University of Tehran Press

Comparative Law Review

Homepage: https://jcl.ut.ac.ir

Online ISSN: 2423-3404

Volume: 17, Issue: 1
Spring & Summer
2026

Validity and Effects of Hidden Contracts in Modern French Law and a Reappraisal of Disguised Transactions in Iranian Law with Emphasis on the Theory of Opposability

Mostafa Harati

Assistant Professor. Department of Private and International Law. Faculty of Literature and Humanities. University of Religions and Denominations. Qom. Iran. Email: m.harati@urd.ac.ir

Article Info

Article Type:
Research Article

Received:
2025/04/20
Received in revised form:
2026/02/16
Accepted:
2026/05/10
Published online:
2026/08/23

Keywords:
Secret Contracts, Apparent Contracts, Sham Transactions, Opposability, Validity, French Civil Code (Reform 2016), Iranian Civil Code.

Abstract

1. Introduction

The intersection of the actual intent of contracting parties and the necessity of protecting third parties constitutes one of the most complex challenges in modern contract law. In scenarios where parties execute two distinct agreements—a visible contract (apparent/sham transaction) to satisfy third-party expectations or public appearance, and a secret contract (counter-letter) to establish their actual legal and economic relationship—the fundamental question arises: Which of these agreements should prevail? Traditionally, legal systems have struggled with this binary, often resorting to nullity (voidance) to resolve the conflict. However, this paper argues that the binary approach of "validity vs. nullity" is insufficient for the complexities of modern commercial relations. The central thesis of this research is that by distinguishing between the validity of the secret contract among the parties and its opposability toward third parties, a more nuanced and efficient regulatory framework can be achieved.

2. Problem Statement

In Iranian law, the prevalent approach to "sham transactions" (transactions involving counter-letters) has been deeply influenced by a rigid interpretation of Article 218 of the Civil Code. Legal doctrine and judicial practice often conflate the concepts of nullity, ineffectiveness, and invalidity, frequently labeling such transactions as void ab initio due to the lack of actual intent or the presence of a "fraudulent" motive. This paper posits that this over-reliance on nullity is analytically flawed and practically detrimental. It fails to account for the actual intent of the parties, which is often legitimate, and it overlooks the specific protection required for third parties. By applying the "nullity" label to all secret contracts, the law ignores the potential validity of these agreements in the internal relationship between parties, thereby creating unnecessary legal instability and failing to provide a sophisticated mechanism for protecting third parties who act in good faith.

3. Methodology

Article Info	Abstract

This study adopts an analytical-comparative methodology. It examines the evolution of legal doctrine in France—specifically following the 2016 reform of the French Civil Code—to extract a model that can be effectively adapted for the Iranian legal system. The research proceeds through three primary stages:

Deconstructing the conceptual framework of secret contracts and distinguishing them from adjacent concepts.

Analyzing the new French approach to secret contracts under Articles 1201 and 1202 of the French Civil Code.

Critiquing the current Iranian approach to sham transactions and proposing a "re-reading" based on the theory of opposability, rather than a wholesale reliance on nullity.

4. The Paradigm Shift in French Law

The research highlights a significant paradigm shift in French civil law following the 2016 reform. The French legislator explicitly provided a solution in Articles 1201 and 1202, moving away from a uniform, nullity-based logic toward a functional, effects-based logic.

Article 1201 (Internal Validity): This article establishes that the secret contract produces legal effects between the parties. The law recognizes that if parties have agreed on a secret contract to modify or negate the effects of an apparent contract, the secret contract represents their true and legitimate will. Consequently, it is valid and binding. The visible contract (apparent transaction) loses its normative function in the internal relationship of the parties. This recognizes the supremacy of the actual intent over the exterior appearance in private relations.

Article 1202 (The Theory of Opposability): This article addresses the relationship with third parties. It establishes that a secret contract is generally in-opposable against third parties who have acted in reliance on the apparent contract. This is not a declaration of nullity but a targeted limitation of the contract's effect. If a third party has relied on the visible facade, the secret agreement cannot be held against them. Crucially, this rule is asymmetrical; while the parties cannot impose the secret contract on a third party to their detriment, a third party may—if it is beneficial to their interests—invoke the existence of the secret contract.

The paper argues that this shift represents the maturation of the concept of opposability. In this model, the secret contract is not inherently "illicit" or "void"; it is simply "in-opposable" to certain third parties, while remaining fully valid and effective in the internal sphere.

5. Re-reading Iranian Law: Toward a Functional Approach

The study contends that many of the difficulties surrounding sham transactions in Iranian law can be resolved without requiring sweeping legislative reform or immediate rewriting of the Civil Code. Instead, a "re-reading" based on the theory of opposability is required.

Current Iranian judicial practice often treats the existence of a secret contract as a defect of the "real intent" (qasd), leading to nullity. The research argues that this is a misinterpretation. In most cases, the intent to enter into the secret contract is the real intent; the sham

Article Info	Abstract
	transaction is merely a layer added for external purposes. Therefore, there is no lack of intent. By introducing the theory of opposability, Iranian courts can adopt a three-tier analysis: Validity: Is the secret contract compliant with general requirements for valid contracts (Art. 190 of the Civil Code)? If yes, it is valid between the parties. Protection of Third Parties: Does the secret contract infringe upon the rights of a third party who acted in good faith based on the apparent transaction? If yes, the secret contract is in-opposable toward that specific third party. Third-Party Option: Does the third party wish to benefit from the reality of the secret contract? If yes, the law should allow this. This approach replaces the “sledgehammer” of nullity with a surgical tool that protects the rights of third parties without unnecessarily destroying the legitimate economic agreements between the contracting parties. **6. Limitations of Third-Party Protection** The paper clarifies that “opposability” is not a blank check for third-party protection. The research emphasizes that protection is reserved for third parties who act in good faith and whose reliance on the apparent transaction is reasonable. If a third party is aware of the secret contract or if their action is not based on a reasonable reliance on the apparent facade, they do not deserve protection. This limits the misuse of the theory of opposability and prevents third parties from opportunistically exploiting the appearance of an apparent contract when they know the reality differs. **7. Conclusion** The research concludes that the legal analysis of secret contracts requires moving beyond the primitive choice of “validity or nullity.” The adoption of the theory of opposability provides a superior, more flexible, and economically efficient solution. By recognizing the validity of secret contracts in the internal sphere and restricting their effects only where necessary to protect third parties, the legal system upholds the autonomy of the will while preserving the security of commercial transactions. For Iranian law, this represents an opportunity to modernize its interpretation of sham transactions and provide a more equitable balance between the parties’ rights and the legitimate expectations of third parties.
How To Cite	Harati, Mostafa (2026). Validity and Effects of Hidden Contracts in Modern French Law and a Reappraisal of Disguised Transactions in Iranian Law with Emphasis on the Theory of Opposability. *Comparative Law Review*, 17 (1), 379- 401. DOI: https://doi.com/10.22059/jcl.2026.410263.634864
DOI	10.22059/jcl.2026.410263.634864