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MISREPRESENTATION IN HOUSING CONTRACTS: A COMPARATIVE ANALYSIS OF ENGLISH AND UZBEK CONTRACT LAW

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Contract law has never been fully comfortable with the words spoken before a contract is signed. The classical principle of freedom of contract is that the parties must bear the consequences of relying on pre-contractual statements which they have not insisted should be terms. By contrast, the modern imperative to protect consumers has generated an increasing body of statutory and equitable remedies specifically designed to address such reliance failures. One of the central questions of comparative contract law is the relationship between these two impulses, and how a legal system resolves that tension tells us a great deal about its deeper doctrinal commitments.[1]

The essay examines this relationship in the specific practical context of the contract for the purchase of an unfinished apartment in Uzbekistan. It is a deliberate choice of subject. Uzbekistan's population is growing fast, from around 32 million in 2017 to more than 37 million in 2025, mostly in urban areas. The demand for new housing is thus no abstraction of the market, but a daily reality. The majority of buyers in the capital city, Tashkent cannot afford an apartment that is ready to move into. Prices in new home projects range from about

$900 to $2,200 per square meter, while one-room apartments sell for between $45,000 and

$100,000 depending on the stage of construction.[2] Conventional mortgage financing is virtually non-existent at this price level. Instead, ordinary families sign long-term investment contracts for unfinished flats, paying a hefty chunk of the price upfront, and the rest in instalments as construction progresses.

But the real problem is not the cost of housing, but what happens after the signature. In this market, developers prepare standard form investment contracts and offer them to the consumer on a take-it-or-leave-it basis. They often contain provisions that put the buyer at a disadvantage in ways that the buyer does not understand when entering into the contract: clauses concerning cancellation, reimbursement and the effects of delay, as well as pre-contractual statements regarding location, scheduling and authorizations that are not always actually honoured. It is thus not a marginal academic puzzle how such terms and the representations surrounding them are treated under Uzbek law. For common Uzbek families, it's the most important legal question when it comes to the biggest financial decision of their lives. As has been observed in the lectures on which this essay belongs to, the most original comparative-law work deals with problems that are live, current and contested rather than settled and historical; the present topic falls squarely into that category.

The essay is further divided into five sections, followed by a brief conclusion. As section 1 includes introductory material, section 2 deals quite extensively with the English law of misrepresentation. There are two reasons for the detailed description of the treatment. First, the module on which this essay is written is a comparative contract law course in which the main comparative role is played by English law. Secondly, the doctrinal framework in English provides a measure of integrated statutory deployment against which the Uzbek picture will be measured. Section 3 is devoted to the Uzbek statutory and Civil Code provisions on pre-contractual statements and unfair terms. Section 4 addresses the practical context of the off-plan housing market, and identifies the doctrinal mismatch by which the protective regime is routinely circumvented. Section 5 proposes a reform, tested against Kazakhstan - a same-legal-family comparator, which has recently reformed the same area of practice.

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2. The English Law of Misrepresentation

2.1 The Common-Law Foundation: From Deceit to Negligence

The common law action for misrepresentation is developed from the tort of deceit. Until the late nineteenth century an actionable misrepresentation required proof of fraud in the strict sense: the representor must have known the statement was false or made it recklessly careless as to its truth. The leading case remains Derry v Peek where the House of Lords overturned a finding of liability against directors of a tramway company where the company's prospectus had stated that the company was authorised to use steam trams when in fact the authorisation depended on a subsequent decision of a minister which was never taken. Lord Herschell's definition – that a representation is fraudulent only when made "knowingly, or without belief in its truth, or recklessly, careless whether it be true or false" – set a bar so high that an honest mistake, no matter how unreasonable, could not give rise to liability.[3]

The high threshold of Derry v Peek resulted in unsatisfactory results where representors were merely negligent. The doctrinal breakthrough was not through a misrepresentation doctrine but through the tort of negligence. In Hedley Byrne & Co Ltd v Heller & Partners

the House of Lords recognised a duty of care in respect of negligent misstatements made in circumstances of assumed responsibility. The decision provided a way for a misrepresentee to claim damages without the burden of proving fraud. Where the representor had undertaken responsibility and the representee had relied on the statement in a reasonable manner.[4] Hedley Byrne was technically a tort case, but the doctrinal effect was to demolish the analytical distinction between misrepresentation, contract and tort that had been insisted upon by the earlier common law.

