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# A Legal Analysis of the Role of Preliminary Negotiations in Contract Interpretation with Emphasis on the Principle of Autonomy of Will in Iranian Law

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## ABSTRACT

Preliminary negotiations constitute an important stage in the formation of contractual relations because they allow prospective parties to exchange information, clarify expectations, define essential terms, and gradually shape the content of the agreement that may later be concluded. Although such negotiations are generally distinguishable from legally operative offer and acceptance, they may retain significant interpretive value after contract formation, particularly where the final written instrument is ambiguous, incomplete, or does not fully reflect the understandings developed during the pre-contractual stage. This article analyzes the legal role of preliminary negotiations in the interpretation of contracts under Iranian law, with particular emphasis on the principle of autonomy of will. Using a descriptive-analytical legal method, the study examines the nature of preliminary negotiations, their distinction from final contractual declarations, the relationship between subjective and apparent intention, and the extent to which prior communications may be used to identify the parties' common contractual will. Particular attention is given to the doctrine of constructive or implied conditions and to circumstances in which a prior understanding may be regarded as forming part of the basis upon which the final contract was concluded. The analysis shows that preliminary negotiations should neither be treated as automatically binding nor excluded categorically from contractual interpretation. Their legal relevance depends on whether the prior understanding was mutual, material, continuous, and operative at the time of contract formation. Negotiations may therefore serve as interpretive evidence where they clarify ambiguous terms, demonstrate a shared contractual assumption, or establish an implied condition, but they should not be used to revive rejected proposals, unilateral expectations, or terms deliberately superseded by the final agreement. The article concludes that a controlled and contextual use of preliminary negotiations is compatible with autonomy of will and can promote both fidelity to genuine contractual intention and legal certainty in Iranian contract law.

**Keywords:** *Preliminary Negotiations; Contract Interpretation; Autonomy of Will; Contractual Intention; Constructive Conditions; Iranian Contract Law*

## Introduction

Contractual relations do not ordinarily emerge at a single identifiable moment detached from what precedes them. Although the technical formation of a contract is conventionally associated with the concurrence of offer and acceptance, many transactions, particularly economically significant or legally complex transactions, are preceded by a period in which the prospective parties exchange information, identify their expectations, negotiate essential

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and secondary terms, propose alternatives, clarify technical specifications, allocate risks, and gradually move toward a final agreement. This pre-contractual process may be brief and informal in ordinary transactions, but it may extend over weeks or months in construction contracts, investment agreements, commercial transactions, insurance relationships, corporate arrangements, and other contracts requiring detailed preparation. Iranian contract law traditionally places considerable emphasis on intention and consent as constitutive elements of juridical acts, and this makes the relationship between negotiations and the parties' eventual contractual intention particularly significant. The formation of a valid contract presupposes a legally effective intention directed toward the creation of legal effects, and the expressions used by the parties ordinarily operate as manifestations of that underlying intention (1). Accordingly, a sharp conceptual distinction must be drawn between preliminary exchanges, which ordinarily prepare the ground for contracting, and declarations that have reached the level of legally operative offer and acceptance. This distinction is not always self-evident because negotiators may use definite language before intending to become legally bound, while in other cases their pre-contractual correspondence may embody understandings that later become part of the basis upon which the final contract is concluded. The proper characterization of such statements therefore requires attention not merely to their grammatical form but also to their context, purpose, sequence, and relationship with the final expression of contractual will. Iranian civil-law doctrine recognizes the centrality of intention in juridical acts and regards external manifestations primarily as means through which the legally relevant intention is disclosed (2). This theoretical orientation creates an important foundation for examining whether, and to what extent, preliminary negotiations may be consulted when the meaning of a completed contract becomes disputed.

The legal importance of preliminary negotiations becomes most evident after the contract has been concluded. A written instrument may appear complete while nevertheless failing to reproduce every understanding, representation, assumption, technical explanation, or condition that influenced the parties' decision to contract. The final document may use an expression capable of more than one interpretation, may remain silent on an issue extensively addressed during negotiations, or may contain a provision whose apparent meaning differs from the meaning attributed to it throughout the pre-contractual relationship. Contract interpretation then becomes necessary because the interpreter must determine the legal content of the parties' agreement rather than merely identify the dictionary meanings of isolated words. Interpretation in private law is therefore closely linked to the reconstruction of contractual intention. Iranian legal scholarship has treated contractual interpretation as a process through which ambiguity is removed and the actual meaning and scope of contractual obligations are ascertained (3). The process is particularly difficult where the written terms, surrounding circumstances, customary understandings, and prior exchanges do not point uniformly in the same direction. The principle of autonomy of will is central in this respect because, within the limits imposed by mandatory law, public order, morality, and other legal restrictions, contractual obligations derive their legitimacy and content primarily from the parties' legally recognized choice. The binding force of contractual obligations is consequently connected with the will that created them, although the law also gives effect to consequences that follow from custom, statutory provisions, and the nature of the transaction (4). The interpretive task thus involves finding a legally acceptable balance between fidelity to the parties' genuine agreement and the need for certainty, reliance, and predictability in transactions.

The problem acquires additional complexity because autonomy of will can be understood through different conceptions of contractual intention. Under a predominantly subjective approach, interpretation seeks the parties' actual or internal intention even where that intention is imperfectly reflected in the contractual wording. Under an

objective or apparent-will approach, greater importance is given to the meaning that a reasonable person would derive from external declarations and conduct. Iranian law does not treat these two dimensions as wholly independent. The language of the Civil Code and the jurisprudential heritage from which many of its concepts originate demonstrate the foundational importance of intention, while external words and conduct remain indispensable evidence through which intention becomes legally ascertainable. The traditional proposition that juridical acts follow intentions reflects the conceptual priority attributed to the internal will in Islamic jurisprudence (5). Jurisprudential analyses of contractual intention similarly connect the validity and characterization of transactions with the purpose toward which legally significant consent is directed (6). Modern Iranian civil-law doctrine has likewise emphasized that declarations are not normally ends in themselves; they reveal an intention that gives the juridical act its character and intended legal effect (7). Yet an unrestricted subjective approach would threaten transactional security whenever undisclosed individual intentions could override objectively communicated commitments. For this reason, the interpretation of contracts cannot be reduced either to psychological inquiry or to mechanical literalism. The more persuasive approach is to treat the manifested agreement as the starting point while allowing surrounding circumstances, including sufficiently connected preliminary negotiations, to assist in determining the common contractual intention when genuine interpretive uncertainty exists.

