ASEAN LEGAL INSIGHTS
https://e-journal.uum.edu.my/index.php/aseanli

How to cite this article:
Razak, F. A., Ghadas, Z. A. A., Ghapa, N., & Azmi, A. F. (2024). Behind the Bargain: Some Selected Legal Theories in Contract Law. *ASEAN Legal Insights*, *1* (September), 1-12. https://doi.org/10.32890/aseanli2024.1.1

BEHIND THE BARGAIN: SOME SELECTED LEGAL THEORIES IN CONTRACT LAW

[1]Farihana Abdul Razak, [2]Zuhairah Ariff Abd Ghadas
[3]Norhasliza Ghapa & [4]Amylia Fuziana Azmi
[1]Faculty of Law, Universiti Teknologi MARA Perak Branch, Tapah Campus, Perak, Malaysia
[2&3]Faculty of Law and International Relations,
Universiti Sultan Zainal Abidin, Kuala Terengganu, Malaysia
[4]Faculty of Law, Universiti Teknologi MARA Negeri Sembilan Branch, Seremban Campus, Negeri Sembilan, Malaysia

[1]Corresponding author: farihana@uitm.edu.my

Received: 14/8/2024 Revised: 25/9/2024 Accepted: 23/12/2024 Published: 31/12/2024

ABSTRACT

A contract is an enforceable promise between two or more parties, and when they agree to engage in the promise, they are consenting to create a contractual relationship. Therefore, there are legal theories in contract law that highlight contractual obligations from the drafting of the agreement until its execution. This article aims to provide an in-depth study of the laws governing contracts by exploring the legal theories and doctrines that govern contract law, particularly on understanding how these basic principles form contractual obligations and agreements. A doctrinal legal research is used to analyse the selected legal theories and doctrines, providing an understanding of each theory's use in the context of contract law. This study reveals that these legal theories affect the formation, interpretation, and execution of an agreement. The analysis indicates that these theories have significant effects not only on the parties involved in the agreements, but also on society as a whole, by reinforcing the principles of fairness and autonomy in legal transactions. These findings have significant implications for understanding contract law, enabling individuals to better navigate and negotiate the complexities of legal agreements before the parties agree to execute the contract. It is hoped that this study will help strengthen the understanding of contract law.

Keywords: Contract, bargain, fairness, contractual obligations.

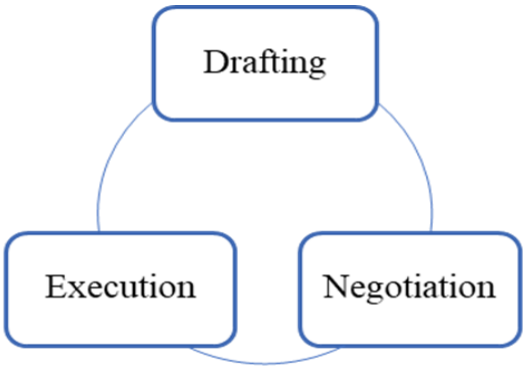
INTRODUCTION

A contract can be defined as an agreement that creates reciprocal legal obligations. In this context, the element of a free consent is important in rendering an enforceable contract, in which both parties must agree upon the same thing in the same sense (consensus ad idem). On top of that, the rights and obligations of the parties must be specified in the contract in a way that is not prejudicial to one another. According to Pheng and Detta (2014), a contract is a legally binding agreement between the parties. The purpose of a contract is to set the value of exchange, to establish the parties' rights and legal obligations, to enable the parties to allocate the economic risks involved in the transaction in advance, and to prepare for what will happen if problems arise (Beatson et al., 2016).

Concerning the phases of contract, Krishna et al. (2005) determined that a contract has three major phases, which are the drafting of contracts, negotiation of contracts, and execution of contracts as illustrated in Figure 1.

Figure 1

Three major phases of contract



Source: Krishna et al. (2005)

Contracts are established by individuals with other persons or businesses, as well as businesses with other businesses, for the purpose to sell or transfer property, provide and receive services, or to create other rights and obligations (Pheng & Detta, 2014). K. Ilobinso (2018) stated that the parties must enter into the contract with free consent. The fundamental principle in contract law is that parties with equal bargaining power should have the freedom to enter into contracts without external intervention on terms voluntarily agreed upon.

Schwartz and Scott (2003) explained that contract law has neither a clear descriptive theory that explains what law is, nor a comprehensive normative theory that explains what law should be. Hence, it is important to identify and discuss the legal theories relevant to contract law because those theories provide a framework for problem-solving by legal philosophers who introduced and developed legal doctrines. Owing to the abovementioned gaps, this research aims to concentrate on the selected legal theories and doctrines, providing an understanding of each theory's use in the context of contract law.

