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Introduction

This latest book in the Straightforward Guides Series *Guide to Contract Law*, is a comprehensive and easy to understand introduction to the complex area of contract law.

Many people, either knowingly or unknowingly, enter into contracts without fully understanding the implications of what they are doing. Contracts can cover a number of areas, from hire purchase agreements to more complex finance agreements, contracts for construction of buildings, contracts for work around the house or contracts to supply goods.

Notwithstanding the type of contract or what area of life it relates to, there is a comprehensive framework of law, both in statute and also common law, which covers parties to a contract. This book will enable the reader, whether layperson or professional, to obtain the basic facts about contract law and also to see clearly where they stand in relation to their rights and obligations. Throughout the book there is reference to relevant court cases.

The necessity of contract law

Contract law is necessary because the law only enforces

certain types of promises, basically those promises which involve some sort of exchange. A promise for which nothing is given in return is called a gratuitous promise, and is not usually enforceable in law (the exception being where the promise is put into some sort of document, usually a deed).

The main reason that we need contract law is because of the complex society we live in, a capitalist society. In capitalist society people trade freely on many different levels. There are many complex interactions, from small business endeavours to massive projects, such as construction projects where binding agreements are essential. Contract law is there to provide a framework to regulate activities. Contract law will rarely force an individual or company to fulfill contractual promises. What it does do is to try to compensate innocent parties financially, usually by attempting to put them in a position that they would have been in if the contract had been performed as agreed.

Contract law-a brief history

Contract law, or the origins of contract law, goes back more than three hundred years. However, because of the very fast innovations in technology and the industrial revolution generally, the main body of contract law was established in the nineteenth century. Before that, contract law barely existed as a separate area of law.

Before the nineteenth century there were many areas of life where free negotiation was not an issue. Activities such as buying goods and then selling them on in the same market were illegal and were criminal offences. There was a basic right to a reasonable standard of living and no one was expected to negotiate that standard for themselves.

A similar, though less humane approach was taken to relationships between employer and employee, or master and servant as they were then called. Today, we all expect to have an employment contract detailing hours of work, duties and pay. This is the most basic of perceived rights. We may, in most cases, not be able to negotiate the terms, but at least it is a contract. In a status society (as it was called), employment obligations were quite simply derived from whether you were a master or a servant: masters were entitled to ask servants to do more or less anything, and an employee who refused would or could face criminal sanctions. Employers had less onerous obligations which could sometimes include supplying food or medical care. Both sets of obligations were seen as fixed and non-negotiable.

Along with the development of contract law within a rapidly changing laissez faire society, came a rapidly changing political consciousness. The view arose that

society was no more than a collection of self-interested individuals, each of whom was the best judge of their own interests, and should as far as possible be left alone to pursue those interests.

This laissez faire approach gave birth to the law of contract as we know it in that, as we have seen, where people make their own transactions, unregulated by the state, it is important that they keep their promises.

Freedom of contract

Its origins in the laissez faire doctrine of the nineteenth-century have had enormous influence on the development of contract law. The most striking reflection of this is the importance traditionally placed on freedom of contract. This doctrine promotes the idea that since parties are the best judges of their own interests, they should be free to make contracts on any terms they choose-on the most basic assumption that no one would choose unfavourable terms. The courts role is to act as umpire holding the parties to their promises not to ask whether the bargain made was a fair one.

Over the years, courts have moved away from their reluctance to intervene, sometimes through their own making sometimes through parliament, notably the Unfair Contract Terms Act 1997.

Contracts and the notion of fairness

Traditional contract law lays down rules which are designed to apply in any contractual situation, regardless who the parties are, their relationships to each other and the subject matter of a contract.

The basis for this approach is derived from the *laissez-faire* belief that parties should be left alone to make their own bargains. It was thought that the law should be required simply to provide a framework, allowing parties to know what they had to do to make their agreements binding. This framework was intended to treat everyone equally, since to make different rules for one type of contracting party than for another would be to intervene in the fairness of the bargain. As a result the same rules were applied to contracts in which both parties had equal bargaining power as to those where one party had significantly less economic power, or legal or technical knowledge, such as a consumer contract.

This approach, often called procedural fairness, or formal justice, was judged to be fair because it treats everyone equally, favouring no one. There are, however, big problems inherent in this approach in that, if people are unequal to begin with, treating them equally simply maintains the inequality.

Over the last century the law has, to some extent at least,

moved away from procedural fairness, and an element of substantive fairness, or distributive justice has developed. Substantive fairness aims to redress the imbalance of power between parties, giving some protection to the weaker one. For example, terms are now implied into employment contracts so that employers cannot simply dismiss employees without reasonable grounds for doing so. Similar protections have been given to others, such as tenants and consumers.

The objective approach

Contract law claims to be about enforcing obligations which the parties have voluntarily assumed. Bearing in mind that contracts do not have to be in writing, it is clear that enforcing contract law might be a problem. Even where contracts are in writing important areas may be left out.

Contract law's approach to this problem is to look for the appearance of consent. This approach was explained by Blackburn J in *Smith v Hughes* (1871)-

“ if, whatever a man's real intentions may be, he so conducts himself that a reasonable man would believe he was assenting to the terms proposed by the other party and that other party upon that belief enters into the contract with him, the man thus conducting himself would be equally bound as if he had intended to agree to

the other party's terms".

It can be seen that the area of contract law is complex and yet is governed by basic principles. In this book we cover, amongst other areas:

- contracts and the law generally
- the formation of a contract
- the terms of a contract
- Implied terms
- misrepresentation
- remedies if a contract is breached.

A basic understanding of contracts will prove invaluable to any person who takes the time to understand more. This brief book will enable the reader to obtain that basic understanding.