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**The concept of contract in a legal history
perspective –
the evolution of the freedom of contract and its
possible limitations in various legal systems**

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I. Research objectives and questions

It is a hardly debatable fact that contract – that is, mutual assent recognised by the legal system – is, from a legal perspective, among the most important factors shaping social and economic relations. This was the final conclusion drawn by the renowned English jurist, one of the first outstanding representatives of comparative legal science, Sir Henry Sumner Maine – who studied, among other subjects, the Roman law in depth – who pointed out as a generally applicable premise in relation to the role played in modern societies by the institution of contract, at least until his age, that “the movement of the progressive societies has hitherto been a movement from Status to Contract”. This statement highlights that today’s society is centred on the individual (rather than the community), making it possible to have their destiny and relationships be shaped by contracts entered into by their free decisions, rather than by their belonging to any particular social group. These considerations are fully valid because – if one thinks about it – there is hardly any segment in our lives and social relationships that are not affected by various agreements and contracts in one way or another. For this very reason, one of the most essential tasks is to define when, under what conditions, we can talk about real contracts, in the legal sense of the term, and when we talk about agreements of no actual legal relevance.

Although consent did not always use to be a central conceptual element of contract throughout the history of law and this thesis is still contestable, my point of departure is that mutual agreement is the most crucial element of a contract, one that is of serious practical importance besides a variety of scientific and theoretical aspects. I also note as a premise for my dissertation that the significance and binding force of an agreement (consensus) between contracting parties is supported by the ancient Roman legal principle under which a private law contract between two contracting parties has the force of law.¹ This maxim, which has its roots in Roman law, takes the form of a specific legal provision in the French *Code civil*, and courts have, to this day, been consistently referring to it in specific legal disputes to this day.

The subject of my dissertation is the central element of contracts, that is, mutual assent, that may be enforced by law, as well as the freedom of contract which is one of the basic principles of civil law, discussed in terms of legal history and by means of comparative law. My primary aim is to present a legal historical analysis of the role played by consensus, an

¹ See, *inter alia*, D. Ulp. 50, 17, 23: „*legem enim contractus dedit*”; D. Ulp. 16, 3, 1, 6: „*contractus enim legem ex conventionem accipiunt*”. For relevant details regarding contracts’ binding force, similar to that of law – in connection with the description of the roots of this doctrine in the Roman law – for details see I. SIKLÓSI: *Fejezetek a „pacta sunt servanda”-princípium történetéből*, JURA, 2018/2, 212. 47.

essential element of a contract, throughout different eras of legal history, along with the cases in which, and the interest for the protection of which, the freedom of contract based on the parties' mutual assent may be restricted.

One of the principal ideas of my dissertation is the premise that the conclusion of a contract is – in the ideal-typical case – based on the free will of and mutual assent between the two parties. This statement can, however, be verified only partially because the form of the conclusion of a contract took precedence over the will of the contracting parties during some eras of legal history, like for instance in the archaic Roman law, and the evolution of the concept during later phases also appeared to be fluctuating; so much so, that from the 1970s some authors went as far as to talk about the “*death of contract*” and the failure of general contract theory, noting that contracts are often concluded under economic pressure (generated by the need to be integrated in trade relations). One of the purposes of my dissertation is to clarify nuances of this premise. Indisputably, contracts are often concluded without actual mutual assent: some contracts are entered into under practical (economic) pressure or legal obligations, which at least one of the parties would not like to sign, or would like to sign under different terms and conditions. However, the authors who go out of their way to prove that mutual assent is not always the essence of a contract – citing countless examples ranging from the formalism of the archaic Roman law to the modern contract law burdened by necessities – may exaggerate the problem because the factors impeding actual consensus are, in a sense, accidental, whereas the *communis opinio* has always been that the point – the essential element – of a contract is, nonetheless, mutual assent, at least in the form of fictitious mutual assent (or in other words, in the perception of the public it is an irrebuttable presumption that the parties wish to enter into a contract in the given case or situation).

