OPEN PEER REVIEW

Challenges in Ascertaining Common Intention in the Interpretation of Contracts Concluded through Algorithmic Systems: The Conflict between Subjective and Objective Will in Light of the Principles of Contract Law

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Received: 2026-05-06 **Revised:** 2026-10-18 **Accepted:** 2026-10-25 **Initial Publish:** 2026-10-29 **Final Publish:** 2027-01-01

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1. Round 1

1.1. Reviewer 1

Reviewer:

The paragraph beginning with “The problem becomes particularly significant when courts or other adjudicative institutions must interpret a contract concluded through an algorithmic system” would benefit from a clearer distinction between contract formation and contract interpretation. Several portions of the manuscript move between the questions of whether a valid contract has been formed, whether consent existed, whether a declaration is attributable to a party, and how an already valid agreement should be interpreted. These are doctrinally distinct inquiries. The authors should expressly separate formation problems from interpretive problems and explain when an algorithmic discrepancy concerns validity, avoidance for mistake, attribution of a declaration, or interpretation of contractual content.

The Introduction states that “the stronger the decisional autonomy of the system, the more difficult it becomes to treat each individual output as the direct expression of a specific contemporaneous human intention.” This is persuasive, but “decisional autonomy” requires an operational definition. The manuscript should identify concrete criteria for measuring autonomy, such as the system’s ability to select counterparties, alter contractual variables, generate novel terms, learn from new data, depart from preprogrammed decision rules, or optimize objectives without transaction-specific human approval. Establishing a graduated taxonomy of autonomy would substantially strengthen the article’s later argument that attribution should vary according to the nature of the technological system.

In the Introduction, the authors argue that “the interpretive challenge thus involves a balance between autonomy, reliance, good faith, commercial certainty, and the allocation of technological risk.” This is an important normative proposition, but the manuscript does not yet establish how conflicts among these principles should be resolved. The authors should explain whether

any principle has presumptive priority and under what circumstances that priority changes. For example, it should be clarified whether reasonable reliance normally prevails over undisclosed subjective intention, whether good faith operates as an exception to that presumption, and whether technological risk should ordinarily be assigned to the party controlling the relevant system.

The paragraph beginning with "The formation of contractual intention must therefore be analyzed through multiple layers of authorization" proposes institutional, functional, parameter, adaptation, and exceptional-circumstances layers. This framework is highly promising but currently appears only once and is not systematically integrated into the remainder of the article. The authors should use these five layers consistently when analyzing later examples of error, reliance, and attribution. They might also explain whether failure at a particular layer produces non-formation, lack of attribution, mistake, or merely an interpretive presumption against the party operating the system.

The article states that "the distinction between intended method and intended result is therefore crucial." This distinction deserves more detailed doctrinal treatment. The manuscript should address whether authorization of an autonomous method constitutes assumption of the normal risks inherent in that method. For example, if a machine-learning system produces an unusual but technically valid result that the user did not predict, the article should explain whether this should be treated as an unintended result within authorized discretion or as an absence of contractual intention. A specific hypothetical example would make the doctrinal boundary substantially clearer.

The discussion of algorithmic mistake should be strengthened by distinguishing mistake in the formation of human intention from mistake in the technological transmission or implementation of that intention. The sentence stating that "the error may occur not in the party's conscious reasoning but in data entry, coding, model design, parameter selection, or system interaction" identifies several different phenomena that may have different legal consequences. The authors should classify these errors more systematically and explain which should ordinarily remain with the system user and which may justify avoidance, reinterpretation, or denial of attribution.

In the fourth section, the manuscript proposes that "technical records may provide more reliable evidence than retrospective testimony." This is plausible but requires qualification. Digital records themselves may be incomplete, manipulated, technically opaque, or generated by systems whose internal logic cannot easily be reconstructed. The authors should discuss evidentiary authenticity, integrity, accessibility, and interpretability of algorithmic logs. They should also address the burden of proof where one party exclusively controls the relevant technical evidence, particularly whether evidentiary presumptions should arise against a system operator who fails to preserve or disclose relevant records.