Preliminary negotiations must nevertheless be approached with caution because not every pre-contractual statement forms part of the contract. Freedom of contract necessarily includes a sphere of freedom to negotiate without immediately incurring the obligations associated with a completed transaction. The parties require the ability to inquire, bargain, test alternatives, reject proposals, revise positions, and discontinue negotiations where no definitive agreement has been reached. The distinction between negotiation and offer therefore protects both contractual autonomy and commercial flexibility. An offer must manifest sufficient definiteness and an intention to become legally bound upon acceptance, whereas preliminary exchanges may merely invite further discussion or clarify the conditions under which a later offer might be made (8). At the same time, the pre-contractual stage cannot be regarded as a legal vacuum. Certain conduct during negotiation may create liability independently of the final contract, particularly where one party acts deceptively, withholds information that it is legally required to disclose, abuses justified reliance, or otherwise acts contrary to standards recognized by the legal system. The importance of informational duties has been particularly examined in contexts in which one party possesses information materially affecting the other party's decision (9). The insurance context provides a particularly developed example of duties of disclosure and the legal consequences of inaccurate or incomplete information (10). Although such duties cannot automatically be generalized to every contract, they show that pre-contractual behavior may possess legal significance even before the final consensus is achieved. The doctrine of good faith also supplies a normative framework for assessing conduct during formation, interpretation, and performance, although its precise status and scope in Iranian law remain subjects of doctrinal debate (11). Consequently, preliminary negotiations may have two distinct legal dimensions: they may generate duties or liabilities at the pre-contractual stage, and they may later function as evidence relevant to the meaning of the contract that was ultimately concluded.

A particularly important route through which prior negotiations can acquire interpretive relevance in Iranian law is the doctrine commonly discussed as the constructive, implied, or tacitly incorporated condition, often described in Persian legal discourse as *shart-e benā'i*. The concept addresses situations in which an understanding has been established before the formal conclusion of the contract and the subsequent transaction is concluded on the basis of that understanding even though the condition is not expressly repeated in the contractual formula. The validity of

such conditions is closely connected with the relationship between prior agreement and final contractual intention. If the parties considered an earlier understanding irrelevant or abandoned it during subsequent negotiations, it cannot legitimately be imported into the final contract. By contrast, if the circumstances demonstrate that both parties entered into the transaction while continuing to regard that understanding as part of the basis of their agreement, refusing to consider it merely because it was not repeated verbatim in the final instrument may conflict with the very principle that contractual effects should correspond to the parties' legally relevant intention. Jurisprudential debates regarding conditions preceding a contract illustrate the historical difficulty of determining when a prior understanding becomes sufficiently connected to the juridical act to acquire binding force (12). Related discussions concerning the relationship between contractual formulation and prior intention demonstrate that the legal effect of an unstated condition depends substantially on whether it can genuinely be regarded as incorporated into the parties' consensus (13). Iranian civil-law doctrine has consequently developed mechanisms for recognizing implicit contractual content where the circumstances, customary assumptions, or basis of agreement justify doing so (14).

The central legal question is therefore not whether preliminary negotiations should always be binding or always be excluded from interpretation. Neither proposition adequately reflects the structure of contractual autonomy. The more precise question is under what conditions a court or other interpreter may legitimately use pre-contractual communications to identify the common intention embodied in the final agreement without converting every negotiating statement into an enforceable promise. This requires examining the legal nature of preliminary negotiations, their distinction from expressions of final consent, the function of autonomy of will in Iranian contract law, the relationship between internal and apparent intention, and the circumstances in which a prior understanding may become an implicit component of the agreement. The issue is of practical importance because excessive exclusion of negotiations may cause the enforcement of a contract in a manner inconsistent with the shared basis on which it was concluded, while excessive reliance on preliminary discussions may undermine the stability of written instruments and allow abandoned proposals to re-enter the contractual relationship. The objective of this study is to analyze the legal role of preliminary negotiations in the interpretation of contracts under Iranian law, with particular emphasis on the principle of autonomy of will, and to identify the criteria by which prior negotiations may properly assist in discovering the parties' common contractual intention.

## Legal Nature and Functions of Preliminary Negotiations

Preliminary negotiations constitute the communicative and deliberative stage preceding the definitive formation of a contract. Their central function is exploratory rather than immediately constitutive: the prospective parties seek information, assess the desirability of the transaction, determine whether their interests are compatible, negotiate the principal terms, and identify matters requiring further agreement. In legal doctrine, this period must be distinguished from the stage at which declarations attain the character of offer and acceptance. The distinction derives from the requirement that contractual formation involves a concurrence of legally operative intentions rather than the mere existence of discussions concerning a possible transaction. The formation of contractual obligations depends on expressions sufficiently directed toward producing the juridical result contemplated by the parties (15). Preliminary negotiations ordinarily lack this definitive quality because their participants remain free to examine possibilities and modify their positions. The legal category of negotiation therefore preserves a space in which persons may exercise contractual freedom before becoming contractually bound. This is consistent with the broader

principle that legal obligations should not ordinarily be imposed as contractual duties unless the requisite intention to create those obligations is established. The external manifestations used during bargaining are important but cannot be assessed in isolation. A statement that linguistically resembles a promise may remain merely provisional where the context demonstrates that further approval is contemplated, while a communication described informally as preliminary may in substance embody a complete and final commitment. The distinction must consequently depend upon the meaning reasonably attributable to the communication within the entire course of dealings. The analytical treatment of offer and acceptance in Iranian legal scholarship confirms that the legal characterization of a declaration requires attention to the intention manifested through it and the stage reached in the process of agreement (8).

The first major function of preliminary negotiations is informational. Contracting parties frequently possess unequal information concerning the subject matter, technical characteristics, legal risks, costs, or circumstances capable of affecting performance. Negotiation enables each side to obtain the information necessary for an informed decision and allows the parties to correct misunderstandings before a binding transaction is formed. The duty to provide information is not uniform across all contractual relationships, and Iranian law does not establish an unlimited general obligation to disclose every circumstance known to one party. Nevertheless, specific contractual settings and general legal doctrines recognize circumstances in which silence, concealment, or misleading disclosure may have legal consequences. Comparative and Iranian legal analyses of disclosure obligations emphasize that the intensity of the duty depends on such considerations as the materiality of the information, the knowledge asymmetry between the parties, the reasonable accessibility of the information, and the legitimate expectations created during bargaining (16). Insurance law provides an especially clear example because risk assessment depends materially on information controlled by the insured or policyholder, making truthful disclosure central to contractual formation (17). Similar reasoning, although not mechanically transferable, helps explain why negotiations may later possess interpretive significance: information exchanged before contracting often reveals how the parties understood the subject matter and which characteristics they regarded as decisive. If the final contractual wording is ambiguous regarding a technical specification, an agreed description repeatedly used during negotiations may constitute valuable evidence of the meaning shared by the parties when they concluded the contract.

The second function of negotiations is to identify and gradually stabilize the content of the contemplated contract. Complex agreements rarely emerge in a single act. Parties may initially agree on commercial objectives, later determine the subject matter and price, subsequently allocate risks, and finally settle procedural or ancillary obligations. Some matters may be expressly recorded in letters, memoranda, minutes, preliminary agreements, or draft instruments, whereas others may remain embodied only in correspondence or consistent oral exchanges. The legal significance of these materials depends upon the extent to which they survive the subsequent process of contracting. Contractual autonomy permits parties to revise or abandon earlier positions, meaning that chronological priority does not itself confer continuing force. A proposal rejected or superseded during negotiation cannot ordinarily be restored through interpretation merely because it appears in an earlier draft. Conversely, an understanding consistently maintained and relied upon through the moment of formation may form part of the contextual basis necessary to understand the final text. The binding force of a contract extends not merely to the exact words chosen by the parties but, under the structure of Iranian civil law, also to consequences legally or customarily attached to their agreement. This broader conception of contractual content has been examined in

Iranian doctrine concerning the binding force and consequences of obligations (18). The interpretive question is therefore not whether the earlier communication is itself a separate contract, but whether it demonstrates the meaning attributed by the parties to the obligation ultimately undertaken.

