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A HISTORICAL OVERVIEW OF CONTRACTUAL OBLIGATIONS IN ENGLISH LAW

DEVIKA G THAMPI

Introduction

The English word contract is also derived from the Latin word contractus, which means to draw together. The word "contract" comes from the Latin words con- meaning "with, together" and trahere meaning "to draw. Contrary to popular belief, contracts and contractual relationships are not a recent invention, but rather have been a fundamental aspect of human society for thousands of years. The history of contracts encompasses a wide range of cultures, periods, and types of agreements. Contracts originated as a way to regulate relationships and ensure stability in society. They were a necessary part of daily economic life as sedentary civilizations developed during the Bronze Age. Some examples of contracts from Mesopotamia include sales and purchases, rental, labor, co-partnerships, loans and mortgages, bankruptcy, and power of attorney. The development of contract law has been influenced by Ancient Greek and Roman thought. It has also seen significant developments during and since the Middle Ages, especially with the development of global trade. Initially, contracts were simple barter agreements, where one party traded goods or services for something of equal value from another party.

An obligation under law is a legal relationship between two or more parties that requires them to act or refrain from acting. It's a binding tie that can be enforced by a court. A contractual obligation is a legal duty or responsibility that a party must fulfill as part of a contract. Contractual obligations are the core of any legally binding agreement and are essential for ensuring that business deals go smoothly. In this article we are discussing about the evolution of Contractual obligation under English Law.

Medieval Period

The Mediaeval Law English contract law as we know it today developed around a form of action known as the action of assumpsit, which came into prominence in the early sixteenth century as a remedy for the breach of informal agreements reached by word of mouth. The early common law was largely concerned with serious crime and land tenure and Glanvill, writing in about 1180, tells us that in his time, 'it is not the custom of the court of the Lord King to protect private agreements. It took three centuries for common law courts to gain general

authority over both formal and informal contracts. Limitations upon the scope of the common law of contract at any given time did not mean that there then existed no forum for contractual business, but merely that remedies had to be sought elsewhere. For the common law evolved in a society served by a bewildering diversity of courts outside the common law system, enforcing a variety of bodies of law. Thus, there were county courts, borough courts, courts of markets and fairs, courts of universities, courts of the Church, courts of manors, and courts of privileged places such as the Cinque Ports. Many such courts handled contractual business. In addition, the Court of Chancery in the fifteenth century developed an extensive contractual jurisdiction.

A Contracts under seal

Medieval law was a system based on formal documents known as writs, which individuals could obtain from the chancery to start legal proceedings in royal courts¹. Each writ corresponded to a specific type of legal action, complete with its own set of rules and procedures. When discussing the components of medieval contract law, it's helpful to distinguish between formal and informal contracts. Unsurprisingly, formal contracts were the first to be integrated into common law. Just like today, significant contracts were typically documented in writing, and it was customary to validate these documents with a seal. The concept of a contract under seal dates back to English medieval times, when most adults were illiterate and could not sign their own name. Each party impressed on the physical document a wax seal or other mark bearing his or her individual sign of identification.

The action of covenant,

This form of action which gained popularity in the thirteenth century, began as a means to enforce agreements requiring specific actions, like constructing a house, rather than simply paying a set amount of money. Over time, it evolved into a means of seeking damages, determined by a jury, for breaching a covenant. By the early fourteenth century, this action was restricted to sealed agreements, leading to the term 'covenant' evolving from meaning just 'agreement' to specifically 'agreement under seal'².

Debt

For formal agreements under seal that involved the payment of a specific sum— essentially a debt. In the royal court, any request for a specific amount of money or a set quantity of interchangeable goods would be initiated through a praecipe

¹ M.P Furmston, Law of Contract (Oxford University press, 16th Edn., 2012)

² *Ibid.*

writ of debt. Initially, even claims for particular items were filed using the same writ, meaning that someone who borrowed money and a book was considered to owe both the money and the book equally. In both royal and local courts, defendants typically had the option to respond through wager of law. When someone lent a significant amount or sold goods at a high price, they often took extra precautions, which resulted in a distinction between the two main purposes for which the single writ of debt could be utilized.

