



ILE

WEEKLY REVIEW

VOLUME 1 AND ISSUE 10 OF 2023

INSTITUTE OF LEGAL EDUCATION



ILE WEEKLY REVIEW

APIS – 3920 – 0037 | ISBN – 978-81-964391-3-2

(Free Publication and Open Access Journal)

Journal's Home Page – <https://wr.iledu.in/>

Journal's Editorial Page – <https://wr.iledu.in/editorial-board/>

Volume 1 and Issue 10 (Access Full Issue on – <https://wr.iledu.in/category/volume-1-and-issue-10-of-2023/>)

Publisher

Prasanna S,

Chairman of Institute of Legal Education (Established by I.L.E. Educational Trust)

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 – info@iledu.in / Chairman@iledu.in



© Institute of Legal Education

Copyright Disclaimer: All rights are reserve with Institute of Legal Education. No part of the material published on this website (Articles or Research Papers including those published in this journal) may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher. For more details refer <https://wr.iledu.in/terms-and-condition/>



CONTEMPORARY ISSUES IN CONTACT LAW

AUTHOR – HEBA ZAIDI, STUDENT AT UNITY DEGREE COLLEGE

BEST CITATION – HEBA ZAIDI, CONTEMPORARY ISSUES IN CONTACT LAW, *ILE WEEKLY REVIEW (ILE WR)*, 1 (10) OF 2023, PG. 13-16, APIS – 3920 – 0037 | ISBN – 978-81-964391-3-2.

ABSTRACT

Contract law is a vital aspect of modern legal systems that governs the formation, interpretation, and enforceability of agreements between parties. It provides a framework for individuals and businesses to enter into contracts and expect certain obligations to be fulfilled. However, like any area of law, contract law faces various contemporary issues that challenge its effectiveness and application in today's complex and rapidly changing world.

One key contemporary issue in contract law is the rise of electronic contracts and the challenges they pose for traditional contract formation and interpretation. With the widespread use of technology and the internet, parties now frequently enter into agreements electronically, such as through online platforms, emails, or electronic signatures. However, questions arise concerning the validity and enforceability of these contracts, especially when issues of consent, terms, and representation are involved.

Another contemporary issue is the imbalance of power between parties in contract negotiations. In many cases, one party, typically a business or corporation, holds significantly more bargaining power and resources than the other party, often an individual or a smaller entity. This power imbalance can lead to unequal terms, unfair clauses, and exploitation. Courts and lawmakers are increasingly stepping in to address this issue by imposing greater obligations of transparency, fairness, and good faith on the more powerful party.

The phenomenon of globalization has also brought new challenges to contract law. As businesses and individuals engage in cross-border transactions, conflicts may arise regarding choice of law, jurisdiction, and enforcement of contracts. Harmonizing contract laws across jurisdictions and adapting to the complexities of international trade have become pressing issues for contract lawyers and policymakers.

In recent years, there has been an increased focus on social and ethical considerations in contract law. Issues such as sustainability, consumer protection, and fair trade are impacting contract formation and interpretation. Parties are now incorporating clauses related to environmental standards, human rights, and social responsibility into their contracts. The legal system must grapple with these emerging concerns and strike a balance between commercial interests and societal values.

Technological advancements have posed both opportunities and challenges in contract law. The use of blockchain technology, smart contracts, and artificial intelligence (AI) has the potential to revolutionize contract formation, execution, and dispute resolution. However, these technologies present new complexities in terms of trust, liability, and accountability. The legal system is now faced with the task of adapting contract law to accommodate these emerging technologies while addressing the legal and ethical implications they raise.

Furthermore, the COVID-19 pandemic has raised unique contractual challenges, such as the frustration of contracts due to unforeseen circumstances, the re-negotiation of terms, force majeure clauses, and the impact of government-imposed restrictions. Contract law has had to evolve to address these novel situations and strike a balance between protecting parties' interests and ensuring fairness during times of uncertainty.