2.2 The Statutory Reformulation: Misrepresentation Act 1967

The intervention was in 1967. The Misrepresentation Act provided a statutory right of action for damages for pre-contractual misrepresentations which were not fraudulent within the meaning of Derry v Peek. The heart of the provision is section 2(1): if a person has entered into a contract in reliance on a misrepresentation and has suffered loss as a result, the representor is liable in damages unless the representor shows that they had reasonable grounds to believe, and did believe, that the statement was true. There are two doctrinally remarkable things about the provision. First, it changes the normal burden of proof: the representee does not have to prove negligence; the representor has to prove that he was not negligent. Secondly, the measure of damages is the tort measure for fraud – the position the representee would have been in had the misrepresentation not been made – rather than the more restrictive contract measure.[5]

Section 2(2) added a further remedial device to enable the court to award damages in lieu of rescission, where the misrepresentation was innocent and rescission would be a disproportionate remedy. The combined effect of sections 2(1) and 2(2) is that the English law of misrepresentation now has a graduated structure of remedies. Fraud attracts rescission as well as the tortious measure of damages. Negligence, meaning the absence of reasonable grounds, gives rise to rescission plus the tortious measure under s. 2(1). Innocent misstatement gives right to rescission or damages in lieu under s. 2(2) Each layer of the structure has its own evidential demands but at no stage is the representee required to prove the highest threshold of Derry v Peek fraud in order to escape from a contract entered into on the basis of a false statement.

The leading case on the operation of section 2(1) in the context of sales-representatives is Esso

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Petroleum Co Ltd v Mardon. The Court of Appeal held that an experienced employee of a major oil company who estimated likely throughput to a prospective petrol-station tenant, on the basis of which the tenant entered the contract, was liable when the estimate was seriously inaccurate. Lord Denning MR said: "The statement was made by one who professed to have special knowledge, in circumstances where reliance was expected, and the law will not permit such statements to be made without responsibility."[6] The principle was extended in Spice Girls Ltd v Aprilia World Service BV where the Court of Appeal ruled that misrepresentation could be made by conduct as well as by words. It was held that the band's involvement in promotional activity with the knowledge that one member was about to leave amounted to a continuing misrepresentation that the band would remain in full composition during the relevant period.[7]

2.3 Excluding Liability for Misrepresentation

In practice, a doctrine of misrepresentation that can be neutralized by a contractual exclusion clause is no doctrine at all. The 1967 Act predicted this. Section 3 as amended by the Unfair Contract Terms Act 1977 applies to any contractual term which seeks to exclude or restrict liability for misrepresentation in the same way as the reasonableness test of UCTA 1977. The cumulative effect is that a representor cannot contract out of the statutory regime by a one-sided clause, at least in any context where one party deals on the other's standard terms; whether the clause survives depends on its reasonableness assessed in context.[8]

2.4 The Consumer Rights Act 2015

The Consumer Rights Act 2015 brought together and modernized the consumer-protection regime, pulling together threads that had previously been scattered across the Sale of Goods Act 1979, the Supply of Goods and Services Act 1982, the Unfair Contract Terms Act 1977 and the Unfair Terms in Consumer Contracts Regulations 1999.[9] The most relevant provisions for the present analysis are sections 50, 31, 62 and 64 and Schedule 2.