A third function of preliminary negotiations is evidentiary. When the parties subsequently disagree about the intended meaning of a provision, the negotiation history may show why particular terminology was selected, which alternatives were rejected, what commercial purpose the parties sought to achieve, and what assumptions were shared. Such evidence is particularly valuable where a contractual expression has no single determinate meaning outside its context. Contractual language should not be severed from the transaction in which it operates. The interpreter must distinguish between interpretation, which seeks the meaning of the agreement, and legal characterization, which determines the juridical category into which that agreement falls. Iranian scholarship on contractual interpretation stresses that the parties' expressions, relevant circumstances, and the structure of the transaction may all contribute to identifying contractual meaning (19). This does not mean that extrinsic material may always displace clear contractual wording. The stronger and more complete the final expression, the greater the evidentiary burden required to demonstrate that the parties nevertheless attributed a different common meaning to it. But even apparently clear language can sometimes become uncertain when applied to concrete circumstances. An expression may be linguistically clear in the abstract while leaving doubt about the object, quantity, quality, timing, or procedure contemplated by the parties. Preliminary negotiations may then assist not by contradicting the contract but by situating its terms within the factual and communicative context in which they were adopted.

A further distinction must be made between negotiations as interpretive evidence and negotiations as an independent source of obligation. These categories overlap but should not be confused. A party may incur liability for misconduct during negotiations even though no contract is ultimately formed, while a perfectly lawful negotiating statement may later become relevant to interpreting a contract without having been independently binding when made. Pre-contractual fault has been discussed in Iranian legal literature as a distinct problem concerning the protection of justified reliance and the consequences of wrongful conduct before final agreement (20). If one party enters negotiations without genuine intention to reach agreement, abruptly terminates advanced negotiations after inducing substantial and reasonable reliance, or deliberately misleads the other party, liability may arise under applicable principles even though the disputed conduct cannot be characterized as breach of the final contract. The interpretive role of negotiations addresses a different question: once a contract exists, what light do previous communications shed on its meaning? Keeping the two dimensions separate prevents doctrinal confusion. A representation may be relevant to interpretation because the final contract was concluded on the understanding that it was accurate, while the legal consequences of intentional falsity may additionally engage doctrines of fraud, misrepresentation, or civil liability. Comparative legal treatment of misrepresentation shows how pre-contractual statements may affect consent and remedial consequences without necessarily becoming express contractual terms (21). Iranian law similarly provides remedies where defects in the process of formation undermine the authenticity of consent or cause legally compensable harm (22).

Good faith gives the pre-contractual stage an additional normative dimension. Even where Iranian positive law does not formulate a comprehensive and express general clause governing every aspect of pre-contractual good faith, the idea plays an explanatory role in doctrines concerning disclosure, prohibition of deception, consistency of conduct, abuse of rights, and protection of legitimate expectations. Good faith in contractual relations has been

analyzed as relevant not only to performance but also to formation and interpretation (11). The principle does not require a negotiating party to sacrifice its own legitimate interests or disclose every strategic consideration. Negotiation inherently permits bargaining, persuasion, and the pursuit of advantageous terms. The legal concern arises when strategic behavior passes into deception, opportunistic contradiction, deliberate exploitation of informational dependence, or abuse of a position created by the negotiating process. The prohibition of abuse of rights offers a related framework for preventing formal legal freedoms from being exercised solely or disproportionately in a manner inconsistent with their legitimate function (23). Accordingly, freedom to negotiate and freedom to withdraw cannot be understood as absolute immunity from responsibility in every circumstance. The manner in which negotiations were conducted may also influence interpretation after formation, particularly where one party attempts to assign a meaning to the final terms that contradicts the understanding it intentionally induced throughout the bargaining process.

The legal relevance of preliminary negotiations ultimately depends on their connection with final consent. Some negotiations concern matters that never become part of the agreement; some are superseded by later understandings; some establish interpretive background without creating obligations; and some contain conditions so integral to the eventual consensus that the contract can reasonably be understood only by reference to them. Autonomy of will requires respect for these differences. It would be contrary to autonomy to impose abandoned negotiating positions merely because they preceded formation, but it would also be contrary to autonomy to ignore an understanding that objectively formed part of the shared basis on which consent was given. The proper legal inquiry therefore asks whether the alleged pre-contractual understanding remained relevant at the moment of formation, whether it was shared or reasonably known by both parties, whether the final contract displaced it, and whether its use is necessary to ascertain rather than rewrite the contractual intention. This approach preserves the distinction between negotiation and contract while recognizing that the history of negotiation may remain legally significant after the moment of formation.

## Autonomy of Will as a Basis for Contract Interpretation in Iranian Law

The principle of autonomy of will occupies a foundational position in private law because contractual obligation is characteristically created through the legally recognized choice of the parties. In Iranian law, this principle cannot be understood merely as an abstract commitment to economic freedom; it operates through rules concerning intention, consent, freedom of contract, the binding force of agreements, and the determination of contractual content. Article 10 of the Iranian Civil Code is commonly treated as one of the clearest legislative expressions of contractual freedom insofar as private agreements are effective between those who conclude them unless they contravene express law. The broader architecture of the Civil Code also confirms that a juridical act requires intention directed toward the production of legal consequences. Iranian legal doctrine accordingly treats intention as the creative element of the contract, while consent concerns the free and unvitiated character of the decision (24). The significance of this distinction for interpretation is substantial. If the contract derives its existence and content from legally effective intention, interpretation must seek to identify the content that the parties intended to place within their juridical relationship. The interpreter should not create a new agreement under the guise of explanation. Rather, the task is to reconstruct the legally relevant agreement from the expressions, circumstances, customary implications, and other admissible evidence connected with the transaction.

The principle of autonomy of will must, however, be distinguished from an unrestricted doctrine of subjective intention. Contract law protects social interaction as well as individual volition. The internal mental state of one party cannot ordinarily create obligations for another where it was never manifested or reasonably knowable. Contract formation necessarily requires communication because consensus involves the meeting of legally meaningful intentions. Iranian legal scholarship therefore differentiates between will as an internal psychological phenomenon and declaration as the external instrument through which that will enters the legal sphere (2). The Civil Code's treatment of intention has often been read as giving conceptual priority to the internal will while requiring some external manifestation for juridical effectiveness. The maxim that contracts follow intentions has long been influential in Islamic jurisprudence and expresses the proposition that juridical characterization depends on what the parties genuinely intend rather than solely on the verbal label attached to the transaction (25). Classical jurisprudential sources similarly examine the relationship between formula, intention, and legal effect when determining whether a transaction has been validly created (26). Yet the recognition of intention does not eliminate the evidentiary and protective importance of outward conduct. External expression supplies the principal basis on which the other contracting party and third persons can identify the content of the juridical act.