Debt on an obligation -The most straightforward precaution for a lender was to have the borrower sign a sealed document, known as a bond. This served as proof of the debt itself rather than just a promise to pay, making it definitive. The defendant couldn't dispute the existence of the debt, although he could argue that the document wasn't his (non est factum).³ However, this was a risky position to take, as it would go before a jury who would examine the seals, and if they ruled against the defendant, he could face imprisonment. Legally, the defendant couldn't even claim that he had made a payment, and while he eventually received equitable protection from the Chancery, it came only after a lengthy battle between the need for general certainty and the pursuit of individual justice.

Penal bonds: - In late seventeenth century bonds were also used for purposes beyond ensuring that a lender or seller received their due payment. For instance, when hiring a builder to construct a house, the customer would obtain a bond from the builder, acknowledging that the builder owed a specific penalty amount, which would be void if certain conditions (sometimes noted on the back of the bond or in a separate document) were met. These conditions would outline the location, size, materials, completion date, and other details of the house. If the customer decided to sue, it would be based on the bond for the penalty, and the builder could argue that he had fulfilled the conditions. On the flip side, the builder would also require a bond from the customer, typically for double the agreed price, which would be void if the customer paid the agreed amount. Such conditional bonds became the primary means for conducting large transactions and remained so until the Chancery began to address penalties and until the concept of assumpsit provided a more straightforward solution.

Debt on a covenant - A sealed document was not necessary for debts as it was for covenants. Lenders could always pursue repayment of the money they lent, sellers could seek the price, and builders or service providers could demand the agreed payment. However, this was typically only feasible when the plaintiff had fulfilled their part of the agreement, meaning the defendant had received their fair exchange. The existence of wager also had another implication: only the debtor

³ *Ibid.*

could swear they did not owe a debt. This only applied to debts arising from contracts; however, if the plaintiff had a bond, the executor could indeed be sued, which would bypass the wager. The overall impact of these actions can be likened to an agreement to construct a house. Savvy parties would establish this through conditional bonds, allowing the party accused of breaching the agreement to be sued for the penalty while being able to argue that the conditions had been met. If the agreement was made informally, the builder could pursue a debt claim for the payment (typically subject to wager of law). However, the customer would be unable to file a covenant if the builder failed to complete the work, as there was no sealed document to support the claim; and likely, they couldn't even recover any money paid through a debt claim. This unfairness contributed to the emergence of assumpsit, where the writ claimed that the defendant had 'undertaken' to fulfill a task.

ASSUMPSIT

Assumpsit ("he has undertaken", from Latin, *assumere*) a legal action for a breach of contract or promise not under seal. In another word an actionable promise.⁴ Back in the fourteenth century the common law courts developed a general jurisdiction over wrongs or torts (then called trespasses) in which the Crown had a special interest, typically those involving breach of the royal peace. Actions of trespass (ie tort actions) were commenced by a writ form which was flexible, and writs could be drafted which were adapted to the special circumstances of the case—these were called writs 'on the case'. The method of trial in such actions was trial by jury, and the remedy damages, which the jury assessed. Round about 1365, it came to be settled that such tort actions on the case could be brought to remedy purely private wrongs, not involving breach of the royal peace or any special Crown interest. Among actions brought about this time there were some where the plaintiff relied in his writ on an allegation that the defendant had entered into an informal arrangement with him, and then by misconduct caused damage in a way not envisaged by the transaction. Thus, in the case of *Skyrne v Butolf*⁵, the plaintiff sued a doctor to whom he had come to find a cure for the ringworm. He alleged that the defendant: undertook (assumpsit), in London, in return for a certain sum of money previously paid into his hand, competently to cure [the plaintiff] of a certain infirmity. Having set out these special circumstances, he went on to allege that the defendant had so negligently performed his cure as to cause damage. This form of trespass on the