This article discusses the following theories: freedom of contract, theory of contract formation and interpretation, doctrine of consideration, doctrine of good faith, principle of laissez-faire, utilitarianism theory, and reliance theory. According to these legal theories, the formation, interpretation, and

execution of an agreement have resulted in different approaches to contract law. The implications are not limited to the parties to the agreements, as it also promotes fairness and freedom in contractual relationships.

METHODOLOGY

This article has adopted doctrinal legal research and qualitative analysis. According to Vibhute and Aynalem (2009), legal research is a systematic study of a specific legal issue that aims to enhance the legal discipline and it involves the analysis of one or more elements of the law. Legal methodology is concerned with understanding the law and legal issues (Jovanovic, 2012). In addition, Vibhute and Aynalem (2009) explained that doctrinal research analyses the law and principles that govern it. Doctrinal research is qualitative because it does not engage with statistical data analysis (N. C. Abdullah, 2018). Furthermore, Chynoweth (2008) clarified that legal theory, jurisprudence, and legal philosophy are the concepts used to indicate doctrinal research. Hence, it entails exploratory research on how the doctrine or principle has been applied in real-world situations. Specifically, this article employed doctrinal legal research to analyse legal theories and doctrines relevant. Books, articles, journals, reports, electronic newspapers, and the internet are the secondary data sources used in the data collection process for this article.

LITERATURE REVIEW

A literature review revealed plenty of theories relating to contract law. In this regard, Schwartz and Scott (2003) argued that contract law lacks both a clear descriptive theory and a comprehensive normative theory, creating a significant theoretical gap. A descriptive theory explains what the law is, and how legal principles and rules operate in practice. On the other hand, a normative theory describes what the law should be in outlining ideal principles that guide the creation, interpretation, and enforcement of laws in ways that promote fairness, justice, or efficiency. The absence of these theories leads to inconsistencies in legal interpretation and application. A clear descriptive theory is required, especially for understanding how contract law works in practice.

According to Schwenzer and Marti Whitebread (2015), despite the theory of contractual freedom has been broadly accepted in commercial practice, its execution differs concerning principles and limitations which results in imbalances in how contracts are regulated and enforced. These limitations may include regulations on unfair terms or laws that protect consumers. As a result, the scope of contractual freedom is not consistent, and the extent of allowed negotiation greatly depends on jurisdiction and situation, resulting in major changes in the practical application of this principle. To address the imbalance in contract, Abdullah and Shaik Ahmad Yusoff (2018) argued that traders and businesses should prioritise corporate honesty and transparency when dealing with consumers. By maintaining a fair approach in drafting contracts and being transparent about the terms, businesses can help create a more balanced and equitable market.

According to Giancaspro (2019), contract terms must be presented clearly and mutually understood by both contracting parties before any agreement is finalised. This means that each party must be fully aware of the obligations, rights, and responsibilities stipulated within the contract. The contract must also be supported by legal consideration as it is a vital element for a contract to be binding and enforceable.

According to Rosenfeld (1985), utilitarianism does not provide a sufficient basis to justify the freedom of contract or to ensure that the terms of a contract are inherently fair. On the other hand, Boldeman (2007) suggested that utilitarianism enhances the moral understanding of the relationship between contracting parties, as it stresses the importance of achieving the best possible outcomes for the greatest number of people.

FREEDOM OF CONTRACT

Before the era of contractual freedom, parties to a contract often had much less power over the formation of their contractual obligations, as the concept of a binding promise was the opposite of what it eventually was under contractual freedom. The philosophy of contractual freedom transforms each individual as absolutely independent, and free from any obligation to any other person. The contract depends on the free will of the contracting parties, not only for its formation but also for the interpretation and validity of the terms of the contract (Rosenfeld, 1985).

According to Boldeman (2007), the theory of contractual freedom is essential to the conceptual framework of economic operations. A contract on the other hand is described as "an economic operation based on the objective or subjective balance of the exchanged values." The economic analysis of the contract has resulted in a more realistic knowledge of the law in general, and the contract in particular (Fares et al., 2004).

According to Hawthorne (2008), the backbone of the free market is freedom of contract, which has been the fundamental pillar in both civil and common law jurisdictions. Freedom of contract ensures that the parties to the contract have the right and power to create their own arrangements unless the government imposes limitations on public policy grounds (Ottinger, 2000). Freedom of contract implies the right of a contracting party to make any contract, to rely on its compliance, and to have the contract's simple terms scrutinised for fairness. The fairness element of bargaining requires the court to uphold the issue of cause in the examination of freedom ("Economic Duress after the Demise of Free Will Theory: A Proposed Tort Analysis," 1968). Therefore, contract freedom is formed based on the voluntary process of bargaining. Parties are thus free to rely on their decisions where they can determine what things are worth and take responsibility for future-oriented decisions.