Another premise is that the private autonomy of private law entities is best embodied by the freedom of contract – a basic principle of the civil law – which however, cannot be unrestricted, just like the right of ownership. Another important objective of my paper in this regard is to demonstrate, by means of comparative law, when the freedom of contract may be prejudiced, concerning which I point out that the autonomy of contracting may, typically, be restricted in protection of justice (general social interest or the interest of the contracting parties) or in view of subsequent changes in the relevant circumstances.

II. Research methodology

My dissertation is built up of three large structural components. The introductory considerations are followed by a discussion of the legal historical antecedents of the modern concept of contract, including the concept of contract under the Roman law, the contract concepts found in sources of Roman law, the evolution of the basic principle of *pacta sunt servanda* that is considered as the antecedent of the freedom of contract as well as its development in legal history during the Middle Ages and the Modern Age.

Thereafter I analyse the contract concept of modern legal systems, highlighting the notional and conceptual elements of the French and the Anglo-Saxon contract concepts and emphasise, in a European legal context, the importance of the requirement of uniform conceptualisation. Also in this regard I present different regulations relating to the legal perception of the negotiations preceding the conclusion of a contract.

The third structural component of my dissertation is focused on the essence of the freedom of contract, its regulation by positive law, its practice and the possible limitations of the parties' contractual autonomy.

In my dissertation I applied primarily a functional comparative legal historical research method. In this regard I will – based on current domestic and foreign (primarily French, English, and German) handbooks – first present in detail the notions and concept of contract in the Roman law, as well as their changes during the Middle Ages and the Modern Age. A key part of my comparative analysis of the contract concept is the description of the Anglo-Saxon laws, the French law as well as European legal systems influenced by the *Code Napoléon*, highlighting the conceptual differences between the various legal systems. I will also take a look at certain overseas countries and thus discuss some specifics of the Quebec and the Louisiana law, among others. Another important task I set myself was to present a comparative legal historical analysis of some recent profound private law reforms – hence the topicality of my thesis. In this context, I tried to evaluate and appraise the conceptually important 2016 reform of the French contract law, as well as the recodification process that got under way in Belgium in 2019. I also found it important to incorporate the recent body of literature on the contract concept, the freedom of contract and its limitations (and particularly on the matter of equivalence) to the fullest possible extent into my treatise.

I also applied legal case analysis as a methodology foundation in my research. In the context of the most fundamental questions relating to the central element of a contract and to the freedom of contract I tried to present and, to the extent possible, analyse important international

legal cases and (published) Hungarian supreme court decisions as well as decisions made by the Hungarian Constitutional Court and the European Court of Justice. I aimed at making critical assessments of ad hoc decisions and pointing out current changes in judicial practice (particularly in relation to contracts *contra bonos mores* and the issue of proportionality of values in contracts).

The jurisprudential technique also played a key role in my study. Its importance lies in that in addition to analysing the currently effective positive law it also enables identification of the system-level legal questions relating to which it is possible to make *de lege ferenda* suggestions to the legislator from time to time. In view of all of the above, I set myself a goal of analysing the concept of contract in a holistic perspective – in this context I scrutinised certain economic and philosophical aspects of the law of contract and also examined in detail the question of what impacts can social regulatory systems – other than the law – have on the modern perception of contract.

III. A brief presentation of the results of my research

III.1. The evolution of the modern concept of contract

The institution of contract already played a prominent role in Roman private law, as it does in today's legal systems, and as we can see in the case of many other legal institutions, the concept of contract in the Roman law had a profound influence on the European – as well as many non-European – legal systems.