The distinction between subjective and apparent will is therefore better understood as an interpretive tension than as an absolute choice between mutually exclusive theories. A purely subjective theory would authorize inquiry into actual intention even where it conflicts with the ordinary meaning of the words used. Its principal advantage is fidelity to autonomy: if both parties genuinely intended the same meaning, enforcing a different meaning merely because of imperfect expression seems difficult to reconcile with the consensual basis of contractual obligation. A purely objective theory, by contrast, prioritizes security of transactions and reasonable reliance by attaching legal effect to the meaning objectively conveyed. This approach avoids uncertainty arising from unverifiable claims concerning internal intention, but it may generate results inconsistent with an actual common understanding known to both parties. Iranian civil-law doctrine generally supports the proposition that manifested intention is evidence of the underlying will rather than an autonomous source wholly detached from it (27). The appropriate interpretive method should therefore protect reasonable reliance on external manifestations while preserving room to establish a demonstrable common intention that differs from a merely superficial reading. Where both parties shared the same meaning, there is less justification for imposing a different objective meaning. Where their actual intentions diverged, greater weight must necessarily be given to objectively ascertainable manifestations and legal standards governing the interpretation of declarations.

This distinction explains why preliminary negotiations may be particularly relevant in an intention-centered system. The final text is normally the most authoritative manifestation of contractual will, but it is not necessarily the only manifestation. The parties may have clarified a technical expression during negotiations and then employed that same expression in the final document without repeating the clarification. They may have agreed upon an assumption concerning quality, quantity, timing, or performance and thereafter drafted the contract against the background of that assumption. In such cases, prior communications may provide evidence of the meaning mutually attributed to the final wording. The use of preliminary negotiations is therefore not inconsistent with the sanctity or binding force of the written contract when those negotiations are used to discover the meaning of the text rather than contradict a deliberately integrated agreement. Contractual interpretation seeks to establish the operative content of consent, and the relevant evidence should be evaluated according to its ability to reveal that content (3). The interpretive relevance of prior dealings is particularly strong where a term is ambiguous, where the contract

employs specialized terminology, where a provision refers implicitly to a previously established specification, or where the practical purpose of an obligation cannot be understood without examining the circumstances in which it was negotiated.

Autonomy of will also explains the importance of distinguishing express contractual terms from implied or constructive terms. Parties do not necessarily verbalize every assumption forming part of their agreement. Some consequences follow from law or custom irrespective of whether the parties specifically contemplated them, while others arise because the structure of the transaction demonstrates that the agreement was formed on a particular shared basis. Iranian legal doctrine concerning contractual obligations recognizes that the legally binding content of a contract may exceed the literal words expressly stated by the parties (7). Custom may supply details that persons operating within a particular transactional environment naturally assume without explicit repetition. General interpretive rules may similarly attribute to words the meaning they ordinarily carry within the relevant social or commercial context. These mechanisms do not displace autonomy; rather, they enable the legal system to give practical effect to agreements as reasonable persons actually make them. A contract would become unmanageably lengthy if every customary incident or obvious shared premise had to be expressly restated. The challenge is to distinguish legitimate implication from judicial addition. An implied term must therefore be anchored in the contract, applicable law, established usage, the nature of the transaction, or a demonstrable common basis of agreement.

The concept of *shart-e benā'i* is especially important because it provides a doctrinal bridge between preliminary negotiations and final contractual content. The condition is not merely any statement occurring before the contract. Its defining feature is that the contract is subsequently formed on its basis. In other words, the earlier understanding remains active in the parties' consciousness at the moment of contracting and constitutes part of the premise upon which consent is exchanged. Classical jurisprudential debates reveal different approaches to the enforceability of conditions not expressly incorporated into the contractual formula (28). Some formal approaches historically required a close connection between condition and contract, while broader approaches recognized that a prior understanding may effectively accompany consent even if not verbally repeated. Jurisprudential analysis of conditions and commercial transactions likewise reflects concern with whether the undertaking can genuinely be attributed to the contractual commitment (12). From the perspective of autonomy of will, the decisive question should be whether the condition formed part of the common intention expressed through the contract. If it did, its omission from the final wording should not automatically deprive it of relevance. If it did not, judicial incorporation would itself violate autonomy.

The Iranian Civil Code supplies support for recognizing contractual assumptions that are not always exhaustively reproduced in formal language. Doctrinal analyses of juridical acts have emphasized that the interpretation of contractual statements should take account of the circumstances and conventional implications in which the statements were made (29). Rules concerning contractual descriptions and characteristics of the subject matter also illustrate the legal significance of qualities forming the basis of consent. Where a transaction is concluded on the assumption that the subject possesses particular characteristics, the absence of those characteristics may generate legal remedies even though the conceptual mechanism may differ according to the type of transaction. The broader importance of these rules lies in their recognition that the content of consent includes assumptions about the subject of the transaction, not merely abstract words. Iranian legal scholarship regarding onerous and property-transferring contracts similarly emphasizes the relationship between agreed qualities and the balance of

exchange expected by the parties (30). Such rules provide an analogical foundation for recognizing that negotiations concerning characteristics later treated as decisive by both parties may assist in interpreting contractual obligations.

Autonomy of will is nevertheless subject to structural limits. Private persons cannot, through agreement, neutralize mandatory legal rules, public order, morality, or legal restrictions designed to protect broader interests. Adhesion contracts and unequal bargaining relationships also demonstrate that apparent agreement does not always reflect genuinely negotiated autonomy. Legal analyses of adhesion contracts question the extent to which standardized terms can be explained solely through classical theories of freely negotiated consent (31). This issue is relevant to interpretation because the weight attributed to negotiation history depends partly on whether meaningful negotiation actually occurred. In a heavily standardized transaction, one party may have had no realistic opportunity to modify terms, and the interpretive relevance of individualized pre-contractual representations may become particularly important where they induced consent. Conversely, where sophisticated parties negotiate detailed written contracts through repeated drafts and deliberately omit a proposed clause from the final version, the omission may strongly indicate abandonment. Autonomy requires attention to the actual structure of the contracting process rather than reliance on abstract assumptions about bargaining equality.

The most defensible conception of autonomy of will for purposes of interpretation is therefore relational and evidentiary. The law should seek the common contractual intention insofar as it can be established through reliable manifestations, while protecting justified reliance and the stability of formal agreements. Preliminary negotiations should neither dominate nor disappear from this inquiry. Their weight varies according to their proximity to formation, consistency, specificity, mutuality, subsequent confirmation, and compatibility with the final instrument. Where prior statements demonstrate a shared understanding and the final text is capable of bearing that understanding, they may provide powerful interpretive evidence. Where they record rejected proposals, unilateral hopes, strategic bargaining positions, or matters expressly superseded by the final contract, autonomy itself requires their exclusion. In this manner, the principle of autonomy of will becomes not an argument for unlimited resort to subjective intention but a criterion for identifying which manifestations genuinely belong to the contractual consensus.