⁴ A.W.B Simpson, The emergence of the Action of Assumpsit, available at: <https://academic.oup.com/book/7682/chapter-abstract/152744580?redirectedFrom=fulltext> (last visited November 1, 2025)

⁵ YB Pas 11 Ric II, AF p 223, pl 12

case has come to be called the action of assumpsit, the name being derived from the allegation in the Latin pleadings that he undertook (assumpsit).⁶

Misfeasance and non-feasance

Misfeasance occurs when a party performs a lawful act in a negligent or improper manner. In the context of assumpsit, it refers to a situation where a party fails to fulfill a duty or obligation under a contract but does so in a way that causes harm or damage. Nonfeasance is the failure to act when there is a duty to do so. In an assumpsit context, it pertains to a party's complete failure to perform their contractual obligations.

In the case of *Watton v Brinth*⁷, an attempt was made to bring such an action against a builder who had undertaken to build a house, but done nothing at all to fulfil his undertaking. This amounted to an attempt to achieve by trespass action what one could not achieve by action of covenant—sue on an agreement to do something without producing an instrument under seal. The court rejected the action; as was said in 1425 in a similar case by Martin J: ‘Verily if this action be maintainable on this matter, for every broken covenant in the world a man shall have an action of trespass.’ To prevent this, a curious compromise was reached: it came to be the basic doctrine of the fifteenth century that assumpsit lay for misfeasance, for doing something badly, but not for nonfeasance, doing nothing at all. Though attacked and qualified, and indeed at times rejected, the nonfeasance doctrine survived for over a century.

Assumpsit and Debt

Attempts were soon made to use assumpsit not to fill gaps in the law, but to replace the action of debt sur contract; the primary purpose of doing so was to deprive the defendant of his right to wage his law, and force him to submit to trial by jury. *Pickering v Thoroughgood*⁸, is itself such a case, and from the 1520s onward the King’s Bench allowed the plaintiff election between the older and newer remedies. By the 1570s the Court of Common Pleas took the same course, but in the late years of the sixteenth century the practice became a matter of acute disagreement between the courts of King’s Bench and Common Pleas; the former court allowing assumpsit to supersede debt sur contract, whilst the judges of the

⁶ Geroge F.Deiser,“The Origin of Assumpsit”,25*Harvard Law Review* 428(1912), available at: <https://www.jstor.org/stable/1325585> (last visited on November 10,2025).

⁷ Y.B. 2 Hen. IV, f. 3, pl. 9 (1400)

⁸ Contract Law Landmark Cases: A Comprehensive Review, available at: <https://www.studocu.com/en-gb/document/university-of-leeds/contract-law/full-contract-law-cases/14685678> (last visited on November 10,2025).

latter court insisted that this was improper.⁹The history of this dispute is complex and to some extent still controversial.The matter was finally settled in Slade's case

Slade's case

The conservative Common Pleas, through the appellate court the Court of Exchequer Chamber, began to overrule decisions made by the King's Bench on *assumpsit*, causing friction between the courts.

In Slade's Case, a case under *assumpsit*, which was brought between judges of the Common Pleas and King's Bench, was transferred to the Court of Exchequer Chamber where the King's Bench judges were allowed to vote. The case dragged on for five years, with the judgment finally being delivered in 1602 by the Chief Justice of the King's Bench, John Popham. Popham ruled that *assumpsit* claims were valid, a decision called a "watershed" moment in English law, with archaic and outdated principles being overwritten by the modern and effective *assumpsit*, which soon became the main cause of action in contract cases. This is also seen as an example of judicial legislation, with the courts making a revolutionary decision Parliament had failed to make.