Another premise to be taken into account is that the principle of the freedom of contract whose centrepiece is the contracting parties private autonomy (or, to use the French term, the autonomy of the will, i.e. *autonomie de volonté*) appeared, in essence, in the classical Roman law as well, but its operation was restricted by certain specifics of the Roman law, e.g. the *actio* system.² In this context some authors go as far as concluding that the Romans did not even have proper freedom of contract (in terms of form and type) since an agreement between two parties does not, in itself, create an obligation, and only the types of contracts exhaustively defined by law on a mandatory basis were recognised by the Roman law as legal facts giving rise to obligations. On the other hand however – that is, in terms of content – the classical

² G. HAMZA: *A római jog a XXI. században*, in: G. Hamza (ed.): *A római jog és hatása a modern jogok fejlődésére*, Budapest 2013, 259.

Roman law, being liberal in nature, provided for a broad freedom of contract, enabling, for instance, substantial deviation from the equilibrium value between mutual services.³

Having reviewed the evolution of contract in the Roman law, on the basis of Zimmermann's remarkable piece of work⁴ it can be concluded that the evolution of the contract system in the Roman law is characterised by – to use a modern technical term – by a dilemma between the principle of declaration and the principle of will (*verba—voluntas* antinomy⁵) and the victory of the latter. From a closer perspective however, this means that the need to conform to a specific form prevailed nearly exclusively during the early phases of the Roman law – for a contract to be valid, the contracting parties had to make a declaration meeting certain format requirements mandated by law. One of the emphatic conclusions of my study is that the *verba—voluntas* doctrine, or the view that during specific (very long) periods of the history of law the essence of contract was made up not of the parties' mutual assent but forms, is somewhat one-sided. Little emphasis is laid in literature on the consideration that, albeit form was of profound importance in archaic Roman law, this formal requirement came primarily from the inherently sacred nature of contracts and also from a need for legal certainty and provability, while on the other hand, it can reasonably be assumed that even in archaic Roman public opinion, the essence of contracts lay not in their form but in the consensus between the parties.⁶ It is quite another matter that it was not until the early imperial period when the first serious reflection of this reasonably presumed public opinion appeared in Pedius's work who noted as a matter of principle according to a fragment by Ulpianus that: "a contract or an obligation without an agreement is null and void" (Ulp. D. 2, 14, 1, 3), „because a contract draws its binding force from the agreement" (Ulp. D. 16, 3, 1, 6). It should be recognised that Pedius regarded agreement as the essential element not only of consensual contracts but also any and all contracts, including formal ones.

³ J. JUSZTINGER: *A vételár az ókori római adásvételnél*, Budapest–Pécs 2016, 105ff refers to texts by Paulus and Ulpianus, according to which it is permissible for the parties to mutually deceive each other in a sale and purchase transaction. The correct interpretation of those texts is, however, not that *dolus malus* is permitted; instead, they are a reflection of the liberal understanding of the freedom of contract in terms of content. For a more recent source see A. RADVÁNYI: „*Naturaliter licere contrahentibus se circumvenire. Az Ulp. – Pomp. D. 4, 4, 16, 4 értelmezése*”, PhD dissertation, PPKE JÁK, defended in 2024.

⁴ R. ZIMMERMANN: *The Law of Obligations. Roman Foundations of the Civilian Tradition*, Oxford 1996³, 622-635.

⁵ G. HAMZA: *Jogösszehasonlítás és az antik jogrendszerek*, Budapest 1998, 196.

⁶ C. CASCIONE: *Consensus*, Naples 2003, 17f, offers a scholarly discussion of the fundamental role of *consensus* in the Roman private law, emphasising its importance and its influence on jurisprudence in the Middle Ages and in the Modern Age, noting also that the reason Roman law did not deal with this issue in detail was the absence of an abstract definition of the concept in a technical sense.

