

General Perspectives on Contracts

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WHAT'S COVERED

In this lesson, you will learn about contracts as a legal concept, and the role they take in society. Specifically, this lesson will cover:

1. Historical View of Contracts

The contract is probably the most familiar legal concept in our society because it is so central to our political, economic, and social life. In conversation, the term is used interchangeably with agreement, bargain, undertaking, or deal; but whatever the word, it embodies our notion of freedom to pursue our own lives together with others.

Contracts are central because they are the means by which a free society orders what would otherwise be disorder. So commonplace is the concept of contract - and our freedom to make contracts with each other - that it is difficult to imagine a time when contracts were rare, an age when people's everyday associations with one another were not freely determined and agreed upon.

Yet in historical terms, it was not so long ago that contracts were rare, entered into if at all by very few.

IN CONTEXT

In “primitive” societies and in medieval Europe, from which our institutions sprang, the relationships among people were largely fixed; traditions spelled out duties that each person owed to family, tribe, or manor.

The movement toward contracts, then, went hand-in-hand with the emerging industrial order from the fifteenth to the nineteenth centuries, as England, especially, evolved into a booming mercantile economy with all that that implies— flourishing trade, growing cities, an expanding monetary system, commercialization of agriculture, and mushrooming manufacturing. Contract law was created out of necessity.

Not until the nineteenth century, in both the United States and England, did a full-fledged law of contracts arise together with modern capitalism.



BIG IDEA

Contract law did not develop according to a conscious, intentional plan. It was a response to changing conditions, and the judges who created it frequently resisted, preferring the quieter, imagined pastoral life of their forefathers.

2. Economic View of Contracts

In "An Economic Analysis of Law" (1973), Judge Richard A. Posner (a former University of Chicago law professor) suggests that contract law performs three significant economic functions:

1. It helps maintain incentives to individuals to exchange goods and services efficiently.
2. It reduces the costs of economic transactions because its very existence means that the parties need not go to the trouble of negotiating a variety of rules and terms already spelled out.
3. The law of contracts alerts the parties to trouble spots that have arisen in the past, thus making it easier to plan the transactions more intelligently and avoid potential pitfalls.



SUMMARY

In this lesson, you were introduced to the **historical view of contracts**, learning that a contract is the mechanism by which people in modern society make choices for themselves, as opposed to being born or placed into a status. You also learned about the **economic view of contracts**, in which the contract serves several specific economic purposes.

Best of luck in your learning!

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