According to May Fong (2009), freedom of contract gives the parties the power to choose whether to engage in a contract or not, and it requires the parties to be bound by the contracts they voluntarily entered into. The purpose of the law to strengthen contract freedom is to ensure that legal and commercial institutions are set up in a way that supports a free and open market (Irakli, 2017). The transparency in a contract nowadays is very important. Hence, contract law categorised by contractual freedom is placed directly within the free market, while contract law categorised by consumer protection laws is often placed within a regulated, controlled, and social market economy (Hawthorne, 2008). Schwenzer and Marti Whitebread (2015) explained that even though the theory of contract freedom was introduced in commercial practice, the principle and limitations differed significantly in its terms. This means that, while contractual freedom allows parties to freely negotiate the terms of their contracts, different legal systems place varying limits on this freedom in order to protect public policy and promote justice.

Consumerism emerged as an ideology in the 21st century and reacted as contrary to the concept of freedom of contract that required customers to take care of themselves. This fundamental concept has been abused by unscrupulous merchants who have used the manipulative technique of drafting contracts (F. Abdullah & Shaik Ahmad Yusoff, 2018). In many types of contracts, particularly in standard form contracts or online contracts, consumers often find themselves in a weaker bargaining position compared to businesses or service providers. As highlighted by Savirimuthu (2005), the realities of online contracts show that traditional contract doctrines are insufficient to address the power imbalances that frequently exist in these settings. Consumers often have little to no ability to negotiate the terms and must either accept or reject the pre-determined contract terms, which can lead to unfair outcomes. Therefore, to maintain a fair-trading atmosphere in the long term and protect consumers, it will be an admirable endeavour by traders to exercise corporate honesty and transparency in the area of the law, striking a balance between the benefits of business suppliers and customers to address market imperfections (F. Abdullah & Shaik Ahmad Yusoff, 2018).

In the theory of freedom, a court will determine whether the transaction was voluntary, or the transaction was improperly influenced by external factors (Bridwellt, 2003). In certain cases, the principle of freedom of contract should be limited if it results in complex and challenging negotiations. The theory of bargaining and the freedom of contracts concern the circumstances in which the parties agree on the terms of the contract on a commercial market (Golecki, 2003). If duties are forced on themselves, a principle of fairness itself will limit one's freedom severely. Contract law requires the exercise of contractual freedom in compliance with the principle of contractual justice (Rodl, 2013). The introduction of consumer legislation is the main reaction to the unfair result of the unlimited freedom to the contract used to ensure that weaker parties are protected (Hawthorne, 2008).

THEORY OF CONTRACT FORMATION AND INTERPRETATION

The interpretation of a contract is an indication of the parties' mutual intention (Ottinger, 2000). This theory aims to make the economy evolve and the market prices are not standardised. However, the terms of the contract agreed by the parties shall be read literally, understood, and well interpreted. Schwartz and Scott (2010) explained that there are some issues in contract interpretation such as the challenge for parties and courts to obtain accurate interpretations; the parties to commercial contracts have preferences over the rules used by the courts to interpret their agreements; whether the contract term is unclear and written in the standard language; and how the commercial parties usually prefer judicial interpretations on a restricted basis of proof.

The use of unfair contract terms without limitation creates a significant imbalance in rights and obligations between the parties. Unfair contract terms are a contract that lacks protection for the weaker party and causes detriment to one party in a contract. The unfair terms are normally found in a standard form of contract prepared by one person called the dominant party without allowing any negotiation with the other party. Perillo (2000) explained that the legislation is concerned with the issues of business risk and its implications. Therefore, when unfair contract terms are used by a dominant party, for example a business organisation and a weaker party agree to a contract, the formation of a contract is not exercised in freedom of contract. However if the dominant party has interpreted the terms in a contract to the weaker party and both parties are clear and agree with the contract, there should not be an issue towards the unfair contract terms used because both parties understand the terms stated and entered into a contract with free consent and applies consensus ad idem.

The judicial system interprets the terms of the contract based on the intention of the party or the understanding of the party to whom such terms were applied (Perillo, 2000). According to Rosenfeld (1985), there is a need for a model contract for an extensive interpretation of a contract to strengthen freedom of contract position, and it is very important nowadays because people are used to using online transactions. Charny (1991) opined that a contract term has to be interpreted by a set of rules of interpretation. Grene (1939) suggested that to test the intention of the parties to the contract, the court shall endeavour by employing extrinsic evidence of facts such as the contracting parties had in mind, to place himself in the position that can interpret the terms used in the meaning intended by them.