## The Role of Preliminary Negotiations in Discovering and Interpreting the Parties' Intention

The legal relevance of preliminary negotiations in contract interpretation begins with the proposition that interpretation is required whenever the legal meaning of the parties' agreement cannot be satisfactorily determined from the contractual text alone. Ambiguity may be linguistic, contextual, technical, or functional. A provision may contain an expression with multiple possible meanings, the contract may fail to specify how an obligation is to be carried out, separate clauses may appear inconsistent, or the literal meaning may produce a result difficult to reconcile with the evident structure of the transaction. Interpretation must then identify the meaning most consistent with the legally ascertainable common intention. Iranian scholarship has long emphasized that contractual interpretation cannot be separated from the broader circumstances in which the juridical act was created (19). The contract itself remains the primary interpretive source, but the interpreter may also consider legal rules, custom, surrounding circumstances, the nature of the transaction, and conduct capable of illuminating the agreement. The principle of autonomy of will supports such contextual inquiry because the objective is not to substitute judicial preference for the parties' decision but to reconstruct the content of that decision as accurately as possible. Preliminary negotiations become relevant precisely because they may record the process through which the common intention took shape.

Their use must begin with classification. Some pre-contractual communications are merely exploratory. They include inquiries, tentative suggestions, requests for information, invitations to negotiate, estimates, draft alternatives, and other statements whose purpose is to facilitate bargaining rather than create a definite commitment. Such communications should not be transformed retrospectively into contractual obligations simply because agreement was later achieved. The distinction from offer is crucial. Offer and acceptance are juridically operative manifestations of consent; preliminary negotiations ordinarily precede that stage and prepare the matters on which consent may later be expressed (8). The parties' terminology is relevant but not conclusive. A document entitled "memorandum," "letter of intent," or "preliminary agreement" may contain binding obligations on confidentiality, exclusivity, disclosure, or negotiation procedure while leaving the principal transaction non-binding. Conversely, a document described as an "agreement" may expressly provide that neither party is bound until execution of a final instrument. Interpretation must therefore focus on substantive intention rather than labels. This is consistent with the general principle that juridical characterization follows the actual content and intention of an act rather than the name assigned to it by the parties (2).

A second category consists of representations and statements of fact made during negotiations. These may concern the characteristics of property, financial conditions, technical capacities, risks, legal status, expected performance, or other matters influencing the decision to contract. Their legal significance may extend beyond interpretation where they are false or misleading. Misrepresentation may affect the validity or remedial consequences of consent, while concealment of material information may engage disclosure duties in relationships where such duties are recognized (21). The interpretation question is somewhat different. Where both parties proceed on the basis of a factual representation and the final contract uses terms whose meaning depends upon that representation, the pre-contractual statement may assist in defining the contractual expectation. For example, where parties repeatedly discuss a specific technical capacity and later employ a general term in the final instrument that could encompass several levels of performance, the negotiating record may demonstrate which level they jointly contemplated. Such use does not necessarily convert every factual statement into a warranty. It uses the statement to understand the meaning of the obligation actually accepted. The evidentiary weight of the statement should depend upon its specificity, materiality, the circumstances in which it was made, the other party's reasonable reliance upon it, and its consistency with the final contract.

A third category consists of prior understandings that may amount to constructive conditions. This category has the greatest significance for Iranian law because the concept of *shart-e benā'i* provides a doctrinal means through which an understanding developed before formation can become relevant to the final agreement. The essential requirement is continuity between the prior understanding and the final consent. A condition discussed during negotiation does not become contractual merely because it was once mentioned. It must be shown that the parties formed the contract while continuing to regard that condition as part of the basis of their transaction. Jurisprudential treatments of contractual conditions demonstrate the importance of determining whether an undertaking is sufficiently connected to the contract to become binding (13). Modern contract doctrine similarly treats the parties' common premise as potentially capable of shaping the content of their juridical act where that premise is reflected in the circumstances of formation (7). Preliminary negotiations may therefore serve two related functions: they may prove that such a condition existed, and they may explain its intended content.

The temporal relationship between the negotiation and formation is important but not decisive. A communication made immediately before signature is not automatically more legally significant than an understanding established

earlier and consistently maintained throughout negotiations. What matters is whether the understanding remained operative. Evidence of later abandonment, substitution, or contradiction should reduce or eliminate its interpretive value. This point is particularly important where parties exchange several drafts. If an early draft contains a clause, the other party objects, and the clause is intentionally deleted from the final agreement, relying on the early draft to restore the omitted term would normally undermine rather than promote autonomy. By contrast, where repeated drafts preserve the same substantive understanding but express it differently, the negotiating history may clarify the meaning of the final formulation. Interpretation therefore requires a diachronic examination of negotiations rather than the isolated citation of whichever prior statement favors one litigant. The entire negotiating sequence must be evaluated to determine whether it reveals continuity or abandonment.

The subjective significance of negotiations is strongest where they establish an actual common intention. If both parties understood a term in the same specialized sense, there is a strong autonomy-based argument for applying that shared meaning even if a third party unfamiliar with the context might read the term differently. This approach reflects the priority of common intention over abstract linguistic meaning. Iranian doctrine emphasizing internal will provides theoretical support for recognizing a mutually shared meaning established through prior communications (27). Nevertheless, the evidence must demonstrate commonality. A unilateral undisclosed intention cannot ordinarily control contractual interpretation because it has not entered the intersubjective sphere of agreement. If one party privately assigns a special meaning to a contractual term but never communicates that meaning, autonomy does not justify imposing it on the other party. Preliminary negotiations are useful precisely because they can show whether an asserted subjective meaning was actually communicated, discussed, and accepted.

The apparent-will perspective provides an important corrective where no actual common intention can be proved. In such situations, interpretation should rely on the meaning reasonably conveyed by the parties' words and conduct. The final text ordinarily has substantial weight because it constitutes the most deliberate and complete external manifestation of agreement. The need to protect justified reliance also discourages retrospective claims inconsistent with the meaning objectively communicated at the time of formation. Iranian civil-law scholarship recognizes the evidentiary role of apparent intention while maintaining the conceptual relevance of internal will (32). Preliminary negotiations may still contribute to objective interpretation because a reasonable recipient interprets contractual language in light of communications exchanged during the bargaining process. What counts as an objectively reasonable meaning is therefore itself contextual. A technical term may mean one thing in ordinary language and another in the specialized context jointly adopted by the parties. Negotiations can define that context without requiring the interpreter to engage in speculative psychological inquiry.

Good faith strengthens the case for considering negotiations where one party attempts to exploit an ambiguity in a manner inconsistent with the understanding it previously induced. A party that deliberately uses particular representations to secure agreement and later advances a contradictory interpretation may be acting inconsistently with standards of fair dealing. Good faith has been analyzed in Iranian legal literature as a principle capable of influencing contractual formation, interpretation, and performance (11). Comparative contract law likewise recognizes good faith as an important interpretive and behavioral standard, particularly where parties' conduct creates legitimate expectations (33). The principle should nevertheless be applied with analytical discipline. It cannot justify rewriting the contract merely to achieve an equitable result. Its proper role is to reinforce interpretations consistent with the parties' established dealings and to prevent opportunistic reliance on literal ambiguity where the negotiating history clearly contradicts the asserted meaning.