The basis of the contract concept of modern rights is clearly the consensus between the parties. I emphasise in my dissertation that although contracts are often concluded under economic pressure, because of the need to integrate into commodity exchange relations, this does not change the fact that mutual consent is the central conceptual element of a contract. The direct antecedent of this concept in the history of dogma is the *pacta sunt servanda* principle, a fundamental contract law principle most purely expressing the contracting parties' freedom under the private law and the effect of consensus constituting a contract. The evolution of the *pacta sunt servanda* principle was markedly affected by the trade law of the Middle Ages the canonical law and natural law and in jurisprudence it was championed by Jean Domat. Domat's viewpoint is deeply embedded in the French *Code civil*, – its Article 1134, which was in force before 2016, solemnly declared that the contract is considered law in the relationship between the parties.

The abstract concept of contract, worked out by German Pandectists – according to which a contract is but an mutual assent between two or more persons aimed at creating legal effect – is appearing in an explicit form in an increasing number of civil codes.⁷ In my dissertation I highlight in this context a major innovation of the 2016 reform of the French contract law, that is, the creation of the legal concept of the legal transaction (*acte juridique*), a clear reflection of Pandectist influence. The legal transaction concept was not defined in the *Code civil* in force beforehand. Not much attention was paid to the abstract legal transaction concept by French jurisprudence until the late 19th century, while it was dominated by the positivist *école de l'exégèse*. It was not until 1899 that the doctrine of legal transaction (*théorie générale des actes juridiques*) appeared first – in the work of Planiol – whereafter the issue was taken up by an increasing number of authors during the 20th century, defining legal transaction essentially in the sense of the German *Rechtsgeschäft*.⁸

In my paper I discuss the specifics of the contract concept in the Anglo-Saxon and the French law, pointing out that consensus is not, in itself, sufficient for the conclusion of a valid contract in those legal systems. One particular feature of the Anglo-Saxon legal viewpoint is that it sees the gist of a contract not so much in the agreement but rather in a kind of a bargaining process. The other specific feature is the so-called *consideration doctrine* the point of which is that a promise made by one contracting party (without laying it down in a deed) is only regarded

⁷ In my paper I discuss the concept of contract as used in the Hungarian Civil Code, the French, the Belgian, the Luxembourgian and Monacan *Code civil*, the Swiss *Code des obligations* and the *Code civil* of Québec.

⁸ I. SIKLÓSI: *Some remarks on the history and significance of the concept of "legal transaction" in a nutshell*, Annales Universitatis Scientiarum Budapestinensis de Rolando Eötvös Nominatae Sectio Iuridica LXII, 2023, 73. (<https://doi.org/10.56749/annales.elteajk.2023.1xii.4.65>)

by the legal system as legally binding if the commitment is made in return for adequate consideration. It is thus a conceptual element of contract, one that lays emphasis not on the parties intent to enter into a contract but rather on an external circumstance which is also perceptible to the outside world, namely the necessity of reciprocity as a general rule.⁹

Until the 2016 reform of the contract law, the French law required three additional conditions for a contract to be valid, in addition to the consensus between the parties: the capacity to enter into a contract, the precisely defined subject of the contract,¹⁰ and the *cause* (*la cause*), that is, the parties' motivation regarding the conclusion of the contract. The French concept of *cause* is deeply rooted in legal history. The essence of, and the indispensable role played in the process of contracting by, the construct, dating back, for the most part, to the Middle Ages, was first defined in a comprehensive manner by the great French jurist of the 17th century, Jean Domat, pointing out that a contract that has no actual *causa*, is null and void and an obligation stemming from an agreement is null and void if either party assumed a contractual obligation without an adequate *causa*.¹¹ Domat interpreted *causa* as the direct goal for the achievement of which the parties enter into a contract. Up until the 2016 reform the French law restricted the contracting parties' autonomy to act through the *causa* construct by preventing the contract from having legal effect in the case of certain forms of behaviour that are prohibited by law. Accordingly, Article 1131 of the French *Code civil* which was in force before 2016 stipulated that a contract is null and void if its *causa* is not allowed (*illicite*); this was clarified by the previously effective Article 1133, providing that a *causa* is *illicite* if it is contrary to law, moral or public order. As I discuss in detail in my paper, the *causa* concept had been the subject of debates for quite some time – on account of the difficulties of its application in practice – until it was eventually eliminated by the 2016 reform from the prerequisites of the validity of a contract. The *causa* construct was also adopted – with practically identical content – by the civil codes of other legal systems belonging to the French law family, including those of Italy, Spain, Belgium or Québec, where *causa* is still – even after the 2016 French reform – an indispensable conceptual element of a contract.