Facts:-John Slade was a grain merchant, who claimed that Humphrey Morley had agreed to buy a crop of wheat and rye from him, paying £16, and had reneged on the agreement. He brought the case before the assizes in 1596, where it was heard by two judges; one of the Common Pleas, and one of the King's Bench. It was heard under *assumpsit*, and the jury found that Morley indeed owed Slade money. Before a judgment could be issued, Popham had the case transferred to an older version of the Court of Exchequer Chamber, which, sitting in Serjeant's Inn, allowed the King's Bench judges to sit. The case continued for five years; at one point, the judges let the matter continue for three years because they could not reach a decision. Eventually, in November 1602, Popham issued a judgment on behalf of the court which stated that, every contract executory imports in itself an *assumpsit*, for when one agrees to pay money, or to deliver anything, thereby he promises to pay, or deliver it; and therefore when one sells any goods to another, and agrees to deliver them at a day to come, and the other in consideration thereof promises to pay so much money to the other, in this case both parties may have an action of debt, or an action upon the case on *assumpsit*, for the mutual executory agreement of both parties imports in it self reciprocal action upon the case, as well as action of debt. It was resolved, that the plaintiff

⁹ W.S.Horlsworth,"Debt,Assumpsit and consideration",11Michigan Law Review347(1913) available at: https://www.jstor.org/stable/1276521?searchText=&searchUri=&ab_segments=&searchKey=&refreqid=fastly-default%3A04ee028d5bb4139b30bc259c0005ad43&initiator=recommender (last visited on November 10,2025).

in this action upon the case upon *assumpsit* shall not recover only damages for the special loss (if any be) which he has, but also for the whole debt, so that recovery or barre in this action shall be a good bar in an action of debt brought upon the same contract; so *vice versa*, a recovery or bar in an action of debt is a good bar in an action upon the case upon *assumpsit*.¹⁰

Doctrine of Consideration

Another development during the Medivel period was the concept of consideration. While *assumpsit* simply took over an established liability that had been addressed through debt contracts—like the obligation to pay for goods sold—there was a pressing need for new doctrine when it came to recognizing innovative contractual liabilities. The solution to these challenges was the doctrine of 'consideration,' which emerged in *assumpsit* cases around the mid- sixteenth century. Consideration referred to a motivating reason, and the core idea of the doctrine was that the enforceability of a verbal promise should hinge on understanding the rationale behind the promise. The reason for making the promise became the basis for whether it should be upheld or not. In modern terms, a promise is seen as a declaration of intent, and the doctrine effectively stripped a mere declaration of intent of any legal significance. Only a declaration of intent backed by a valid reason or motive would obligate the promisor to fulfill their commitment. In *Stone v Wythipol*¹¹, it was held that

Every consideration that both charge the defendant in an *assumpsit* must be to the benefit of the defendant or charge of the plaintiff, and no case can be put out of this rule.

The courts evolved or adapted an analysis in temporal terms of the relationship between promise and consideration, which is first found in *Hunt v Bate* (1568). A promise might be motivated by something in the past, for example, a past favour: such a past (or executed) consideration was, in general, bad. A consideration might be some continuous state of affairs—such as the existence of a marriage—and this was a continuous consideration, and good. A present consideration meant an act or promise contemporaneous with the promise, and a future (or executory) consideration—something yet to happen, such as a marriage not yet celebrated. Into this analysis, which in part survives, was fitted the important rule that an actionable counter-promise would rank as a good consideration.¹²

¹⁰ DAVID IBBETSON, “SIXTEENTH CENTURY CONTRACT LAW: *SLADE'S CASE* IN CONTEXT”, 4Oxford journal Of Legal Studies295 available at: <https://academic.oup.com/ojls/article-abstract/4/3/295/1422588?redirectedFrom=PD> (last visited on November 10,2025).

¹¹ (1588) 1 Leon 113; 80 ER 102

¹² J.Beatson,Anson’s Law of Contract (Oxford university press,29th Edn.,2010)

17 and 18 centuries

The structure of informal contract law established in the Elizabethan period was essentially simple; as it was said in *Golding's Case* (1586): In every action upon the case upon a promise there are three things considerable, consideration, promise and breach of promise. The seventeenth and eighteenth centuries saw an extensive development of commercial law and reception of the law merchant, but in basic informal contract law what was involved was largely elaboration, rather than innovation. There were, however, certain areas of significant development, particularly in relation to the place of formality in contract law and to the enforcement of duties imposed rather by law than by the consent of the parties.

