

Advanced Contracts, Tendering and Public Procurement
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Lecture 5
Evaluation of Contract Law

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Contract law encompasses fundamental principles and serves as the foundation for legal agreements. It is worth considering whether contract law can be applicable to the relationship between students and universities. It is widely recognized that universities in various regions, such as India, play a significant role in providing education. While education can be categorized into primary, secondary, and higher education, our focus here is on university education. This type of education is typically geared towards adult learners and is regulated by relevant authorities such as the University Grants Commission, which oversees the university sector.

Now, the reason why we are examining this within the framework of contract law is because, in the present times, we can observe a significant shift from the pre-liberalization, privatization, and globalization (LPG) era, which refers to the period prior to 1991. During that time, education in India was exclusively offered by the government through state universities, serving as the sole providers of education. However, with the introduction of privatization in the education sector, we now witness the existence of numerous private universities that offer education services. Consequently, students may encounter grievances or issues, and it becomes crucial to determine the applicable legal framework for addressing such concerns within the student-university relationship.

This is the type of evaluation that we must consistently undertake. Now, in addition to the provisions outlined in the Constitution, which highlight education as a public service and a public good, we consider the perspectives put forth by the Supreme Court over time. The Supreme Court has deliberated on various issues such as the permissibility of demanding capitation fees by institutions, the existence of management seats, the modernization of education, and the associated costs. It is worth noting that the Supreme Court has often been called upon to adjudicate such matters, with most cases involving public institutions or publicly aided institutions as the parties involved.

Now, it is important to acknowledge that when a private institution receives aid, it acquires certain characteristics of a public nature. Aided institutions, as you may observe, fall under the purview of writ jurisdiction due to the significant financial assistance they receive from the government. This aid can encompass various aspects such as teacher salaries and developmental grants provided by the University Grants Commission (UGC). Consequently, privately managed yet publicly aided institutions are bound by the constitutional mandate, and writ jurisdiction can be invoked to ensure accountability of these universities.

However, when it comes to completely unaided institutions, which are purely private entities, besides constitutional law, another legal framework that comes into play for evaluation is tort law. Tort law, known as the law of civil wrongs, becomes relevant in this context. It should be noted that within tort law, there is recognition of the concept of educational malpractice. Educational malpractice refers to the provision of deficient educational services by an educational institution, resulting in negligence that causes harm or injury to the student's learning experience or assessment. Consequently, in such instances, the student retains the right to pursue legal action against the institution, seeking redress under the tort of educational malpractice.

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Leeds Beckett University
Student Contract 2017/18

The Contract

1. The terms contained within this document together with the "relevant documents" referred to in schedule 1 (the "Relevant Documents") (together "the Contract") will govern the relationship between Leeds Beckett University (the "University") and any individual registered and enrolled as a student at the University or any individual who has accepted an offer to study at the University ("You", or together "Students"). By accepting an offer to study at the University and by completing the process of registration and enrolment, you agree to abide by the terms of the Contract. Any references to the "General Regulations" in documents elsewhere should be taken to refer to this Contract.
2. For this purpose, registration is the process by which a student first enters a course or programme of study, and enrolment is an annual process by which taught students chose a 'diet' of modules within that course and research students receive confirmation of continued registration at a progression meeting.
3. Students receiving tuition or educational services at another institution under a collaborative agreement with the University are bound by these terms, together with any regulations or similar of the 'delivering institution' which may apply from time to time. Where the terms of this Contract and those of the delivering institution are in conflict then precedence shall be determined by reference to the individual collaboration agreement and to the relevant documents.
4. Nothing within this Contract shall be construed as annulling or amending the University's Instrument and Articles of Government.
5. The terms of this document will take effect from the earlier of your acceptance of any offer to study at the University or 1 August 2017.
6. If you wish to contact the University about this Contract, you should contact the Secretary & Registrar by email to secretary®istrar@leedsbeckett.ac.uk.