DOCTRINE OF CONSIDERATION

One of the developed theories in the common law is the doctrine of consideration. Consideration has numerous meanings, but in general, it refers to an agreed-upon promise to achieve or return (Gordon, 1990). Consideration is a condition for a contract to be enforced and a legal obligation to the promisee in return for that promise (Kennedy, 2000). Consideration is required in a legal contract in which the parties negotiate and perform the obligations as stated in a contract. There is no contract until consideration is given, and no legal obligation exists without this element. The element of consideration cannot be waived as it is a requirement under contract law (Ashley, 1913). Consideration is an important rule because it helps to distinguish between promises and mere intention (Gordon, 1990). In the case of a bargaining transaction, the contracting parties are expected to enforce a promise and be liable for that promise (Koo, 2011).

In the case of *Carlill v. Carbolic Smoke Bal Co. [1893] 1 QB 256*, the court held that sufficient consideration existed. In this case, the Carbolic Smoke Ball Co. has created a carbolic smoke ball to prevent influenza and diseases from being infected by the users. The company announced to reward £100 to any person who contracts the influenza, or any disease caused, after having used the ball three times daily for two weeks, according to the printed directions supplied with each ball. Mrs. Carlill bought the balls and used them as directed. However, after she used the ball, she contracted the flu and demanded compensation. The company refused the request thus Mrs. Carlill sued for the reward. Carbolic Smoke Ball Co argued that no binding agreement occurred. They claimed that they did not amount to a promise, although the words in the advertisement represented an intention. One of the arguments made was no consideration from Mrs. Carlill which the terms of the alleged contract would enable someone who purchased and used the balls to claim a reward. The court held that Mrs. Carlill had the right to the reward. Based on this case, sufficient consideration was given to the difficulty suffered by Mrs. Carlill while using the smokeball as directed by the company. Therefore, it is the liability of the company to ‘give something in return’ as elements of offer, acceptance, consideration, and intention to create legal relations are met.

A promise can only be enforceable once the contracting parties fulfil the reciprocity requirement, often known as the ‘mutual principle’. It is important based on the moral and legal obligation to keep promises. Consideration, or the quid pro quo requirement, has been defined as the exchange element required for a contract to be enforceable as a bargain (Rosenfeld, 1985). The theory of consideration served its formal and practical purposes in different ways in the various contexts to which it was applied (Kennedy, 2000). An agreement must be given formally and supported by consideration to be enforceable (Lorenzen, 1919). The contract terms, on the other hand, must be presented and understood between the contracting parties, followed by legal consideration (Giancaspro, 2019).

DOCTRINE OF GOOD FAITH

The theory of the utmost good faith, also known as 'uberrimae fidei' in Latin, is a legal doctrine of contracts that requires contracting parties to act honestly and not to deceive the information on which the agreement is based. Generally, English law does not acknowledge the principle of good faith, instead it depends on a specific principle to ensure fair dealing. However, according to Edwards (2009), the principles of good faith and unconscionability have started to be adopted into common law by courts.

The doctrine of good faith does not only restrict immoral conduct but requires positive action (Hawthorne, 2008). The issue of good faith arises when such an agreement is insufficiently defined and intended for an unforeseen future (Burton, 1980). The dominant party in a contract believes that they drafted a contract with bona fide, i.e., they use appropriate terms of contract that establish equal rights and obligations of contracting parties. However, if the dominant party provides terms that are a preference to one-sided contracts, it will lead to an unfair agreement. With the use of today's standard form contracts, the contract commonly disadvantages a weaker party. Therefore, the theory of good faith should imply a contract especially while drafting a contract reasonably, honestly, and certainty.

However, the concept of good faith in negotiating a contract is seen as promoting inconsistency. Trakman and Sharma (2014) opined that there are challenges in measuring the concept of good faith due to no legal standards. The court may decide that a good faith bargaining agreement is enforceable based on the interpretation of the written agreement, including expressed terms regulating the negotiating process; a contextual manner by imposing reasonable standards of conduct of parties in compliance with the practices, the needs of the market, and the customs of trade (Trakman & Sharma, 2014). Furthermore, good faith is part of the intention of the parties, and not only benefits one party (D. Campbell, 2014). Hence, parties should be bound by good faith with the terms of a contract that are reasonably transparent and supported by good consideration (Trakman & Sharma, 2014). In the opinion of Edwards (2009), the concept of the doctrine of good faith can be applied to give effect to reasonable expectations related to execution of the contract terms. As believed by Dimatteo and Sacasas (1995), the duties of good faith should be included in all future contracts.