Section 50 makes what may be the most important doctrinal change in this area in half a century. A statement made by a trader to a consumer about a service to be supplied to the consumer constitutes a term of the contract if the consumer relies on the statement in deciding to enter into the contract or in any subsequent decision about the contract. The change is decisive: what would have been a mere pre-contractual statement under the old doctrine – and so only subject to the rescission and damages regime of the 1967 Act – becomes contractual content in the consumer context. The remedy for a breach is the contract remedy, with the full consumer-protective apparatus of the 2015 Act available. Section 50(3) also states that any contractual terms which seek to exclude this effect are not binding on the consumer.[10] Sections 62 and 64 provide for the test for unfair terms in consumer contracts. Section 62 extends for the non-binding nature of unfair terms to the consumer. A term is unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations to the detriment of the consumer. Section 64 shows that clarity of language is not by itself sufficient to defeat the assessment. A clearly drafted term may still be vulnerable to assessment for substantive fairness unless it relates to the main subject matter or price. Schedule 2 contains a grey list, which is not exhaustive, of twenty types of terms that are presumed to be unfair. Paragraph 1 deals with exclusion of liability for non-performance; paragraph 4 deals with terms which bind the consumer and make the trader's performance subject to a condition which is controlled by the trader; paragraph 6 deals with disproportionate compensation for non-performance by the consumer;

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paragraphs 11 and 14 deal with unilateral alteration of contract terms and product characteristics respectively.[11]

The House of Lords in Director General of Fair Trading v First National Bank plc interpreted the fairness test as being both procedural and substantive. The test is not just whether the term was arrived at by an unfair process but whether the term itself results in an unfair outcome.[12] The Supreme Court subsequently re-formulated the penalty doctrine in ParkingEye Ltd v Beavis applying a similar but different test of legitimate interest and proportionality.[13] The two doctrines - substantive fairness review under sections 62 and 64 and penalty review under the common law as restated in ParkingEye - work in tandem to police standard-form contracts in the consumer context.

2.5 The Integrated English Structure

The English regime as a whole has three integrated features. First, the consumer is identified by a substantive test (s2(3) CRA 2015: an individual acting outside their trade, business, craft or profession, whether or not the contract falls within that person's trade, business, craft or profession. Secondly, pre-contractual statements made to a consumer are incorporated into the contract as terms (section 50) and attempts to exclude this incorporation by contract are themselves invalid. Third, the residual standard form terms are subject to a substantive fairness review against a published grey list (Schedule 2). The three features are mutually supportive: a broad consumer definition triggers contractual absorption, which triggers fairness review. The structure leaves surprisingly little doctrinal room for the kind of escape clause that is standard in housing-investment contracts in jurisdictions without the kind of consumer-protection architecture.

3. The Uzbek Law of Misrepresentation

3.1 The Consumer-Protection Statute

Uzbek statutory law has a misrepresentation regime that is, on its face, similar in scope and severity to the English regime. According to Article 1 of the Consumer Law, a consumer is defined as a natural person who acquires goods, orders work or services or intends to do so, for personal consumption or other purposes unrelated to the derivation of profit.[14] The same article defines a contractor (ijrochi) as a person providing services, including expressly “repair-construction services”. Thus, the Law on Consumer Protection's textual scope includes the construction services offered to the buyers as natural persons.

Article 6 provides detailed disclosure duties before the conclusion of the contract. The consumer should be provided with thirteen kinds of information in the state language: price, payment conditions, warranty obligations, rules of safe use, etc. The substantive misrepresentation regime is contained in Article 7. If the information provided is false or incomplete and the consumer suffers loss, the consumer may terminate the contract and recover damages.[15] Article 7(2) provides that the consumer’s claims shall be decided on the presumption that the consumer has no specialist knowledge – an evidential rule in the consumer’s favour, in the same spirit as the reversal of the burden of proof in section 2(1) of the English 1967 Act. Article 7(3) provides for the full recovery of loss caused by misleading advertising. Article 21 renders contract provisions that restrict rights of the consumer or are contrary to the legislation invalid. This is automatic invalidity, not a remedy at the discretion of the court.[16]

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3.2 The Civil Code Background