Your Right of Cancellation

7. You are entitled to cancel the Contract within fourteen days of the date of accepting a place, or fourteen days from the date of your first enrolment on the course. To do so you must, within the relevant 14-day period, inform the University of your intention to cancel the contract. Taught students should contact your School office. Research students should contact the Graduate School. A cancellation form is available for this purpose. Completed forms should be submitted to the School office or Graduate School before the relevant 14-day period expires. Where you have cancelled the contract in accordance with this paragraph you will be entitled to a full refund of fees paid to that point.
8. If you wish to withdraw and cancel this Contract after this period, you must do so in writing to the University, by completing the withdrawal process outlined at <http://www.leedsbeckett.ac.uk/media/files/public-information/withdrawals-policy-and-procedure-201617-v1-20160919.pdf?la=en>.

The University's Obligations

9. The contents of this Contract, together with the 'relevant documents' listed at Schedule 1 set out how the University will provide to you any teaching, examination, assessment and other 'educational services' for which you are registered and enrolled and the University will take all steps which are reasonably in its power to provide these educational services in accordance with the terms of this agreement.



However, it is important to note that the recognition of educational malpractice as a tort has been established through judgments in both the United Kingdom and the United States. This establishes a legal basis for students to address and seek redress for their grievances.

Nevertheless, why should we consider contract law in this context? The rationale behind this lies in the United Kingdom, where universities have made a conscious decision to govern the student-university relationship under contract law. This choice has been uniformly adopted by all universities in the UK. The universities assert that contract law is advantageous due to its statutory nature, unlike tort law, which relies more on judicial interpretation. In contract law, parties could explicitly articulate and communicate the terms and conditions of their agreement, ensuring explicit consent and clarity, instead of relying on the discretion of judges in tort law.

Therefore, universities in the UK have unequivocally stated that every student admitted is bound by contract law, and any disputes arising between the student and the university can potentially constitute a breach of contract. In India, however, a notable observation can be made regarding various educational institutions, particularly coaching institutes that offer preparatory courses for medical, law, or engineering examinations. Deficiencies in the services provided by these coaching institutes present a significant issue, as it raises concerns regarding the fulfillment of promises made by the institute to the students.

In India, students who have enrolled in private tutorials, coaching institutes, or online coaching platforms such as Byju's or Akash, are recipients of learning and educational

services. It is noteworthy that the consumer protection law in India can serve as an additional legal avenue for students in such cases. Whether students have opted for offline or online coaching services, they can seek redress through the Consumer Forum if they encounter any deficiencies in the services provided. The Consumer Protection Act of 2019, in its current form, can address issues related to unfair trade practices and unfair terms imposed by coaching institutes or tutorial services.

When considering universities, it is essential to recognize that they provide formal education. Within university settings, there exists an academic rigor encompassing an academic curriculum and academic bodies. It is crucial to understand that various aspects fall within the domain of academic matters. These aspects may include classroom teaching, teacher qualifications, examinations, grading systems, and more. It is important to note that many of these academic matters do not involve commercial transactions or considerations. Consequently, universities do not make promises of degrees, as academic matters extend beyond commercial deals or understandings.

However, if universities provide administrative services such as hostels, cafeterias, or other student facilities, these services can be subject to contractual agreements. These administrative services establish a contractual relationship between the university and the students, as they involve specific obligations and expectations.

For instance, if I choose to rent a room in a paying guest (PG) accommodation, wouldn't that be considered a contract? Similarly, if I opt for a room in the university hostel, shouldn't that also be treated as a contractual arrangement? Here, it becomes necessary to distinguish between the two types of services provided by universities: academic and administrative. Academic services, which are not acquired through purchase or hire, encompass factors such as examination performance, grading systems, research projects, and regulations pertaining to plagiarism, academic integrity, and disciplinary matters.

Instances of indiscipline may require appropriate action, but they are not inherently contractual in nature and should be treated separately from contractual matters. On the other hand, administrative services provided by universities, such as accommodation in hostels or other administrative facilities, can certainly be subject to the principles of contract law. This differentiation ensures that administrative services are governed by contractual obligations.

