

Viktor Savchenko

# **Free Will in Civil Law**

A Ukrainian Perspective

With a foreword by Thomas Douglas

# UKRAINIAN VOICES

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# Foreword

It is a pleasure to introduce this monograph by Dr. Viktor Savchenko, which is the culmination of research that he conducted during his time at the Uehiro Oxford Institute.

When Viktor joined the University of Oxford as a British Academy Fellow, I have had the privilege of serving as his academic mentor. During this period, I have seen his work evolve into an ambitious synthesis that touches on many different areas of law and also begins to bridge a significant divide between philosophy and civil law.

The timely publication of *Free Will in Civil Law: A Ukrainian Perspective* meets a growing global interest in Ukraine. While international attention often focuses on geopolitics, this book shifts the perspective toward the country's intellectual traditions, offering a sophisticated analysis of how free will is applied in Ukrainian law.

Savchenko's research addresses a significant gap in existing scholarship. While the philosophical debate over free will is vast, it often remains detached from the practicalities of private law. Conversely, legal scholarship sometimes treats free will as a merely procedural matter. This monograph unites these perspectives by examining the methodological principles for recognising freedom of the will across a broad spectrum of legal relations.

By examining how freedom of the will operates within different areas, Savchenko provides more than just legal commentary. He offers a window into the values of a legal system striving to align with European standards while maintaining its unique scholarly voice.

At a time when Ukraine's European future is being forged, understanding its legal and philosophical perspectives is more important than ever. This book makes a substantial contribution to that understanding, and I highly recommend it to scholars of law, philosophy, and Eastern European studies alike.

Professor Thomas Douglas  
Uehiro Oxford Institute  
University of Oxford



# Introduction

This monograph is the first comprehensive study of the theoretical and practical problems of free will in civil law, with in-depth attention to the legal system of Ukraine. The work provides a thorough analysis of new ideas and contemporary international legal trends concerning the subject. The relevance of this research is underscored by the central importance of free will to all fields and institutions of civil law. This principle determines the logic and scope of the study, each section of which offers a detailed analysis of the significance of free will for a specific area of civil law. The study demonstrates how an understanding of this concept affects the resolution of contemporary challenges in civil law, analysing the relationship between free will, personal integrity, and compliance with legal requirements.

This monograph will be of value to academics, lecturers, doctoral candidates, students, legal practitioners, and the general public.

Civil law is based on constructs and principles that stem from the foundational ideas of the nature of law itself. It is fundamentally based on normatively enshrined principles, namely: (1) the inadmissibility of arbitrary interference in a person's private life; (2) the inadmissibility of the deprivation of property rights, except in cases established by law; (3) freedom of contract; (4) freedom of entrepreneurial activity not prohibited by law; (5) judicial protection of civil rights and interests; (6) the principles of justice, good faith, and reasonableness.

The essence of these principles suggests they are united by a profound legal idea: the concept of free will. Indeed, the notion of human freedom in action and decision-making underlies the entirety of civil law.

Free will is of central importance to all fields and institutions of civil law, a fact that determines the logic and relevance of this study. Each section, therefore, provides a detailed analysis of the significance of free will for a particular sub-branch of civil law. Furthermore, we demonstrate how understanding the legal nature of

free will impacts the resolution of contemporary problems in civil law. It finds undeniable reflection in personal non-property rights, in the right of ownership and property rights in the property of others, in the law of obligations, and in intellectual property and inheritance law.

Free will is the basis of civil legal relations, which are founded on the principles of dispositivity and autonomy of the will. Violations of these principles are grounds for declaring transactions invalid, classifying vitiating factors, and exempting from civil liability.

Despite this, legislation contains no formal definition of free will, nor does it delineate its boundaries and principles. Likewise, legal doctrine has not yet defined its concept or its place within the legal system.

Nevertheless, the concept of free will is applied across all areas of civil law, influencing the development of legislation and the formation of legal values, acting as a tacit benchmark for law-making. This study is primarily based on the Civil Code of Ukraine of 2003, which remained the governing legislation at the time of writing (early 2026). However, the relevance of the theoretical framework presented here extends well beyond existing legislation. On January 22, 2026, a new draft of the Civil Code was registered in the Verkhovna Rada of Ukraine. Notably, this prospective legislation closely aligns with the expanded concept of free will advanced in this monograph. The author submitted proposals regarding these issues to the Parliament, and the Verkhovna Rada has officially acknowledged the importance of this research for the ongoing legislative reform. Consequently, this work offers both an analysis of the established legal framework and a theoretical foundation for the future of Ukrainian civil law.

An analysis of civil legislation confirms the absence of direct normative contradictions to this legal idea. This provides grounds to assert that the concept of free will is fundamental to the entire branch of civil law and requires a deep and comprehensive analysis.