Information disclosed during negotiations may also shape the parties' legitimate expectations. Legal treatment of disclosure obligations demonstrates that some facts are so material to consent that failure to communicate them may disturb the fairness and authenticity of contractual formation (9). Insurance doctrine illustrates this particularly clearly because the assessment of risk requires cooperation in the provision of relevant information (10). The principle of utmost good faith historically associated with insurance relationships further illustrates the connection between informational transparency and meaningful consent (34). These examples should not be transformed into a universal rule requiring maximal disclosure in every negotiation, but they demonstrate that the pre-contractual stage can create a factual and normative context that survives formation. Where information was expressly provided to explain the meaning or expected performance of a contractual term, that communication may legitimately guide interpretation.

The question of admissibility becomes especially sensitive where the final contract appears clear. A rigid textual approach might insist that prior negotiations are irrelevant whenever the written words possess an ordinary meaning. Such a position offers certainty but may confuse linguistic clarity with contractual clarity. Words can appear clear outside their context yet have a specialized or mutually defined meaning between the parties. On the other hand, unrestricted resort to negotiations risks destabilizing written contracts by allowing parties to manufacture ambiguity after disputes arise. A balanced solution is to recognize a rebuttable preference for the final contractual text while permitting preliminary negotiations where they reliably demonstrate the common meaning, explain contextual ambiguity, identify the basis of a constructive condition, or clarify matters left incomplete. The more explicit and comprehensive the final contract, the stronger the evidence required before prior communications affect interpretation. If the parties have expressly declared that prior negotiations are superseded or have adopted an integration-type provision, that expression itself reflects autonomy and should ordinarily be respected unless overriding legal considerations apply.

The doctrine of constructive conditions supplies the clearest mechanism for integrating this balanced approach into Iranian law. A constructive condition derives its force not from the mere historical fact that it was discussed but from the proposition that the contract was formed on its basis. Classical jurisprudential concern with the legal status of conditions preceding a contract reflects the need to connect the prior undertaking with the final act of consent (5). The question should therefore be framed evidentially: did the prior understanding remain part of the foundation of consent at formation? Evidence may include repeated references to the condition, the commercial indispensability of the matter, correspondence demonstrating reliance, consistency between the condition and the final contractual scheme, customary assumptions, and conduct immediately surrounding formation. Conversely, evidence of express rejection, deliberate deletion, incompatibility with the final text, or abandonment should preclude incorporation. This framework protects both contractual intention and transactional certainty.

The consequences of recognizing a preliminary understanding also require differentiation. In some cases, the negotiation merely assists in selecting among possible meanings of an express provision. In others, it may establish an implied contractual condition whose breach triggers remedies available for breach of that condition. In still others, it may demonstrate deception, mistake, or another defect affecting consent. These consequences should not be collapsed into a single doctrine. The interpretation of an existing obligation differs from adding an implied term, and both differ from challenging the validity of consent. Iranian civil law provides distinct conceptual tools for these problems, and doctrinal precision is necessary to avoid remedy-driven interpretation. The interpreter should first identify the legal function performed by the negotiation evidence and only then determine its consequences. This

methodology is especially important because the same pre-contractual statement may be relevant in several ways: it may clarify meaning, establish reliance, reveal a constructive condition, or demonstrate misrepresentation.

The most persuasive criterion for using preliminary negotiations is therefore whether doing so gives effect to, rather than substitutes for, the parties' contractual autonomy. Negotiations should be considered where they reliably establish the meaning mutually attributed to contractual language, demonstrate a common assumption on which the contract was formed, or clarify an obligation that cannot otherwise be satisfactorily determined. They should be excluded where they reflect abandoned proposals, unilateral expectations, statements superseded by the final agreement, or attempts to contradict an unequivocal allocation of rights and risks deliberately adopted by the parties. This criterion integrates subjective and objective dimensions of intention. It recognizes genuine common intention where sufficiently proved, but it also protects reliance on the external structure of the transaction. It therefore offers a coherent basis for judicial use of preliminary negotiations within Iranian contract law without transforming the pre-contractual stage into an automatic source of contractual obligations.

## Preliminary Negotiations, Constructive Conditions, and the Limits of Interpretive Reliance in Iranian Law

The relationship between preliminary negotiations and constructive conditions provides the most promising doctrinal basis for explaining why prior communications may influence the interpretation of contracts under Iranian law. The concept of a constructive condition addresses an understanding that may not appear expressly in the final wording but nevertheless forms part of the basis on which the parties conclude the contract. Its significance lies in the distinction between an independent pre-contractual statement and an understanding incorporated through the parties' final consent. The former may have no contractual force, while the latter acquires relevance because the contract is made in contemplation of it. Jurisprudential discussion of conditions has historically focused on the degree of connection necessary between a condition and the contract for the condition to be enforceable (12). The formal concern is understandable: contractual obligations should not be expanded by reference to statements that the parties never intended to preserve. Yet an excessively formal requirement that every condition be verbally repeated at the exact moment of formation may fail to reflect how contracts are actually negotiated. Parties frequently settle important matters beforehand and subsequently conclude the contract on the assumption that those matters remain agreed. In such circumstances, recognition of the constructive condition may better correspond to autonomy of will than its exclusion.

The distinction between a constructive condition in a broad and narrow sense can clarify the analysis. In a broad sense, the concept may encompass assumptions and understandings forming the foundation of the transaction even where they have not been separately articulated as formal conditions. In a narrower sense, it concerns a matter specifically discussed before formation and subsequently treated by both parties as part of the basis of agreement. The narrower conception is particularly relevant to preliminary negotiations because it requires identifiable communication. The parties may, for example, discuss a particular quality of the subject matter, receive confirmation, and then proceed to conclude the contract without restating the quality. If the evidence demonstrates that both parties continued to treat the quality as essential, the prior discussion is not merely historical background; it helps establish the substantive content of the final consent. Iranian legal doctrine concerning the effect of intention provides support for giving legal significance to the actual basis upon which the transaction was undertaken (35). The important limitation is that the alleged condition must be common rather than unilateral. A private motive or

expectation, unknown to the other party, cannot ordinarily become a contractual condition simply because it influenced one party's decision.

The relationship between constructive conditions and the Civil Code is also significant. Although Iranian positive law does not contain a comprehensive provision expressly declaring that preliminary negotiations generally form part of contractual interpretation, several rules recognize the legal importance of qualities, understandings, custom, and circumstances connected with contractual consent. The rules governing agreed characteristics of contractual subject matter demonstrate that an assumption concerning qualities may have legal consequences where it forms part of the basis of the transaction. Iranian doctrine concerning transactions and property transfers treats conformity with agreed description as integral to the contractual exchange (30). More broadly, the principle of freedom of contract permits parties to establish contractual arrangements that are not prohibited by mandatory law, while the binding force of valid agreements requires respect for the obligations thereby created (4). These principles collectively make it difficult to justify a categorical exclusion of a pre-contractual understanding where reliable evidence establishes that it formed part of the shared basis of final consent.

The interpretive use of constructive conditions should nevertheless remain distinct from enforcement of an independent preliminary promise. A negotiating party may make a statement that does not satisfy the requirements of a contractual undertaking and that neither party later treats as part of the final agreement. Such a statement should not become binding retrospectively. Conversely, the same statement may acquire contractual relevance if subsequent conduct demonstrates that it became incorporated into the consensus. The decisive transformation occurs through final consent. This is consistent with the proposition that obligations derive from legally effective agreement rather than from the mere chronology of communications. The theory of juridical acts emphasizes that intention must be directed toward a legal effect for that effect to arise (36). Consequently, a constructive condition is not binding simply because it predates the contract; it is binding because the later contract is concluded on its basis.