In the case of *Aseambankers Malaysia Bhd & Ors v. Shencourt Sdn Bhd & Anor [2014] 2 CLJ 773*, Mohamad Ariff Yusof JCA, ruled, based on error, that an appeal should be allowed in respect of the duty of good faith and fair dealing with the application of correct law.

Burton (1980) believes that the theory of good faith can be used to protect a weaker party in a contract against a dominant party. Collins (2014) opined that the concepts of good faith and fair dealing should be developed as a basis for contractual terms which should normally ensure a fair balance of burdens and benefits between the parties. However, developing agreements with good faith does not take place because of indefiniteness or lack of mutuality as well as the different ways of interpreting good faith. Hence, the doctrine of good faith seems to be a warrant for the use of judicial wisdom and is possibly unpredictable and inconsistent. The application of the doctrine of good faith and equality of bargaining power in the contract represents the level of freedom in contact.

PRINCIPLE OF LAISSEZ-FAIRE

Laissez-faire is from a French term that means "let you do" or "leave alone". This theory was introduced during the Industrial Revolution and developed by Adam Smith in the eighteenth century (Gluck, 1979). Adam Smith coherently and strongly stated the doctrine of liberalism and exerted a

marked impact on subsequent liberalism (Bowen, 1936). Laissez-faire is an ideology in which the government is hands-off and has minimum interference in the commercial dealings of individuals and society. The theory allows contract law where the parties enter into a contract with freedom without any interference by the government. When the dominant party sets the terms and conditions of the contract, some of the terms used may be unfair, and the freedom of contract is not given to the weaker party based on the 'take-it' or 'leave-it' principle. According to Dowd (1996), most economists support the general concept of free trade for the most part but disagree that it extends to financial services. Bishop (1995) opined that the sellers and manufacturers support society by investing their capital for maximum profit; however, they harm society by establishing monopolies.

J. Parish (1945) argued that Adam Smith's theory was that a flexible economy, and so persisted as long as there was a highly flexible market and classical economics offered a fair and valid interpretation of the trade processes. Adam Smith's claims against the Government's unfair trade monopoly on the Colonists were so simple and persuasive. He rejected previous economic practices and promoted the abolition of structures detrimental to fair and free market systems (Goff, 1947). Laissez-faire doctrine implies a restriction on the role of the government towards individuals (Mayer, 1990). However, for most of the centuries, the laissez-faire theory that underpinned the classical contract model was in decline, with governmental interference in the market system becoming dominant (Nolan, 1996). Viner (1960) highlighted the primary concerns in dealing with economic issues, which are the economic behaviour and the seller's intentions. The unencumbered practice of individual self-interest is essential in Adam Smith's free-market system to achieve the common interest and to enforce procedural fairness (Rosenfeld, 1985).

UTILITARIANISM THEORY

The theory of utilitarianism was created by Jeremy Bentham and this theory is complementary to the theory of laissez-faire. Jeremy Bentham was a philosopher, economist, and legal reformer who developed modern utilitarianism. Utilitarianism, developed by Jeremy Bentham, is a moral and philosophical theory that assesses the rightness or wrongness of actions based on their outcomes or consequences. The indicator of right and wrong in the theory of Jeremy Bentham is "the greatest happiness for the greater number". In his book titled "Introduction to Morals and Legislation", Jeremy Bentham argued that the law is intended to acknowledge what is beneficial to people. Jeremy Bentham acknowledged contract freedom under laissez-faire as it contributes to the greater happiness of a larger number of people.

Bentham's utilitarianism is closely related to the laissez-faire economic theory, which promotes minimal government interference in the free market. Both philosophies emphasise individual freedom and decision-making based on the pursuit of personal or collective happiness. According to Rosenfeld (1985), utilitarianism does not give enough justification for the freedom of contract to demonstrate the terms that make the contract fair. Utilitarianism is improving the moral understanding of the relationship in which the expressed contract has become essential (Boldeman, 2007). Utilitarianism theory implies that if it results in the satisfaction of the largest number of people in a society, an action is acceptable, and this philosophy acknowledges that the act is morally right if it creates the best possible results in a specific circumstance.

Utilitarian principles in contract law tend to explain how laws are designed to promote fairness, efficiency, and society's well-being. In light of this, utilitarianism demonstrates that the government has

the right to interfere in contracts to improve the greater good or serve the public welfare. For example, when contracts are unequal to one party or harm society, the government has the power to interfere with the terms of the contract. This aligns with the utilitarian principle that government action is justified when it prevents harm or maximises societal benefits. Thus, utilitarianism supports the idea that contractual obligations should result in positive consequences for society as a whole.