In conclusion, contract law faces several contemporary issues in today's dynamic and interconnected world. These include the rise of electronic contracts, power imbalances in negotiations, globalization, social and ethical considerations, technological advancements, and the impact of events like the COVID-19 pandemic. It is crucial for contract law to adapt and evolve to effectively address these challenges and ensure fair and enforceable agreements in the ever-changing landscape of commerce and technology.

INTRODUCTION

There must be the presence of lawful consideration for any contract to get enforceable by law i.e., there should be trade of something legal between both the parties. If the legal consideration is not present, the contract gets void.

Contemporary issues in contract law refer to the current challenges and debates surrounding the formation, interpretation, and enforcement of contracts in today's legal landscape. These issues arise due to changes in technology, societal norms, and economic developments that impact how contracts are created, understood, and enforced. In this introduction, we will briefly discuss some of the key contemporary issues in contract law.

One significant contemporary issue is the rise of electronic contracts. With the advent of the internet and digital platforms, individuals and businesses can now enter into contracts electronically, without physically signing a document. This raises questions about the

validity and enforceability of these contracts. Courts and lawmakers are grappling with issues such as consent, authentication, and the legal framework for electronic contract formation.

Another important issue is the application of contract law to new technologies. As technology advances, new types of contracts are emerging that pose unique challenges. For example, contracts related to artificial intelligence, blockchain, and cryptocurrency raise novel issues regarding liability, ownership, and enforcement. Courts are tasked with applying traditional contract principles to these innovative technologies.

Moreover, issues of fairness and inequality in contractual relationships have gained attention. Imbalances in bargaining power between parties can lead to unfair or oppressive contracts. This has sparked discussions about the need for consumer protection laws, restrictions on unfair contract terms, and the duty of parties to act in good faith during contract negotiations.

The globalization of commerce and cross-border transactions has also created complexities in contract law. International contracts involve varying legal systems and cultural differences, which can lead to conflicts in interpretation and enforcement. Harmonizing contract laws across jurisdictions and establishing mechanisms for resolving international contract disputes are ongoing challenges.

Additionally, contract law faces contemporary challenges in relation to social issues. For example, issues of diversity, inclusion, and discrimination can arise in contractual relationships. Lawmakers and courts are increasingly considering the impact of contracts on marginalized groups and the need for anti-discrimination provisions in contractual agreements.

Finally, the COVID-19 pandemic has presented unique challenges to contractual obligations. The widespread disruptions caused by the

pandemic have raised questions about the enforceability of force majeure clauses, the allocation of risk, and the need for contract modifications or waivers in response to unforeseen circumstances.

In summary, contemporary issues in contract law encompass a wide range of challenges and debates stemming from technological advancements, societal changes, economic developments, and globalized commerce. These issues require continuous evaluation and adaptation of contract law principles to ensure fairness, efficiency, and effectiveness in modern contractual relationships

CONTEMPORARY ISSUES IN CONTACT LAW

One of the primary issues in a contract is whether or not one or both parties are willing to keep their word in a legal contract. When making a transaction with one person, the parties that are contracting have to be of legal age according to state law.

Contemporary issues in contract law can vary depending on the jurisdiction and the specific circumstances. Here are a few common contemporary issues in contract law along with some relevant case laws to provide a detailed explanation:

Electronic contracts: With the advancement of technology, electronic contracts have become increasingly common. One contemporary issue is determining the validity and enforceability of electronic contracts. One notable case is the United States Supreme Court case of *Specht v. Netscape Communications Corp.* (2002). The court held that a browserwrap agreement, where the terms and conditions are accessible through a hyperlink, can be enforceable if the user has actual or constructive notice of the agreement.

Standard form contracts: Standard form contracts, also known as adhesion contracts, are pre-drafted agreements that individuals often have no negotiating power over. A significant issue is determining the fairness and

enforceability of these contracts. An example is the Supreme Court of Canada case of *Uber Technologies Inc. v. Heller* (2020). The court held that an arbitration clause in Uber's standard form contract was unconscionable and therefore not enforceable due to significant inequality of bargaining power.

