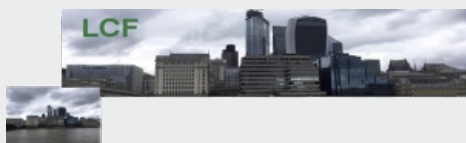




Jindal Global Law School
India's First Global Law School



The London Centre for Commercial and Financial Law

Conference Series on **CONTRACT LAW IN COMMON LAW COUNTRIES: A STUDY IN DIVERGENCE**

June 7-8, 2021

September 7-8, 2021

December 7-8, 2021

CALL FOR PAPERS

Organized by:

Jindal Global Law School

O.P. Jindal Global University, India

and

**The London Centre for Commercial and
Financial Law (LCF)**

in co-operation with the

Institute of Advanced Legal Studies,

School of Advanced Studies,

University of London



It is commonplace amongst commercial lawyers and academics to speak of the difference between common law and civil law. Indeed, the attempts at harmonization of contract law by supra-national entities have focused on the divergence between the two. However, this discussion is usually limited to a comparison of different jurisdictions, one an adherent of common law and the other of civil law. Yet, there are various domestic solutions within common law countries that provide an intriguing departure from the English common law, sometimes incorporating civil law principles and at other times innovating entirely new solutions at odds with the legal tradition.

In this conference series, participants are invited to explore the divergence of law between common law countries through a comparative lens. Papers must significantly engage with two or three common law jurisdictions, one of which must be England, on the topic of choice. Through this exercise, the conference series hopes to identify the diversity and ingenuity in domestic systems as they grapple with modern problems, as well as the friction and internal tension created occasionally as courts attempt to navigate a departure from a known tradition.

CONFERENCE 1: THE FORMATION OF THE AGREEMENT

June 7-8, 2021

In today's globalized world, with the explosion of international trade and e-commerce, the form that contracts take has been evolving. From the widespread use of form contracts, the ascendancy of clickwrap agreements, and the new 'smart' contracts, the fundamentals of how a valid agreement comes into existence have been challenged. When may a proposal be revoked? At what point does an acceptance take place, and on what terms? What constitutes valid consideration? Indeed, is the very concept of consideration slowly retreating from common law thought? And how is the common law developing in its understanding of privity? Within the context of contract formation, what vitiating factors exist and how are they developing, especially in light of increasing concerns for consumer protection? The first conference will focus on these and any other related questions that demonstrate the evolving understanding of the formation of an agreement.

CONFERENCE 2: THE SUBSTANCE OF THE AGREEMENT

September 7-8, 2021

Carrying on from the previous conference, there are many contemporary debates surrounding the nature of the terms in contracts and, especially, what terms should be implied into them. For example, though a uniquely civil law concept, an implied duty of good faith and fair dealing has been gaining traction around the common law world, with even the English courts suggesting now that such a term may be implied in appropriate long-term, 'relational' agreements.¹ What is the breadth and scope of an implied term of good faith and fair dealing? Is it to be limited in its use by a party? In other words, is such an implied term of good faith and fair dealing to be used as a sword or a shield or both? How does such an implied term interact with existing, explicit terms of the agreement? Can they override them or merely supplement them? And what is to be made, in today's pandemic with lockdowns of various guises prevalent the world over, of the doctrines of impossibility, impracticability, and frustration? Perhaps the common law doctrine of impossibility has not faced such an inflection point since the First World War, when England developed a more expansive doctrine of frustration.² How can one envision the next development in the law of impossibility? The second conference will focus on these and any other related questions that demonstrate the shifts in implied terms and impossibility.

CONFERENCE 3: DISPUTES ARISING OUT OF THE AGREEMENT

December 7-8, 2021

To wrap up the series, the third conference participants will engage with the consequences of a dispute. What remedies are available for breach, and how are stipulated sums addressed? Is specific performance available only where damages are insufficient, or is it expanding from an exceptional remedy into an alternate remedy on par with damages? And how are common law courts upholding party autonomy where parties are choosing incompatible laws to govern their agreement? In keeping with one of the themes of this conference which is the context of a globalized economy, how do common law courts approach situations where parties willingly submit to disparate legal regimes, including adopting 'soft law' like the UNIDROIT Principles of International Commercial Contracts, in order to further their business arrangements? In the face of a clear conflict of legal regimes, how are common law courts responding? The final conference will focus on these and any other related questions that address the parties' remedies and dispute resolution.

¹ Martin A Hogg, 'The Implication of Terms-in-Fact: Good Faith, Contextualism, and Interpretation' (2017) 85 *George Washington Law Review* 1660

² Catharine MacMillan, 'English Contract Law and the Great War: The Development of a Doctrine of Frustration' (2014) 2 *Comparative Legal History* 278

Submission Instructions

The papers selected for the conference are to be published in a special issue of Liverpool Law Review in 2022. Interested participants should submit abstracts of up to 500 words for review by **December 15, 2020** to the following address: **manasi[at]jgu.edu.in**. Selected participants will be notified by **January 15, 2021**.

Participants must then submit a draft manuscript before the conference and a final manuscript after. Details are below:

Draft manuscript: 6,000–8,000 words (excluding footnotes)
Final manuscript: 8,000–10,000 words (excluding footnotes)

Conference	Draft Due	Conference Dates	Final Manuscript Due
1	7 May 2021	7-8 June 2021	8 July 2021
2	7 August 2021	7-8 September 2021	8 October 2021
3	7 November 2021	7-8 December 2021	8 January 2022

Conference Details

Due to the uncertainties surrounding international travel with the pandemic, this conference series will be held fully online. In order to accommodate various time zones, it will be spread out over two days. The timings on both days will be 12PM–3PM (GMT)/5:30PM–8:30PM (IST).

Full programme details will be circulated by March 1, 2021.

Conference Fees:

For one conference: GBP 20

For two conferences: GBP 35

For all conferences: GBP 50

Convenors:

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