Some studies have addressed individual issues of free will in the context of legal philosophy, civil law, and criminal law. Still,

modern scientific research has primarily focused on specific principles and institutions. This subject has been addressed by scholars such as Ronald Dworkin (in his work on abortion and euthanasia), David McGoldrick (on the International Covenant on Civil and Political Rights), Lauri Hannikainen (on peremptory norms), Paul Gordon Lauren (on the evolution of human rights), and Johannes Morsink (on the origins of the Universal Declaration). H. L. A. Hart developed a doctrinal "Will Theory," which was countered by the "Interest Theory" proposed by Jeremy Bentham and Rudolf von Jhering. However, these scholars focused primarily on human rights without paying sufficient attention to civil law. More recently, Visa Kurki has investigated free will in the context of legal personhood.

Despite its fundamental importance, a comprehensive study of free will within civil law has not yet been conducted. Given its central role and the aforementioned lack of extensive research, the need for such an inquiry is clear.

The author expresses his gratitude to his academic supervisor, Professor Roman Maydanyk, Academician of the National Academy of Legal Sciences of Ukraine; to the reviewers for their objective assessment of the text; to Professor Tetyana Kaganovska, Rector of V.N. Karazin Kharkiv National University; Professor Vitaliy Seryogin, Dean of the Faculty of Law; and Olena Ustymenko, Head of the Department of Civil Law Disciplines, for their assistance in writing and publishing this monograph. The author is also grateful to Professor Thomas Douglas, Director of Research at the Uehiro Oxford Institute, for invaluable advice and discussions; and to his grandparents, parents, wife, children, and family for their inspiration, support, and understanding.

The author extends special gratitude to Balliol College, University of Oxford, its Master and Fellows, and the British Academy for their comprehensive support of this research.

Published for the first time in English, this book is a revised and updated translation of a monograph previously released in Ukrainian, which has received prestigious awards, including:

1. The Best Publication of 2024 from the National Academy of Sciences of Higher Education of Ukraine;

2. Winner of the III National Competition of Scientific and Educational Publications on Law, Security, and European Integration for the Best Monograph of 2024.

# **1. Methodological Principles of Recognition of Free Will as the Genesis of Legal Understanding**

## **1.1. Historical and Philosophical Analysis of Free Will as the Genesis of Legal Understanding**

Law is the foundation of a civilised society, because it allows us to distinguish between order and chaos, system and disorder. Historically, the primary purpose of law has been the regulation of social relations, a fundamental idea that remains unchanged.

The relevance of a historical and philosophical analysis of free will as the origin of legal understanding is underscored by the foundational works of G. W. F. Hegel. He was the first to conclude that the starting point of law is will, therefore, freedom constitutes its substance and concept, and the system of law is the kingdom of realised freedom (De Caro and Putnam 2020). Philosophical and legal scholarship indicates that the will represents the transformation of subjectivity into objectivity. It is the unity of theoretical consciousness and practical activity, the efficacy of objectified consciousness, and the purposeful regulation of behavior aimed at reshaping reality (Blikhar 2015, 150).

To fully explore this issue, it is necessary to examine the understanding of free will throughout various periods: in the philosophy of Antiquity, the Middle Ages, and the Renaissance; in the doctrines of the Modern Age and classical German philosophy; in 20th-century Western philosophy; and in contemporary Ukrainian philosophy. Such an analysis will allow us to trace the shifting paradigms in the understanding of free will across different historical epochs and to assess its profound impact on the development of law.

The philosophy of antiquity laid the foundations for the understanding of free will, as well as basic legal concepts. Confirmation of this can be seen in the works of Jaspers, who noted that the West is familiar with the idea of political freedom. In Greece, he

argued, a form of freedom existed—albeit briefly—that arose nowhere else. This community of free people withstood the pressures of universal despotism and totalising organization. In doing so, the polis established the foundations for the entire Western conception of liberty, encompassing both the reality of freedom and its ideals (Jaspers 2000).

Aristotle defined philosophy as the process of "thinking about thinking"—the development of thought aimed at self-knowledge and, simultaneously, knowledge of the external world. He argued that without this self-awareness, a person possesses a slavish consciousness, becoming a mere executor of another's will in their motivational impulses. Therefore, the central question of philosophy is not the relationship between matter and consciousness, but that between will and reason. Aristotle posited that the will is not inherently rational from birth; it must be cultivated to become so (Zhadko and Bidzilia 2019). The relevance of these ideas will become apparent later in our discussion of the connection between free will and civil capacity, the scope of a minor's free will, and other related issues.

Ancient times produced a great number of legal philosophers who explored the fundamental ideas of law.

The ancient world produced a great number of legal philosophers who explored the fundamental ideas of law. The flourishing of slave-owning democracy spurred the development of views on personal autonomy and choice. At the same time, the belief in an inexorable fate (*fatum*) that guides individuals and limits their free will persisted. The relationship between free will and predestination has been a recurring theme throughout human history, reflected in the works of leading scientists, philosophers, theologians, and lawyers.

For example, the Stoics are well-known, particularly the concept of fate, which is higher than the gods and is the embodiment of immutable cosmic laws. According to common understanding, fate is a predetermined, unavoidable destiny — a mysterious force that dictates the course of all existence (*Slovník ukraïns'koi movy* [Dictionary of the Ukrainian Language] 1979, 10:570). Antiquity