Implied terms and unfair contract terms: Another contemporary issue is the interpretation of implied terms in contracts and the enforcement of unfair contract terms. In the United Kingdom, a notable case is *Marks and Spencer plc v. BNP Paribas Securities Services Trust Company (Jersey) Limited* (2015). The Supreme Court held that in the absence of express wording, an implied term can only be added to a contract if it satisfies a strict test of necessity, meaning that it is so obvious that it goes without saying.

Good faith and duty of honesty: The concept of good faith and the duty of honesty in contract law has become an important contemporary issue. In Canada, the case of *Bhasin v. Hrynew* (2014) established that parties have a duty to perform their contractual obligations honestly and in good faith. This case expanded the traditional understanding of "good faith" and introduced a general organizing principle of good faith that applies to all types of contracts.

Force majeure and frustration of contract: The COVID-19 pandemic has highlighted the issues of force majeure clauses and frustration of contract. A relevant case is the English High Court case of *Canary Wharf (BP4) T1 Limited v. European Medicines Agency* (2019). The court held that Brexit did not frustrate the lease agreement between the parties, and the European Medicines Agency was bound to continue paying rent despite its relocation from London to Amsterdam.

These are just a few contemporary issues in contract law, and there are numerous other issues and cases that could be explored. It is important to note that contract law can differ between jurisdictions, so it is essential to consult

local laws and seek legal advice for specific cases.

Conclusion

Contemporary issues in contract law are diverse and complex, reflecting the ever-changing nature of the legal landscape. It is crucial for legal professionals, lawmakers, and individuals involved in contractual relationships to understand and address these issues adequately.

One key contemporary issue is the impact of technology on contract law. The widespread use of digital platforms and e-commerce has brought about new challenges and considerations. For example, issues such as online contracting, electronic signatures, and the enforceability of online terms and conditions have emerged. As technology continues to advance, it is essential for contract law to adapt and address these issues effectively.

Another important issue is the increasing complexity of contractual relationships and the imbalance of power between parties. Many contracts today involve multinational corporations, government entities, or highly specialized industries, leading to situations where one party holds significantly more bargaining power than the other. This power imbalance often results in unfair terms, unequal distribution of risks, and limited options for the weaker party. Addressing and rectifying this issue is crucial to ensure fair and equitable contractual relationships.

Additionally, globalization has presented new challenges in contract law. With businesses operating across borders and jurisdictions, conflicts of laws often arise. Determining which country's laws apply and how to enforce them can be complex and time-consuming. Harmonization efforts, such as the United Nations Convention on Contracts for the International Sale of Goods (CISG), have been made to address these challenges. However, further efforts are needed to streamline and

simplify the international contract law framework.

Furthermore, the COVID-19 pandemic has given rise to specific contractual issues. The pandemic has disrupted businesses, supply chains, and economies, leading to contract breaches, force majeure claims, and disputes over performance and non-performance. Courts and lawmakers have faced challenges in interpreting and applying existing contracts in the context of unforeseen circumstances brought about by the pandemic. The need for flexible and adaptable contract law provisions to handle such situations has come to the forefront.

Lastly, the ethical considerations within contract law cannot be overlooked. Issues such as the enforceability of contracts involving illegal activities, unfair contract terms, and the duty of good faith and fair dealing have become increasingly relevant. The ethical dimensions of contract law require ongoing reflection and consideration to ensure that contractual relationships are founded on fairness and integrity.

In conclusion, contemporary issues in contract law encompass a wide range of challenges, including technological advancements, power imbalances, globalization, pandemic-related issues, and ethical considerations. It is crucial for legal professionals and lawmakers to continuously analyze, adapt, and develop the legal framework surrounding contracts to address these issues effectively and maintain fairness and justice within contractual relationships.