Statute of fraud

A statute of frauds is a form of statute requiring that certain kinds of contracts be memorialized in writing, signed by the party against whom they are to be enforced, with sufficient content to evidence the contract. Against this background was passed the Statute of Frauds (1677). The unregulated character of seventeenth-century jury trial had made it, in the opinion of some, too easy for plaintiffs in *assumpsit* to bring actions on verbal promises inadequately proved; if the old system of *wager of law* had unduly favoured defendants, its supersession by *Slade's Case* unduly favoured plaintiffs. The remedy adopted was to require formality, in the new form of writing under signature, for actions on the more important agreements—for example on agreements to transfer interests in land, and contracts for the sale of goods worth more than ten pounds. The statute, an essentially reactionary measure, produced a curious list of agreements which needed writing, and was from the start supplemented by the equitable doctrine of part performance.

Quasi contract

The seventeenth century also saw the extension of *assumpsit* into what came to be called quasi-contract. The pleaders of the late-sixteenth century evolved a form of *assumpsit* which came to be known as *indebitatus assumpsit*,¹³ where the plaintiff averred that the defendant was indebted to him (*indebitatus*) in a *Devertain* sum, and had promised to pay this sum. This was appropriate when a debtor was sued in the new action, and after *Slade's Case* (1602) sanctioned this use of *assumpsit* it came to be settled that in *indebitatus assumpsit* the details of

¹³ *Supra* note 1.

the transaction generating the debt need only be set out in a summary form—the defendant would be said to be indebted ‘for the price of goods sold and delivered’, ‘for money lent’, ‘for work and services performed’. Lord Mansfield in the great case of *Moses (p. 13) v Macferlan* (1760) held that, that an action of *indebitatus assumpsit* on an implied promise could be brought whenever natural justice and equity required a defendant to return money. The courts also evolved a form of special *assumpsit* which lay on agreements to pay reasonable prices or remuneration—actions on a *quantum meruit* or *quantum valebat*.¹⁴

19th century

The nineteenth century is usually regarded as the classical age of English contract law, and this for two reasons. The first is that the century witnessed an extensive development of the principles and structure of contract law into essentially the form which exists today, and this process appears to modern lawyers more significant when linked to the belief (which is perhaps too readily accepted) that until the Industrial Revolution contract law was somewhat crude and inadequate. The second involves a change in the attitude of thinking lawyers to contract. In previous years lawyers, in so far as they troubled themselves at all, conceived of contract law primarily as an adjunct to property law.

Yet the period also saw much statutory interference in private contracts, Bills of Exchange Act 1882 and the Sale of Goods Act 1893.

It is evident that the fundamental framework of *assumpsit* law, established in the sixteenth and seventeenth centuries, largely stayed the same until the nineteenth century. This period marked a transition from a primarily unilateral view of promises to a bilateral understanding of contracts, which created mutual rights and obligations for the parties involved. This evolution was accompanied by a significant development in contractual doctrine, layering new principles over the existing ideas rooted in earlier case law.

Until 1790, there was no comprehensive work detailing the English law of contracts, nor was there a tradition of such writings. This changed when John Powell released his *Essay upon the Law of Contracts and Agreements*. Powell aimed to uncover the fundamental rules and principles of natural and civil equity that underpinned contract case law, thereby initiating a tradition that continues to this day. The nineteenth century saw the emergence of numerous contract

¹⁴ *Supra* note 13.

treatises, with notable ones including Chitty (1826), Addison (1847), Leake (1867), Pollock (1875), and Anson (1879).