Thus, in the student-university relationship, it is crucial to regulate contract law in a manner that distinguishes between academic and administrative aspects. Contract law offers distinct advantages in addressing the latter, while matters pertaining to academic performance and discipline should be addressed through separate mechanisms, going beyond the realm of contracts.

Hence, it becomes essential to explicitly define the duties and obligations of the parties involved in a contract. This includes understanding the grounds for contract termination and the implications of breaches, as well as determining the appropriate remedies and damages in case of contractual disputes. In the United Kingdom, contract law is widely utilized to govern the university relationship. Given that Indian law is fundamentally rooted in common law, which draws inspiration from UK contract law, India may choose to continue using contract law as the framework for this relationship. Alternatively, India could introduce a dedicated statute under the University Grants Commission or the Higher Education Council, specifically addressing the grievance redressal mechanism and the adjudicatory processes pertaining to this unique relationship.

It is inevitable that we take this matter seriously, my friends, considering the privatization of education and the rapid proliferation of universities offering various services. We must not overlook the fact that many of these universities make significant representations to students. Therefore, it is imperative to establish a comprehensive system that effectively governs this relationship and safeguards the interests of all parties involved.

Universities often make various promises to students, including the availability of dual degrees, partnerships with foreign institutions, off-campus placements, and more. Students rely on these promises, and when they are not fulfilled or go awry, it is crucial for students to have a mechanism for addressing their grievances. Holding universities accountable is the central issue at hand. Without a legal framework that ensures their accountability, students may face exploitation, which is detrimental to the integrity of the legal system. Therefore, moving forward, either the regulatory body, such as the University Grants Commission, or a specific law governing this relationship needs to be established.

This topic serves as an introductory evaluation because it involves an old law, the Indian Contract Act of 1872, being applied to new relationships. It raises questions about the feasibility and effectiveness of applying this outdated law to contemporary circumstances. In

our course, titled "Advanced Contract," we delve into these interesting aspects by examining present-day relationships and their interaction with contract law.

Now, it is crucial to draw a conclusion from the discussion. The key conclusion is that a distinction must be made between academic and administrative services within the university context. Applying a contractual relationship framework is appropriate for administrative services. However, when it comes to academic examinations, evaluations, and disciplinary matters, contract law may not be a suitable legal framework.

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The sources of contract law are of great importance to understand. Contract law primarily derives from legislation. In the Indian context, the Indian Contract Act of 1872 is a legislation passed by the parliament or state assemblies, post-independence. Another example is the Consumer Protection Act of 2019, which is also a legislative mandate. Legislation serves as a foundational source of law. However, my friends, legislation is not the sole source of law. Law can also be established through judge-made law, commonly known as case law. It is through the interpretation and application of the law by judges that we gain a comprehensive understanding of contract law in practice. Therefore, case law plays a significant role as one of the primary sources of contract law, as it helps us comprehend the operation and application of contract law through the analysis of relevant legal cases.

Hence, it is evident that even within the Constitution, specifically in Article 141 and 142, along with various other provisions, it explicitly grants judges the authority to create law, issue directions, and deliver judgments. The pronouncements made by judges carry the

weight of law. This aspect is known as precedent. Precedent refers to a binding legal decision that establishes a framework for interpreting the law and serves as a guide for future cases. Case law is essentially a collection of precedents that must be followed in subsequent cases. In India, we have the Supreme Court, which sets the law for the entire nation, and we also have high courts whose judgments have significance not only within their respective states but also hold persuasive value in other states. It is important to note that high courts also function as constitutional courts, further emphasizing their legal authority.

High Courts also have the authority to interpret the law. Therefore, it would be incorrect to assume that the judgments of one High Court have no implications in other states. High Courts play a crucial role in shaping the understanding of contract law through their case law and interpretation of statutes. In the United Kingdom, contract law is largely derived from judge-made law, which is commonly referred to as common law. Common law encompasses the legal principles and doctrines established by judges to govern common situations in the relationships between individuals.