The Consumer Law is supported by the general regime of the Civil Code. Articles 122 and 123 concern the Uzbek law of mistake and fraud. Article 122 provides for the rescission of transactions concluded under material mistake (muhim adashish) Article 123 provides for the rescission of transactions concluded by fraud (aldash), threat or exploitation of grave circumstances (og‘ir holatdan foydalanish).[17] They reflect the continental civil-law structure of erreur and dol, and indirectly of the English common-law action in deceit, but have the evidential demands of Civil Code provisions: the consumer-favourable evidential presumptions of the Consumer Law are absent. The purchaser relying on article 122 must prove the materiality of the mistake; the purchaser relying on article 123 must prove the deception. Nor is either supported by the presumption of consumer ignorance available under article 7 of the Consumer Law. Article 360 of the Civil Code regulates accession agreements. The article establishes the principle of standard-form contracts, whose terms are determined by one party and observed by the other without negotiation. This provision confers a discretion on the acceding party to seek termination or amendment where the contract deprives him of his usual rights, excludes or limits the liability of the other party or contains manifestly onerous terms. The provision is structurally similar to the English fairness regime, but it is judicial as opposed to statutory, requires party initiation, and does not contain any published list of presumptively unfair categories.

Article 116 invalidates from the moment of its conclusion (o‘z-o‘zidan haqiqiy emas) any transaction, the content of which contradicts the legislation or whose deliberate aim is contrary to public order or morality. This is the doctrinal equivalent in Uzbek of the English doctrine of illegality combined with the civil-law doctrine of nullity. The Plenum Resolution of the Supreme Court No 269 of 28 November 2014 confirms that article 116 is the operative anchor of the law on void transactions. The Plenum Resolution No 306 of 23 December 2016 provides for the application of contract-law provisions to construction-pudrat disputes.[18]

3.3 The Doctrinal Comparator: Why Uzbek Law Looks Like English Law on Paper

The Uzbek regime is a reasonable functional counterpart to the English regime in three doctrinal respects, taken on its statutory face value. First, article 1 of the Consumer Law defines the consumer substantively – with reference to non-profit personal consumption – in terms broadly comparable to section 2(3) of the Consumer Rights Act 2015. Second, article 7 of the Consumer Law grants a right of termination plus damages on proof of false or insufficient information, with a presumption of consumer ignorance which approximates the burden-reversal brought about by section 2(1) of the 1967 Act. Third, article 21 of the Consumer Law automatically invalidates restrictive consumer terms, giving something closer to the rule of section 50(3) of the 2015 Act than to the discretionary fairness review of section 62.

On the page, the Uzbek regime is in some ways more protective than the English regime. Article 7 of the Consumer Law is an automatic statutory right and not, as in England, a remedy mediated through the discretion of the trial judge under s2(2) of the 1967 Act. Article 21 creates an automatic invalidity, not a presumption rebuttable in the circumstances. In short, the two regimes are doctrinally compatible and at points the Uzbek regime is more generous. What follows is that the practical operation of the two regimes differs sharply.

4. The Housing-Investment Context and the Doctrinal Mismatch

4.1 The Empirical Setting

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The structural origin of the doctrinal mismatch is financial and has already been sketched in the introduction. The point to develop here is the contractual form that this structure of finance produces. A buyer who cannot afford a finished apartment, and cannot borrow in the mortgage market, enters into a contract for the purchase of an apartment that does not yet exist. The contract is referred to as an investment contract (investitsiya shartnomasi) or equity participation contract (ulush kiritish shartnomasi). The label is the developer's contractual choice, not an economic characterization of the buyer's position. A real contract concluded in Tashkent on 7 February 2025 illustrates the typical features of the form: a delivery deadline qualified by the term ориентировочно (approximately), the unilateral discretion of the developer to modify project specifications, the unilateral discretion of the developer to extend deadlines without being in breach, a clause providing that all marketing materials and project renderings are "conditional" and subject to change at will, and a refund mechanism conditioned on the resale of the apartment to a third party.[19]

4.2 The Doctrinal Mismatch: How the Investor Label Displaces Consumer Protection

The doctrinal pathology is in the way Uzbek courts and practitioners approach the relationship between the Consumer Law and the contractual label. Courts have not generally applied the Consumer Law where a contract is characterized as an investment or equity-participation contract. They have drawn on the provisions of the Civil Code on construction-pudrat (articles 666 to 685) and accession agreements (article 360). The net result is that the rich statutory misrepresentation regime in articles 6, 7 and 21 of the Consumer Law - applicable on its text to any natural person acquiring services for personal residence is avoided.

