no. 2. P. 404–434. DOI: <https://doi.org/10.1093/ojls/gqz003>.
37. Zimmermann R. Metus and dolus. The law of obligations: Roman foundations of the civilian tradition. 1996. P. 651–677. DOI: <https://doi.org/10.1093/acprof:oso/9780198764267.003.0021>.

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