RELIANCE THEORY

Jaffey (1998) argued that the doctrine of reliance, an agreement signifies the fulfilment of a contracting party's obligation; yet, the party is under no obligation to perform the obligation and is not guaranteed to do so. This means the contracting parties must perform their obligations as stated in the contract, but, it does not guarantee the contracting parties will perform the obligation. The expected and reasonable reliance of the contract is required in the contract, in particular where the responsibility of the contracting parties is demanded. If the weaker party relies on the contract drafted by the dominant party and causes him to suffer a loss, the court will consider the reliance theory in this situation. Reliance theory, as discussed by Jaffey (1998), emphasises the expectation and trust that one party places in another to fulfil their contractual obligations. According to this doctrine, when parties enter into a contract, they are not necessarily guaranteed to perform their obligations, but the agreement creates a reasonable expectation that those obligations will be fulfilled. The essence of reliance theory is that contractual obligations are not just about legal formalities but also about the trust and belief that parties place in each other. If one party acts in reliance on the agreement, especially the weaker party in an unequal bargaining position, the law recognises that reliance as a key factor when considering contractual disputes.

The reliance theory can provide expectation remedies if it is needed by the court (Gordon, 1990) and this theory is concerned with the promisee's reliance on the contract enforceable between the parties. The simple agreement can rise to the level of an enforceable duty if the real test of reliance is used. Facts of actual reliance on the simple agreement would then support the case of a plaintiff, i.e., the weaker party in a contract. Dimatteo and Sacasas (1995) stated that courts have used the reliance principle to describe a liability determination in several simple agreements. According to Jaffey (1998), if one party has taken the necessary steps to bring the contractual terms to the other party's notice and enter into the contract, the first party's reliance on the other party's intention to be bound by those terms will be considered reasonable. Therefore, based on the reliance theory, the law of the contract does not give effect to the duties or obligations assumed by the contract voluntarily but requires the application of general law to protect the rights of the parties directly (Jaffey, 1998). In this context, the reliance theory serves as a mechanism to ensure fairness when one party suffers due to their reliance on the promises made in a contract. It helps protect parties who, by relying on the agreement, find themselves at a disadvantage when the other party fails to meet their obligations. Courts may award reliance damages to restore the injured party to the position they should have held if they did not rely on the breached contract. Reliance theory emphasises the protection of contracting parties who suffer damages as a result of their reasonable reliance on the contract. Contract law provides a variety of approaches to protecting parties' interests, particularly where one party relies on the other's obligations. Therefore, this approach is useful for correcting power imbalances in contractual partnerships and ensuring that weaker parties are not unfairly harmed.

CONCLUSION

A contract is an enforceable promise made between two or more parties, and when they agree to fulfil the promise, they agree to establish a contractual relationship. There are legal theories in contract law that highlight contractual responsibilities from the time the agreement is drafted until it is executed. Freedom of contract allows the parties the right to choose whether to enter into a contract or not, and it requires the parties to be obliged to the contracts they voluntarily entered into. Transparency and honesty offer a balance between the dominant and weaker parties in a contract, minimising bias in any agreement between the contracting parties. The theory of contract formation and interpretation is a significant factor for the contracting parties to understand the terms set out in the contract, whether fair or unfair, to the intention of the contracting parties and both have to be transparent on the terms agreed. Hence, the intention of the contracting parties must be in good faith, i.e., involved reasonableness, honesty, and certainty to avoid the abuse of power in the contract.

The Doctrine of Consideration serves as a critical element in validating contracts, ensuring that a mutual exchange of value occurs. Under the doctrine of consideration, if one of the parties does not give consideration, the contract cannot be performed or enforced. This theory is important since it indicates that everyone benefits from the agreement. The Doctrine of Good Faith emphasises ethical standards in contract performance and execution, ensuring fairness and equity. The application of the theory of good faith and equality of bargaining power in the contract represents freedom in contact. It is observed that the principle of laissez-faire emphasises contract freedom by excluding unfair contract terms and limiting the role of government in market intervention. Hence, contract freedom is necessary in the principle of laissez-faire. According to utilitarianism theory, an action is acceptable if it results in the satisfaction of the greatest number of people in a society, and this theory recognises that the act is ethically correct if it produces the best possible consequences in a given situation. This theory empowers the government to intervene in contracts based on economic considerations. Based on the reliance theory, the law of the contract requires the application of general law to directly protect the parties' rights.

Legal theories are the foundation of contract law, guiding the creation, interpretation, and implementation of contractual agreements. In conclusion, legal theory is required to determine the fundamental reasons. The theories have the potential to transform society and address bias in the legal system. All in all, each of these theories brings unique advantages and safeguards to contracting parties, ensuring that contracts are formed, interpreted, and enforced fairly. From promoting autonomy and fairness (freedom of contract, consideration, and good faith), to ensuring societal benefit and protection of weaker parties (utilitarianism and reliance theory), these principles collectively form the foundation of a just and equitable contract law system. By understanding and applying these theories, contracting parties can better navigate their legal obligations and rights towards fostering trust and stability in contractual relationships.