The clearest example is the clause in the Tashkent contract that the brochures and renderings are only "conditional." A clause of this type would run into two doctrinal hurdles under English law. Section 50 of the Consumer Rights Act would convert pre-contractual brochure statements into terms of the contract, and s 50(3) would render void the clause purporting to exclude that effect. Under Uzbek law, the same clause would automatically be void under Article 21 of the Consumer Law as limiting consumer rights. However, as the Consumer Law is deemed inapplicable to investment contracts, the buyer has to rely on article 360 of the Civil Code to argue that the clause is manifestly onerous in the context of an accession agreement. This is a discretionary, judicially-mediated remedy, placing the procedural burden squarely on the buyer.

Doctrinally, the contrast is stark. In functionally identical contracts, the same clause is satisfied by automatic statutory invalidity in English consumer law and by a discretionary judicial remedy in Uzbek civil law. The textual protection of article 21 of the Consumer Law would fill the gap, but the threshold of consumer status prevents the buyer from reaching it.

4.3 The Deeper Comparative Point

The more profound difference between the two systems lies not in doctrine but in institutional architecture. English law makes use of substantive judicial review of contract terms: a published grey list used by courts in the light of statutory standards. Uzbek law has historically displayed a preference for a formal regulatory architecture: state registration, notarisation, model contracts approved at ministerial level, mandatory escrow regimes. Each approach represents a different theory of regulating contracts. English theory depends on courts applying a standard. The Uzbek theory depends on central institutions to police form ex ante.[20] Neither approach is inherently superior. But the Uzbek approach requires its institutions to actually perform the ex-ante role. And in the housing-investment sector, the largest single market for consumer contracts in the country, they have not.

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5. Reform: The Kazakhstan Comparator and the Application of Existing Uzbek Institutions

5.1 Why Kazakhstan Rather Than England as the Reform Comparator

The doctrinal comparison in this essay is between English and Uzbek law and the reform that follows is based on both. But it should be recognized that the English regime cannot be transplanted into Uzbek law in any direct sense. The two systems are members of different legal families, with different doctrinal vocabularies and different institutional habits. Uzbek law is part of the post-Soviet civil-law family. It is based on the tradition of Russian Civil Code and influenced by the Model Civil Code of the Commonwealth of Independent States. Its closest legal relatives are Russia, Kazakhstan, Kyrgyzstan and the other Central Asian republics. Any proposal for reform of Uzbekistan must be one that can work in this institutional context.

The natural comparator is Kazakhstan. The Civil Code of Kazakhstan, like the Uzbek Civil Code, comes from the same doctrinal source of the Soviet Union. The two countries also share similar regulatory architecture, a Russian commercial-law vocabulary, and a closely comparable post-1991 transition path. Kazakhstan, too, experienced a structurally identical off-plan housing crisis, but earlier than Uzbekistan. In the early 2010s, Kazakhstan experienced a wave of developer insolvencies and unfinished construction projects, which were very similar to the situation Uzbekistan is facing today. Kazakhstan's response was the Law on Equity Participation in Housing Construction of 2016, which introduced three regulated forms of equity-participation contract, mandatory developer licensing and mandatory escrow.[21] The institutional logic of the Kazakhstani solution – extending ex-ante regulatory control, rather than reproducing the English substantive-fairness regime – fits Uzbek architecture in a way the English model does not. English law is chosen as the primary comparator not because of its institutional similarity to Uzbek law, but because of its influence and doctrinal depth in this field. Kazakh law is included as a secondary comparator precisely because of that similarity – it shows how a system with the same civil-law heritage has dealt with the same problem.

5.2 The Two-Limb Reform Proposal

The first phase of the reform is interpretative. The Plenum of the Supreme Court should adopt a Resolution to the effect that natural persons who are buyers under equity-participation and investment-construction contracts for the purchase of residential premises for personal use are included in the definition of consumer given in article 1 of Consumer Law 221-I. This does not require a change in law. It is an interpretation of the current statutory language, supported by the statutory definition of contractor (which explicitly includes repair-construction services). The doctrinal consequence is important: articles 6, 7, 21 and 28[1] of the Consumer Law would be immediately applicable to contracts of housing-investment. In parallel, the regime of the Civil Code on construction-pudrat (arts. 666-685) and accession agreements (art. 360) would continue to apply, with the Consumer Law acting as lex specialist.