⁹ A HARMATHY.: *Változások a szerződések burzsoá elméletében*, Állam- és Jogtudomány 17 (1974). 596f.

¹⁰It should be noted that these are also required in German-type legal systems – only without prescribing it in the definition of contract

¹¹ J. DOMAT: *Les lois civiles dans leur ordre naturel*, Paris 1964, Livre I, T. I, sect. I, art. 5.

III.2. The freedom of contract and its possible limitations

It is from the concept regarding consensus as a central element of contract that the freedom of contract, one of the most important fundamental elements of contract law, can be derived. Freedom of contract emphasises the freedom and private autonomy of legal entities entering into, or having an existing a contractual relationship, and is based on the concept that subjects of civil law can shape their contractual relationship themselves, of their own free will, without any external influence. Eörsi sees a direct connection between the freedom of contract principle and the provision of the French *Code civil* that makes the agreement between the parties legally binding, emphasising that this was how the *Code civil* unified the revolutionary pathos with the new “*Enrichissez-vous*” pathos, a new pillar of contract autonomy. In Eörsi’s understanding the freedom of contract principle means that anyone may enter into a contractual relationship with anyone else at any time and the parties may specify the content of their contract themselves, subject to certain legal restrictions.¹² As was pointed out by Attila Harmathy, freedom of contract became a focal point for research in the wake of the economic, social and market changes in the 1990s. In response to the economic and legal regime change, authors consider the freedom of contract principle as one of the most important basic principles of private law, as a natural consequence of market economy, indeed, as the motor of market conditions.

In my paper I demonstrate that the freedom of contract principle appears in most civil codes in the form of specific legal provisions and that there is ample judicial practice reflecting the importance of the autonomy of contracting. However, the parties’ private autonomy cannot, of course, be unlimited. In this regard one of my key conclusions is that the freedom of contract may, in most cases, be restricted in the interest of justice. As to what contractual justice actually is, there are varied opinions in legal literature. According to the theory of renowned German Romanist and civilist Werner Flume contractual justice is a notion that makes sense from a procedural (formal) aspect, meaning, essentially, that the requirement of justice can only be examined from the perspective of the contracting procedure and therefore the question whether the content of a contract is just or not should not be examined. The criterion of justice – at least at the level of “*Sollen*” – is satisfied by an adequate contracting process: the conclusion of a contract may be regarded as “just” if the parties are free to determine the content elements of the contract.

¹² GY. EÖRSI: *Összehasonlító polgári jog*, Budapest 1975, 64.

Karl Larenz does not share the above position. Under his theory, one fundamental requirement is that in exercising their freedom of contract the Parties should agree on contract terms and conditions that can be regarded as just. Similarly to Flume's theory, Larenz also holds that the parties' equal bargaining position is an inherent element of the freedom of contract. The fundamental difference lies in Larenz not precluding the possibility of assessing, as well as the process of contracting, the content of the contract as well, from the aspect of justice.¹³

I examine the connections between contract and justice from two angles. Justness can, on the one hand, be examined in a broader, overall societal sense, in which case the question is whether the agreement between the contracting parties is in line with generally accepted and followed social norms shaped by society, that is, whether the contract violates society's values that are rooted in norms generally accepted by society and society's objective sense of justice. An approach to justness, with such content, leads us to the category of contracts that are in conflict with good morality.

Another – relative – approach to justness probes the interests of the contracting parties and aims to answer the question of whether the contract might cause some kind of inequilibrium between the parties' interests, and whether it is therefore necessary to adjust the contractual relationship in order to restore equilibrium. It is in connection with this question that difference in values between service and consideration arises as an issue to be dealt with.