ACKNOWLEDGMENT

This research received no specific grant from any funding agency in the public, commercial, or not-for-profit sectors.

REFERENCES

Abdullah, F., & Shaik Ahmad Yusoff, S. (2018). Consumer Protection on Unfair Contract Terms: Legal Analysis of Exemption Clauses in B2C Transactions in Malaysia. *International Journal of Asian Social Science*, *8*(12), 1097–1106. https://doi.org/10.18488/journal.1.2018.812.1097.1106

Abdullah, N. C. (2018). *Legal Research Methodology*. Sweet & Maxwell.

Ashley, C. D. (1913). The Doctrine of Consideration. *Harvard Law Review*, *26*(5), 429–436.

Beatson, J., Burrows, A., & Cartwright, J. (2016). *Anson's Law of Contract* (31st ed.). United States of America: Oxford University Press.

Bishop, J. D. (1995). Adam Smith's Invisible Hands Argument. *Journal of Business Ethics*, *14*(3), 165–180. Retrieved from https://www.jstor.org/stable/25072635

Boldeman, L. (2007). *The Cult of the Market Economic Fundamentalism and its Discontents*. Australia: ANU E Press.

Bowen, H. (1936). Adam Smith - Radical. *Pi Gamma Mu, International Honor Society in Social Sciences*, *11*(3), 265–267.

Bridwellt, P. (2003). The Philosophical Dimensions of the Doctrine of Unconscionability. *The University of Chicago Law Review*, *70*, 1513–1532.

Burton, S. J. (1980). Breach of Contract and the Common Law Duty to Perform in Good Faith. *Harvard Law Review*, *94*(2), 369–404.

Campbell, D. (2014). Good Faith and the Ubiquity of the "Relational" Contract. *The Modern Law Review*, *77*(3), 475–492.

Charny, D. (1991). Hypothetical Bargains: The Normative Structure of Contract Interpretation. *Michigan Law Review*, *89*(7), 1815–1879.

Chynoweth, P. (2008). Legal research. In A. Knight & L. Ruddock (Eds.), *Advanced Research Methods in the Built Environment* (Vol. 1). https://doi.org/10.1097/00128488-200112000-00003

Collins, H. (2014). Implied terms: The Foundation in Good Faith and Fair Dealing. *Current Legal Problems*, *67*, 297–331. https://doi.org/10.1093/clp/cuu002

Contreras, J. L. (2015). A Market Reliance Theory for Frand Commitments and Other Patent Pledges. *UTAH L Rev*, (2), 479–558.

Dimatteo, L. A., & Sacasas, R. (1995). Credit and Value Comfort Instruments: Crossing the Line from Assurance to Legally Significant Reliance and toward a Theory of Enforceability. *Baylor Law Review*, *47*(2), 357.

Dowd, K. (1996). The Case for Financial Laissez-Faire. *Source: The Economic Journal*, *106*(436), 679–687.

Economic Duress after the Demise of Free Will Theory: A Proposed Tort Analysis. (1968). *Iowa Law Review*, *53*(4), 892–924.

Edwards, C. (2009). Freedom of Contract and Fundamental Fairness for Individual Parties: The Tug of War Continues. *UMKC Law Review*, *77*(3), 647–696.

Fares, M., Coase, R., E. Williamson, O., Klein, B., G. Furubotn, E., Ghestin, J., … D. Libecap, G. (2004). The Economics of Contracts: Theory and Applications (E. Brousseau & J.-M. Glachant, eds.). United Kingdom: Cambridge University Press.

Giancaspro, M. (2019). Testing the boundaries of the consideration doctrine: Can you contract to buy and sell a ghost? *Alternative Law Journal*, *0*(0), 1–7. https://doi.org/10.1177/1037969X19882485

Gluck, G. (1979). Standard Form Contracts : The Contract Theory Reconsidered. *The International and Comparative Law Quarterly*, *28*(1), 72–90. Retrieved from https://www.jstor.org/stable/758554

Goff, F. R. (1947). Adam Smith's Wealth of Nations. *Quarterly Journal of Current Acquisitions*, *4*(2), 11–13.

Golecki, M. J. (2003). Synallagma and Freedom of Contract - The Concept of Reciprocity and Fairness in Contracts from the Historical and Law and Economics Perspective. *German Working Papers in Law and Economics*, *2003*(18).

Gordon, J. D. (1990). Dialogue About the Doctrine of Consideration. *Cornell Law Review*, *75*(5), 986–1006. https://doi.org/10.1525/sp.2007.54.1.23.