Offer and acceptance

Thus, the doctrine of offer and acceptance first clearly emerges in the case of Adams v Lindsell in 1818 as a mechanism for settling the moment of contracting in agreement by correspondence; it became a central doctrine, and in 1882 Sir William Anson was able to claim that, 'Every expression of a common intention arrived at by the parties is ultimately reducible to question and answer. Eventually, the doctrine was even applied, albeit somewhat unhappily, to unilateral contracts in *Carlill v Carbolic Smoke Ball Co* (1893).¹⁵

INDIAN CONTRACT ACT

The Indian Contract Act as applied today was drafted originally by the third Indian Law Commission in the year 1861 in England. The Indian Contract Bill tried to define laws relating to Contracts, Sale of movable properties, Indemnity, Guarantee, Agency, Partnership and bailment. The act came into effect in 1872 but soon afterwards amendments were made in that regard, which repealed section 76 to 123 dealing with the sales of goods act and separate legislations were enacted called Sales of Goods Act 1930' to govern that area. Also, section 239 to 266 dealing with partnership was repealed and new legislation was enacted called Indian Partnership Act 1932.

20th century

The Contract (Applicable Law) Act 1990

It is a piece of legislation in the United Kingdom that deals with the determination of the law applicable to contractual agreements in cases involving a foreign element, typically in situations where the contract involves international transactions or parties from different jurisdictions. The UK version of the Contract (Applicable Law) Act 1990 primarily implements the European Union's Rome Convention (1980), which was later replaced by Rome I Regulation (Regulation (EC) No 593/2008) after the UK left the EU. However, the 1990 Act was designed to clarify how English courts would apply the appropriate law in contract disputes with cross-border elements before and after the implementation of EU-wide regulations. The Act supports the freedom of the parties to decide which

¹⁵ Id

jurisdiction's law should apply to their contract. This autonomy is an essential feature in international commercial contracts, allowing the contracting parties to avoid uncertainty in cases involving cross-border transactions.

Following the UK's departure from the European Union, the Rome I Regulation (which replaced the Rome Convention) no longer directly applies to the UK. Instead, the UK now has its own system for determining the law applicable to contracts in international contexts, based on the principles in the Private International Law (Implementation of Agreements) Act 2020 and the UK's common law principles.¹⁶

The Contracts (Rights of Third Parties) Act 1999

It is an Act of the Parliament of the United Kingdom that significantly reformed the common law doctrine of privity and "thereby [removed] one of the most universally disliked and criticised blots on the legal landscape". The second rule of the doctrine of privity, that a third party could not enforce a contract for which he had not provided consideration, had been widely criticised by lawyers, academics and members of the judiciary. Contracts (Rights of Third Parties) Act 1999, created a statutory exception to privity, providing, in certain circumstances, third parties the right to enforce terms of contracts to which they are not privy. Section 1 of the Act allows a third party to enforce terms of a contract in one of two situations: firstly, if he is specifically mentioned in the contract as someone authorised to do so, and secondly if the contract "purports to confer a benefit" on him. An exception to the second rule is if the contract makes it clear that the third party is not meant to be able to enforce the term.¹⁷

Conclusion

In conclusion, the evolution of contract obligations under English law reflects a dynamic journey from rigid, formalistic rules to more flexible and pragmatic principles. Starting with a focus on formal contract creation and enforceability under classical doctrines, English contract law gradually evolved to accommodate social and economic changes, moving toward a more balanced

¹⁶ The Contract (Applicable Law) Act 1990 available at: <https://www.legislation.gov.uk/ukpga/1990/36/contents> (last visited on November 10,2025).

¹⁷ The Contracts (Rights of Third Parties) Act 1999 available at: https://www.legislation.gov.uk/ukpga/1999/31/pdfs/ukpga_19990031_en.pdf (last visited on November 10,2025).

approach that takes into account the intentions of the parties, fairness, and justice. The shift from strict reliance on form and consideration in early common law to the modern-day emphasis on freedom of contract and the implied terms doctrine highlights how English law has adapted to changing societal and business needs. Landmark cases, legislative reforms, and the influence of equity have contributed to the growth of a more nuanced system, providing greater protection for parties while still respecting the autonomy of contracting individuals. Ultimately, the evolution of contract obligations under English law has aimed to strike a balance between predictability and flexibility, ensuring that legal principles continue to foster fairness, clarity, and enforceability in contract law. As new challenges arise, such as digital contracts and global commerce, it is likely that English contract law will continue to evolve, incorporating new perspectives and developments in order to meet the demands of an increasingly interconnected world.

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