A typical example for the restriction of the freedom of contract in the public interest is when the legal system intervenes in the contractual autonomy of private legal entities in order to protect certain interests of society as a whole. This kind of state intervention is exercised primarily on the basis of so-called general clauses. Hungarian authors who have been discussing the history, evolution and practical importance of general clauses, as well as their effects in different legal systems, include András Földi, Attila Menyhárd, Gergely Deli and József Benke. The legal positions presented in the works of the above authors present a widely varied picture of the scope of application of general clauses, as well as their advantages and disadvantages, and their functions the legal system. According to one of those positions general clauses are the "lifebelts" provided by the law, used in an auxiliary, subsidiary manner when no guidance is provided by specific legal provisions.¹⁴ Another position draws attention to the hazards of the application of general clauses. In this regard, I refer in particular to András Földi's conclusions, who, in his work on the principles of good faith and fairness, advocates

¹³ K. LARENZ: *Lehrbuch des Schuldrechts, I, Allgemeiner Teil*, München 1987, 76-79.

¹⁴ G. DELI: *A jó erkölcsökről*, Budapest 2013, 65.

the application of general clauses, but does not fail to point out that ethical or moral values such as good faith, fairness, and good morals inevitably pose a threat to legal certainty.¹⁵

The prohibition of contracts that are contrary to good morals arises from the objective requirements of justice, stipulating that contracts between private legal entities should not be contrary to generally accepted (typically unwritten) social norms. The requirement of good morals (as a framework norm, so-called *norme cadre*) is to be filled with content by judicial practice. In my study I demonstrate that the 2016 French contract law reform introduced significant changes in this area as well. French judicial practice has always distinguished clearly between the categories of good morals and public interest (*ordre public*); however, this picture needs to be nuanced in light of the legislative reform. The reform removed violation of public morality from the provisions relating to contract law as a ground for nullity. The current requirement concerning the content of a contract is that the agreement between the parties must not violate public order. The specific legal regulation has thus shifted towards a more value-neutral category of public order, which may, in my opinion, facilitate more predictable law enforcement; on the other hand, as is sometimes emphasised in French literature, it is more in line with the conditions prevailing in an increasingly multicultural French society.

The issue of the requirement of equivalence arises in connection with the criterion of justice in its subjective sense. The requirement of proportionality of value between service and consideration dates back to the Roman law of the late imperial period. One manifestation of the requirement of equivalence is the legal institution of *laesio enormis*, or abnormal harm, which was introduced by Emperor Diocletian as one of the measures of the “welfare state” seeking to intervene in economic relations with the aim of crisis management¹⁶. Different legal systems apply different models to regulate the requirement of contractual equivalence. The concept of *laesio enormis* in Roman law is most closely followed by French law. It seeks to eliminate market mechanisms defined through the legal institution of *lésion*, preventing owners from selling their property below the adequate price. The need for the law to ensure justice in the world of contracts appears in other legal systems as well, covering also the requirement of proportionality of value between the service and the consideration.¹⁷ Differences also appear between legal systems in terms of whether the objective existence of an imbalance in value between service and consideration is, in itself, sufficient to allow intervention in the contractual

¹⁵ A. FÖLDI: *A jóhiszeműség és tisztesség elve. Intézménytörténeti vázlat a római jogtól napjainkig*, Budapest 2001, 22.

¹⁶ K. VISKY: *Spuren der Wirtschaftskrise der Kaiserzeit in den römischen Rechtsquellen*, Bp.–Bonn 1983.