Grene, M. (1939). Theories of Interpretation in the Law of Contracts. *The University of Chicago Law Review*, *6*(3), 374.

Hawthorne, L. (2008). Materialisation and Differntiation of Contract Law: Can Solidarity Maintain the Thread of Principle Which Links the Classical Ideal of Freedom of Contract with Modern Corrective Intervention. *Tydskrif Vir Hedendaagse Romeins-Hollandse Reg (Journal for*

Contemporary Roman-Dutch Law), *71*(3), 438–453.
Irakli, T. (2017). The Principle of Freedom of Contract, Pre-Contractual Obligations Legal Review English, EU and US Law. *European Scientific Journal, ESJ*, *13*(4), 62. https://doi.org/10.19044/esj.2017.v13n4p62
J. Parish, W. (1945). With Due Respect to Adam Smith. *The Southwestern Social Science Quarterly*, *26*(3), 217–227.
Jaffey, P. (1998). A New Version of the Reliance Theory. *Northern Ireland Legal Quartely*, *49*, 107.
Jovanovic, M. (2012). *Legal Methodology & Legal Research and Writing*.
Kennedy, D. (2000). From the Will Theory to the Principle of Private Autonomy: Lon Fuller's "Consideration and Form." *Columbia Law Review*, *100*(1), 94–175.
Koo, Z. X. (2011). Envisioning the Judicial Abolition of the Doctrine of Consideration in Singapore. *Singapore Academy of Law Journal*, *23*(2), 463.
Krishna, P. R., Karlapalem, K., & Dani, A. R. (2005). From Contracts to E-Contracts: Modeling and Enactment. *Information Technology and Management*, *6*, 363–387. https://doi.org/10.1007/s10799-005-3901-z
Lorenzen, E. G. (1919). Causa and Consideration in the Law of Contracts. *Yale Law Journal*, *XXVIII*(7), 621–646.
May Fong, C. (2009). The Malaysian Contracts Act 1950: Some Legislative and Judicial Developments Towards a Modern Law of Contract. *Jurnal Undang-Undang*, (36), 53–81.
Mayer, D. N. (1990). Jurisprudence of Christopher G. Tiedeman: A Study in the Failure of Laissez-Faire Constitutionalism. *Missouri Law Review*, *55*(1), 94–161.
Nolan, D. (1996). The Classical Legacy and Modern English Contract Law. *The Modern Law Review*, *59*(4), 603–619. https://doi.org/10.1111/j.1468-2230.1966.tb02103.x
Ottinger, P. S. (2000). Principles of Contractual Interpretation. *Louisiana Law Review*, *60*(3), 766–791.
Perillo, J. M. (2000). The Origins of the Objective Theory of Contract Formation and Interpretation. *Fordham Law Review*, *69*(2), 427–477. https://doi.org/10.2139/ssrn.262445
Pheng, L. M., & Detta, I. J. (2014). *Business Law* (Second Edi). Malaysia: Oxford University Press.
Rodl, F. (2013). Contractual Freedom, Contractual Justice, and Contract Law (Theory). *Law and Contemporary Problems*, *76*(2), 57–70. Retrieved from https://www.jstor.org/stable/24244720
Rosenfeld, M. (1985). Contract and Justice: The Relation Between Classical Contract Law and Social Contract Theory. *Iowa Law Review*, *70*, 769.
Savirimuthu, J. (2005). Online Contract Formation: Taking Technological Infrastructure Seriously. *University of Ottawa Law & Technology Journal*, *2*(1), 105–144.
Schwartz, A., & Scott, R. E. (2003). Contract theory and the limits of contract law. *Yale Law Journal*, *113*(3), 541–619. https://doi.org/10.2307/3657531
Schwartz, A., & Scott, R. E. (2010). Contract Interpretation Redux. *The Yale Law Journal*, *119*(5), 926.
Schwenzer, I., & Marti Whitebread, C. (2015). International B2B Contracts - Freedom Unchained? *Penn State Journal of Law & International Affairs*, *4*(1), 34–46.
Trakman, L. E., & Sharma, K. (2014). The Binding Force of Agreements to Negotiate in Good Faith. *The Cambridge Law Journal*, *73*(3), 598–628.
Vibhute, K., & Aynalem, F. (2009). *Legal Research Methods*.
Viner, J. (1960). The Intellectual History of Laissez Faire. *Journal of Law and Economics*, *3*, 45–69. Retrieved from http://www.jstor.org/stable/724811
Wacke, A. (1993). Freedom of Contract and Restraint of Trade Clauses in Roman and Modern Law. *Law and History Review*, *11*(1), 1–19.