The burden of establishing this connection is important for judicial practice. A party relying on preliminary negotiations should identify the specific statement or understanding invoked, demonstrate its relevance to the disputed contractual provision, and show that it remained operative when the contract was concluded. Vague references to the “spirit of negotiations” should not suffice. Reliable documentation such as correspondence, minutes, exchanged drafts, technical specifications, written confirmations, or consistent communications can substantially strengthen the evidentiary case. The conduct of the parties after formation may also have limited confirmatory value where it demonstrates a shared understanding already present at formation, although subsequent conduct should not ordinarily be used to fabricate an intention that did not previously exist. The interpreter must evaluate the whole sequence of dealings rather than selecting isolated statements. Such an approach also reduces the danger that one party will exploit informal or ambiguous negotiating remarks to alter a carefully drafted agreement.

The role of custom deserves particular attention because custom may connect preliminary negotiations with the final contract in ways not immediately visible from the written text. Commercial actors frequently use terminology whose content is shaped by trade practice. Negotiators may also omit details precisely because the relevant usage is assumed. Where pre-contractual discussions employ a term according to an established professional meaning, the final use of that term may reasonably be interpreted in the same manner. Iranian contract law gives interpretive importance to conventional meaning and customary implications, and legal doctrine has long recognized that

contractual obligations may include consequences supplied by usage (7). Nevertheless, custom should not override a contrary common intention clearly established by the parties. Its proper function is supplementary and interpretive. The same principle applies to preliminary negotiations: they assist in discovering contractual meaning but should not casually defeat an explicit and deliberate provision.

The doctrine of good faith can further discipline reliance on negotiation history. A party should not be permitted to induce a specific understanding throughout negotiations, accept the other party's performance or commitment on that basis, and then exploit ambiguous drafting to deny the very understanding it created. Scholarship concerning good faith in Iranian law has emphasized its potential relevance to controlling inconsistent or opportunistic contractual behavior (37). The principle of utmost good faith developed in particular contractual settings illustrates the broader concern that one party should not manipulate informational asymmetry in a manner destructive of informed consent (17). At the same time, good faith should not become an instrument for imposing obligations that the parties never assumed. Its relationship with autonomy is corrective rather than substitutive: it prevents strategic distortion of the agreement but does not authorize judicial reconstruction according to abstract fairness.

Pre-contractual fault presents a closely related but conceptually separate limitation. Negotiations may generate reliance before any final contract exists, and wrongful termination or deceptive conduct may cause economic loss. The analysis of fault in preliminary negotiations recognizes that contractual freedom does not necessarily eliminate responsibility for culpable conduct occurring during bargaining (20). However, liability for such conduct should not be confused with interpretation of the final agreement. If negotiations fail and no contract is formed, there is no final contractual text to interpret. The legal question concerns responsibility arising from conduct itself. If a contract is ultimately formed, the same conduct may become relevant both to interpretation and to independent liability, but the legal bases remain distinct. This distinction helps avoid the mistaken conclusion that every pre-contractual duty must become a term of the subsequent contract.

Similarly, fraud and misrepresentation may affect the authenticity of consent rather than merely the meaning of contractual terms. If one party deliberately provides false information regarding a material circumstance and thereby induces the other party to contract, the appropriate analysis may involve defects of consent, liability, or specific remedies rather than interpretation alone. Comparative examination of fraud and misrepresentation demonstrates the importance of distinguishing false inducement from ordinary disagreement concerning contractual meaning (22). The interpretive function of preliminary negotiations becomes relevant when those communications explain what the parties meant; the validity function becomes relevant when they show that consent was improperly obtained. Courts should identify which question is actually presented before determining the appropriate doctrinal framework.

Written-form certainty imposes another important limit. Modern commercial contracts often result from extensive drafting precisely because the parties wish to consolidate their agreement into a stable and authoritative document. Allowing informal negotiation evidence automatically to override such documents would weaken contractual certainty and increase litigation. The final written instrument should therefore enjoy substantial interpretive priority, especially where it is detailed, professionally drafted, and negotiated by parties of comparable sophistication. This priority is itself grounded in autonomy: choosing to record an agreement in a final document may demonstrate the intention that the document define the contractual relationship. If the final instrument expressly states that prior negotiations, representations, or drafts have no independent contractual effect, that provision should ordinarily receive considerable weight. Yet even such clauses may themselves require interpretation, and they should not

necessarily prevent evidence of fraud, illegality, or other matters that cannot lawfully be excluded merely through contractual drafting.

The relative bargaining power of the parties may also influence interpretive assessment. Standard-form and adhesion contracts present different concerns from individually negotiated agreements. Where a stronger party supplies non-negotiable terms while simultaneously making individualized pre-contractual representations, strict reliance on standardized wording may permit the stronger party to benefit from inconsistency between what was represented and what was drafted. The legal character of adhesion contracts has therefore generated debate concerning the adequacy of classical autonomy-based explanations (31). The interpreter should not assume that every signature proves detailed negotiation of every term. Conversely, where both parties are commercially sophisticated and represented by legal advisers, deletion or modification of provisions during drafting may provide strong evidence of conscious contractual choice. Context thus determines the evidentiary weight of both the final text and the negotiation history.

A workable judicial standard should therefore require a structured relationship between preliminary negotiations and the final contract. The negotiation evidence should concern the disputed contractual matter; it should reflect a communication sufficiently definite to illuminate meaning; it should have been known to or shared by the other party; it should not have been clearly abandoned or superseded; and reliance on it should remain compatible with the contractual structure as a whole. Where these elements are present, consideration of negotiations is consistent with autonomy because it helps identify the agreement the parties actually made. Where they are absent, reliance on negotiations risks transforming interpretation into supplementation without consent. The interpretive process must always distinguish discovering meaning from creating new obligations.

This approach also helps reconcile internal and apparent will. Preliminary negotiations are uniquely capable of connecting the two because they convert internal objectives into communicated manifestations. They show not merely what one party may later claim to have intended, but what was actually expressed, discussed, accepted, rejected, or modified during the path toward agreement. Where those communications establish a shared understanding, the subjective and objective dimensions of intention converge. Where they reveal persistent disagreement, the final expression acquires greater importance because it may represent the only common external basis on which the contract was concluded. In this sense, negotiation history does not necessarily undermine textual certainty. Properly used, it can explain why the parties selected particular wording and identify the point at which divergent positions were resolved.

Iranian law therefore possesses sufficient conceptual resources to recognize a controlled interpretive role for preliminary negotiations even without a single comprehensive statutory rule expressly regulating their use. The doctrines of intention and consent, freedom of contract, binding force, customary implication, constructive conditions, defects of consent, disclosure, civil liability, and good faith collectively provide a framework within which prior negotiations can be evaluated. The absence of a general provision does, however, create uncertainty concerning the weight courts should attribute to different forms of negotiation evidence. Greater doctrinal clarity is desirable to distinguish mere bargaining from shared contractual assumptions and to identify the limits within which negotiation history may influence interpretation. The strongest approach is not to declare preliminary negotiations categorically binding or irrelevant, but to connect their legal significance to the final contractual will. Such an approach places autonomy of will at the center of interpretation while preserving both freedom of negotiation and the stability of concluded contracts.