The second limb is institutional. Exercising its powers under article 25 of Consumer Law 221-I and the standard-terms power in article 359 of the Civil Code, the Competition Committee should issue a binding list of categories of contractual terms in housing-investment contracts that are presumed to be void under article 21. The list should include, at a minimum: terms providing for refund of the buyer's payments only after the apartment is resold to a third party; terms reserving to the developer the unilateral right to extend delivery deadlines without compensation to the buyer; terms reserving to the developer the unilateral right to alter project specifications; terms purporting to

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exclude the contractual effect of pre-contractual statements, marketing materials, and project renderings; and terms imposing disproportionate penalties on the buyer for cancellation without symmetrical liability on the developer.

The institutional basis for this reform is already in place. Under paragraph 11 of Presidential Decree PF-6313 dated 14 September 2021, the Anti-Monopoly Committee was instructed to review the conditions of public contracts for compliance with the principles of consumer rights and party equality. Annex 2 of the above-mentioned Decree had provided for the Ministry of Construction to prepare model construction contracts. Neither initiative has been specifically implemented for housing-investment contracts. The reform proposed here is an extension and not a replacement of this existing regulatory programme. It takes Kazakhstan's institutional architecture as evidence of feasibility and English doctrinal architecture as the reference of substantial content.

6. Conclusion

In comparative essays, it is tempting to conclude that the legal system under investigation is a failure because it does not have the doctrines of the comparator system. It is important to say so explicitly, this essay does not come to that conclusion. The Uzbek statutory law does not have doctrinal sophistication but that does not mean that the buyer of an unfinished apartment in Uzbekistan is faced with failure of Uzbek law. Indeed, the law on the protection of consumers' rights No 221-I, read on its face, contains in articles 6, 7 and 21 a misrepresentation regime which is at least as protective as the English regime in sections 50 and 62 of the Consumer Rights Act 2015 and in some respects more protective. Article 7(2) is more generous than anything in the English Act in its presumption of consumer ignorance. Article 21 is stricter than the discretionary fairness review under section 62 in that restrictive terms are automatically invalid. The duties of disclosure in article 6 are concrete and detailed, whereas those in English are scattered. There are the doctrinal materials.

What the comparison shows is something else and more difficult. In practice, the protection of the Uzbek page is evaded because the contractual label – investor, equity participant – pushes aside the substantive inquiry into the economic position of the buyer. The English regime combats this displacement by three integrated features: a substantive consumer test, absorption of pre-contractual statements as contractual terms and a published grey list of presumptively unfair clauses. The Uzbek regime possesses the doctrinal elements for each of these features, but has not assembled these into an integrated structure. The failure is in the institutions, not in the doctrine. And because the failure is institutional, the reform must be institutional also. The Plenum of the Supreme Court has the competence to interpret and settle the threshold of consumer status without a change in legislation. Article 21 provides that the Competition Committee is statutorily authorized to issue presumptively-void term categories. The Kazakhstan's precedent shows that reform of precisely this same-legal-family kind is doable. What is needed is not new doctrine but the application of existing tools. The human stakes are concrete. In a rapidly urbanising, young and growing country, the housing market is one where ordinary household can only get homes by signing standard- form contracts with a central protective regime doctrinally circumvented. The agreements contain provisions which would be void under English consumer law and which would never reach contract stage in Kazakhstan's regulated equity-participation regime. They are signed in Uzbekistan on a daily basis. It is not exceptional to be a buyer who signs such a contract in Tashkent on 7 February 2025, with promised completion in December 2025, and no firm date by May 2026, with a contract whose own marketing materials are described as conditional. The fact pattern is standard. The comparative law conclusion this essay reaches is not that Uzbek law should look more like English law. The issue is that the Uzbek law should be applied as written. The protection that the legislature granted in 1996 has been doctrinally

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restricted to the very buyers it was meant to protect. Reform is not innovation in law. That is institutional integrity.

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