The paragraph stating that "experts can explain how the system functioned, what data it processed, and whether an output was technically foreseeable, but the court must determine the legal significance of those facts" correctly distinguishes technical expertise from judicial interpretation. This point should be expanded into a clearer procedural recommendation. The authors should identify which issues are factual, which require expert evidence, and which remain exclusively normative legal questions. This clarification would increase the practical usefulness of the article for litigation involving opaque or highly complex algorithmic systems.

Authors revised the manuscript and uploaded the document.

1.2. Reviewer 2

Reviewer:

In the second section, the manuscript states that "the interpretive process consequently transforms subjective will into a legally cognizable form." This formulation is theoretically important but somewhat imprecise. Interpretation does not necessarily transform subjective will; in many legal systems, it reconstructs contractual meaning from objective evidence even when subjective will remains unknowable. The authors should refine this proposition and engage more explicitly with the distinction between the evidentiary function of outward manifestations and the normative choice to protect reliance. Doing so would make the theoretical discussion of subjective and objective theories more analytically rigorous.

The paragraph discussing subjective interpretation states that "where the parties demonstrably shared a particular understanding, that common understanding may deserve priority over the ordinary or literal meaning of the language they used." The phrase "may deserve priority" is too tentative for a doctrinal article. The authors should specify the conditions under which actual common intention should prevail and identify the limits of this principle. Particular attention should be paid to situations involving third-party reliance, mandatory rules, standardized terms, evidentiary uncertainty, or transactions recorded through immutable technological mechanisms. The article would benefit from articulating a clear rule rather than leaving this point at the level of general principle.

The discussion beginning with "Common intention is particularly difficult to identify where an algorithm intervenes because several potentially relevant levels of will may exist" is one of the strongest analytical parts of the article and should be developed further. The proposed distinction among general transactional intention, intention embodied in configuration, transaction-specific output, and legally interpreted manifestation could become the principal conceptual model of the manuscript. The authors should formalize these levels and explain the legal significance of each. In particular, the article should clarify which level controls when they conflict and whether the hierarchy changes depending on the foreseeability of the algorithmic output.

In the paragraph stating that "prior authorization cannot automatically answer every interpretive question because the scope of that authorization may itself be disputed," the manuscript correctly identifies a central doctrinal problem but does not provide sufficiently precise criteria for determining the boundaries of authorization. The authors should develop a test based on factors such as programmed constraints, user-selected parameters, system documentation, ordinary operational behavior, foreseeable deviations, organizational instructions, and prior course of dealing. This would convert the discussion from a descriptive observation into a usable legal framework.

The manuscript repeatedly uses the concept of foreseeability, including the proposition that attribution should depend partly on "the foreseeable range of outputs," but it does not define whose perspective determines foreseeability. This is a significant issue. The authors should distinguish between foreseeability from the perspective of the ordinary user, a technically sophisticated operator, the system developer, the contractual counterparty, and an expert familiar with the algorithm. They should also distinguish technological foreseeability from legal or commercial foreseeability. Otherwise, foreseeability risks functioning as an undefined discretionary criterion.

In the third section, the manuscript states that algorithmic contracting "resembles delegation, but the analogy is incomplete because the algorithm lacks legal personality and independent juridical intention." This comparison should be expanded because the relationship between algorithmic systems and agency doctrine may provide an important analytical benchmark. The authors should explain more precisely why conventional agency rules cannot fully resolve attribution, while identifying which agency concepts remain useful, such as actual authority, apparent authority, scope of authorization, unauthorized acts, and allocation of risk between principal and third party. A structured comparison would considerably deepen the private-law analysis.

Authors revised the manuscript and uploaded the document.

2. Revised

Editor's decision: Accepted.
Editor in Chief's decision: Accepted.