## Conclusion

Preliminary negotiations occupy an intermediate legal position between non-binding social communication and the definitive creation of contractual obligations. Their ordinary function is to enable prospective contracting parties to investigate the transaction, exchange information, evaluate risks, clarify their expectations, formulate possible terms, and determine whether final agreement is desirable. They should therefore not be treated as equivalent to offer and acceptance merely because they concern matters later included in the contract. Freedom of contract necessarily presupposes freedom to negotiate, reconsider, modify, and in appropriate circumstances abandon proposed terms before final consent is reached. At the same time, describing negotiations as preliminary does not mean that they become legally invisible once the contract is concluded. The same communications that initially performed an exploratory function may subsequently provide important evidence concerning the meaning attributed by the parties to their final agreement.

The principle of autonomy of will supplies the primary normative justification for considering such evidence. A contractual obligation should, within the boundaries established by law, correspond to the legally relevant agreement of the parties. Interpretation is therefore not merely an exercise in linguistic analysis; it is a process directed toward identifying the content of the contractual consensus. The final written instrument ordinarily constitutes the strongest and most deliberate manifestation of that consensus, and preserving its authority is essential to transactional security. Nevertheless, contractual language cannot always be understood in isolation from the circumstances in which it was adopted. Where the language is ambiguous, technical, incomplete, or dependent upon assumptions developed during bargaining, prior negotiations may reveal the common meaning attributed to it. In these circumstances, consultation of negotiation history does not contradict the written contract but assists in understanding it.

The distinction between internal and apparent will should not be resolved by absolute preference for one over the other. Internal intention is conceptually significant because contractual obligations are rooted in consent, but undisclosed subjective intention cannot reasonably determine the obligations of another party. External declarations are therefore indispensable because they transform intention into a legally cognizable form and protect reliance. Preliminary negotiations are particularly valuable because they frequently connect these two dimensions. They provide evidence of what was actually communicated about the parties' purposes, assumptions, and intended obligations. Where negotiations establish a common understanding, giving effect to that understanding promotes rather than undermines autonomy. Where they disclose only unilateral hopes or unresolved disagreement, they cannot displace the final external manifestation of agreement.

The doctrine of constructive conditions offers an especially appropriate framework for understanding the contractual significance of prior negotiations in Iranian law. A pre-contractual statement should not become binding merely because it occurred before the contract. Its significance depends upon whether the contract was ultimately formed on its basis. If the evidence establishes that the parties continued to regard a previously negotiated matter as part of their agreement at the moment of formation, its omission from the final verbal formula should not automatically deprive it of legal relevance. Conversely, where a proposed condition was rejected, abandoned, replaced, or intentionally omitted during the progression toward the final agreement, contractual autonomy requires that it not be restored through interpretation. The decisive factor is thus continuity between the preliminary understanding and final consent.

A careful distinction must also be maintained between the several legal functions that preliminary negotiations may perform. They may clarify the meaning of an express contractual provision; they may demonstrate the existence of an implied or constructive condition; they may establish that a particular representation formed the basis of consent; they may reveal fraud, mistake, or informational misconduct; or they may support a claim based on wrongful pre-contractual conduct. These functions lead to different legal consequences and should not be merged. Interpretation concerns the meaning and scope of an existing contractual obligation. Implication concerns whether an unexpressed but legally attributable term forms part of the agreement. Defects of consent concern the authenticity or validity of the contracting decision. Pre-contractual liability concerns wrongful conduct that may be actionable independently of the final contract. Judicial analysis becomes more coherent when the precise function of the negotiation evidence is identified before a remedy is selected.

Reliance on preliminary negotiations should accordingly be subject to evidentiary and substantive limits. The party invoking them should demonstrate a concrete relationship between the prior communication and the disputed contractual matter. The alleged understanding should have been shared, communicated, or at least known to the other party; purely private motives should remain outside contractual interpretation. The evidence should also be assessed across the entire negotiation history rather than through isolated statements selected after a dispute has arisen. Later drafts, modifications, objections, deletions, and confirmations may demonstrate whether an earlier understanding survived or was abandoned. The final contract should remain the principal reference point, and the clearer, more complete, and more deliberately integrated the written agreement is, the stronger the evidence should be before prior communications influence its interpretation.

Good faith provides an additional reason to reject opportunistic interpretations inconsistent with an understanding deliberately created during negotiations. A party should not be able to induce the other side to contract on a particular understanding and then exploit ambiguous language to deny that understanding after formation. Yet good faith should remain connected to the agreement rather than functioning as an unrestricted license to revise it. The goal is to prevent distortion of contractual autonomy, not to replace autonomy with judicial assessments of fairness. This distinction is particularly important in commercial relationships, where parties require both protection against strategic inconsistency and confidence that carefully drafted allocations of rights and risks will be respected.

The degree of bargaining power and the nature of the contract should also influence the practical evaluation of preliminary negotiations. In individually negotiated agreements between sophisticated parties, the drafting history may demonstrate deliberate inclusion or exclusion of specific terms, and courts should be reluctant to resurrect rejected provisions. In standardized or adhesion relationships, individualized representations made before contracting may carry greater interpretive importance where the weaker party had no meaningful opportunity to alter the written form. A context-sensitive approach is therefore preferable to a universal rule that either always admits or always excludes pre-contractual communications.

The analysis ultimately supports a controlled model of interpretive relevance. Preliminary negotiations should be usable where they clarify ambiguous contractual wording, demonstrate a common meaning, establish a shared basis of agreement, or prove a constructive condition that remained operative at the moment of formation. They should not be used to enforce rejected proposals, unilateral expectations, negotiating tactics, or terms clearly superseded by the final contract. This model reconciles the principle of autonomy of will with legal certainty because it respects both the actual consensus and the external form through which that consensus is communicated.

For Iranian contract law, the principal doctrinal need is not the recognition of an unlimited new category of binding pre-contractual statements but greater clarity regarding the evidentiary role of negotiations in interpretation. Judicial reasoning should expressly distinguish preliminary bargaining from final consent and should explain why a particular negotiating statement is or is not connected with the contract ultimately formed. Courts should examine whether the disputed understanding was material, mutual, continuous, and compatible with the final contractual structure. Such an approach would increase predictability without sacrificing fidelity to genuine contractual intention.

The resulting position is that preliminary negotiations are neither inherently binding nor inherently irrelevant. Their legal significance is derivative of the role they played in the formation of contractual consent. Where they remained outside final agreement, they cannot create obligations through interpretation alone. Where they shaped and accompanied the common intention on which the parties contracted, they may legitimately assist in determining the meaning and extent of contractual obligations. The principle of autonomy of will therefore provides both the justification for using preliminary negotiations and the principal limitation upon their use: negotiation history may illuminate the contract that the parties actually made, but it must never become a means of imposing a contract that they did not make.

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All authors equally contributed to this study.

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## Transparency of Data

In accordance with the principles of transparency and open research, we declare that all data and materials used in this study are available upon request.

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