¹⁷ A. MENYHÁRD: *A jóerkölcsbe ütköző szerződések*, Budapest 2004, 241.

relationship, or whether an additional subjective element is also required, namely the exploitation of the other party's disadvantageous position (this is referred to as usury in Swiss and German law). In the context of a detailed presentation of Hungarian regulations and judicial practice concerning striking disproportion, I referred to the practice that I consider to be correct, which, on the basis of division position statement No. PK 267, is moving towards taking all the circumstances of a given case into account, imposing strict conditions for challenging contracts on the grounds of conspicuous imbalance in value, in order to protect trust in contracts, thereby preventing potential legal uncertainty. An analysis of recent judicial practice also leads to the conclusion that Hungarian courts only declare contracts invalid on grounds of striking imbalance in value in very limited circumstances, and under very strict conditions. A considerable proportion of negative decisions are based on the fact that courts assign the risk of striking imbalance to the contracting parties and attach, in many cases, great importance to the conduct of the parties at the time of conclusion of the contract, examining whether the parties took all reasonable measures to recognise the potential disproportion.

In addition, regulatory measures curtailing the private autonomy of the parties – as a kind of compensatory mechanism – in order to protect certain persons in a more disadvantaged (vulnerable) positions (typically consumers), also constitute a specific restriction on freedom of contract.

Another example for the restriction of freedom of contract is the application of the *clausula rebus sic stantibus* principle, enabling a contracting party to be released from their contractual obligations in view of subsequent changes in the relevant circumstances. The 2016 French contract law reform brought about a profound conceptual change in this area as well, introducing the legal institution of *imprévision*, which now allows for reference to subsequent changes in circumstances in civil law contracts and, in view of this, for the renegotiation of contractual terms.

I discussed the topics in my dissertation in the hope that they clearly illustrate how relevant certain issues relating to the essential conceptual elements of the concept of contract and the significance of mutual consent, which were already examined in detail by Roman jurists, remain to this day. In view of the long process of the evolution of the concept of contract in legal history, it can be concluded that, in view of the rapidly changing economic and social conditions, contract law is perhaps the most dynamically developing area of private law. I also demonstrated how various legal systems take different approaches to fundamental issues of contract law (the concept of a contract, pre-contractual liability, restrictions on freedom of contract, general clauses, the requirement of proportionality, subsequent changes in

circumstances, etc.). This may be the reason for the fact that in spite of a certain demand for concept harmonisation, European legal harmonisation has not yet been achieved in the field of contract law. In conclusion, I would like to note that, in my opinion, judges also have a major task on hand in creating and developing legal material relating to the concept of contract and freedom of contract. This is said because it is a wise, well-informed judge, who is also skilled in comparative law, who should fill the abstract legal norms with content (in this context I am referring, in particular, to general clauses limiting the private autonomy of the parties, or norms enforcing the requirement of equivalence). Judicial practice meeting these requirements may serve as a *de lege ferenda* compass for the legislator in the continued development of contract law.

IV. The author's publications on the subject of the dissertation

I. GASS: *Római jog, jogösszehasonlítás, európai jog*, Jogtudományi Közlöny 66, 2011/5, 303-306.

I. GASS: *Alapvetések és alapkérdések a szerződés fogalmának témaköréből*, in: Ünnepi tanulmányok Hamza Gábor 70. születésnapja tiszteletére, Budapest 2019, 117-132.

I. GASS: *Réflexions sur l'État de droit du point de vue du droit privé : la liberté contractuelle*, Annales Universitatis Scientiarum Budapestinensis de Rolando Eötvös Nominatae Sectio Iuridica LXI, 2022, 62-69.

I. GASS: *Hamza Gábor: Az európai magánjog fejlődése a kezdetektől a XX. század végéig – A modern magánjogi rendszerek kialakulása a római jogi hagyományok alapján* (Budapest: Novissima 2022), Állam- és Jogtudomány 64, 2023/2, 94-97. (<https://doi.org.10.51783/ajt.2023.2.05>)

I. GASS: *Gondolatok a szerződéses egyenértékűségről összehasonlító jogtörténeti kontextusban – a felén túli sérelem modern kori továbbélése*, Polgári Jog, 2026/1-2. (forthcoming)