In the UK, judges have consistently developed various principles and doctrines that form an integral part of contract law. One such doctrine is the principle of promissory estoppel, which has been recognized and applied by both UK and Indian judges. This principle holds significant importance in cases involving government contracts. Additionally, there are numerous other principles pronounced by judges, such as the principle of unjust enrichment and the principle of restitution. These principles are applied by judges in conjunction with the relevant statutes to adjudicate cases effectively.

It is interesting to observe how judges have played a significant role in the evolution and development of contract law by introducing principles and doctrines that have become integral to contracts. Additionally, international law serves as another source of contract law. In India, although there haven't been many bindings international laws specifically related to contracts, there is an international arbitration law to which India is a party. International arbitration is a crucial aspect of contract law. Furthermore, apart from arbitration, there is the UN Convention on the International Sale of Goods, although India has not ratified this convention. Instead, India has the Sale of Goods Act of 1930. Nevertheless, international trade involves various agreements such as the World Trade Organization (WTO) and the General Agreement on Tariffs and Trade (GATT) that govern trade relationships. Hence,

international law becomes an important source of law due to the critical practices and principles it encompasses.

Bilateral investment treaties (BITs), multilateral trade treaties, and other international agreements play a significant role in shaping contract law. For instance, bilateral investment treaties between countries like India and Australia have contributed to disputes and challenges related to investment protection. The influence of global events on contract law is evident, and there is a growing trend towards the harmonization of laws, particularly with the establishment of arbitration mechanisms. International contract law, sponsored by organizations like the United Nations, takes the form of treaties, conventions, or declarations.

However, it's important to distinguish between international contract law and comparative contract law. International contract law pertains to agreements between countries, while comparative contract law involves analyzing and comparing the positions of different legal systems, such as Indian contract law with UK, US, or Australian law. Comparative contract law aims to incorporate beneficial aspects from one legal system into another.

Custom and usage also hold significance in contract law. Section 1 of the Indian Contract Act 1872 recognizes that customs and usages can serve as sources of contract, if they are not inconsistent with statutory provisions. Customary practices and usages can shape contractual relationships and be considered as a source of law in contract matters.

So, it is a common practice that customary practices and usages in contract law can continue unless they are directly contradictory to statutory provisions. If a custom is inconsistent or in contravention of the law, it cannot be upheld. However, customary practices and usages that are in alignment with the law can still have relevance in contract law.

To illustrate this, let us consider the customary practice observed on ships. When a ship encounters rough weather while on a voyage at sea, and there is a risk of sinking due to heavy load, the captain has the customary right to offload certain goods to maintain the ship's balance and ensure its survival. This action is taken to save the lives of those on board and protect specific goods. The captain has the authority to make decisions regarding which goods should be offloaded in such circumstances.

This is a common practice observed in many cultures and societies around the world. It is important to acknowledge that various customary practices exist in different countries, each with their own unique traditions and societal norms. These customs hold significant influence

in the realm of contract law. As we continue our exploration, we will uncover more examples of such customary sources of law.

For an example of the role of custom in contract law. In legal matters, the concept of agency often arises when one person requires another person to act on their behalf. This need for representation can manifest in various situations, such as hiring an attorney, engaging a broker, or appointing an insurance agent. These individuals serve as agents and enter contracts on behalf of the principal.

However, when we consider the application of customs to the concept of agency, intriguing questions arise. For instance, can the notion of agency extend to marital relationships? Can a spouse represent their partner, and vice versa? It is worth noting that customs and traditions vary across different societies and communities. In certain customary practices, the representative character of spouses may be restricted or denied altogether. For example, in some customs, wives may not have the same representative capacity as husbands, and vice versa.

While the rule suggests that spouses can represent each other in commercial transactions, the extent and limitations of this representation require careful consideration. It is essential to understand the specific customs and norms governing these situations. For instance, the ability of a wife to pledge her husband's property may depend on whether it is for any purpose or limited to necessities of life. These nuances within customs and practices demand thorough examination to ascertain their implications in contract law. However, it remains clear that a wife can certainly make purchases on behalf of her husband in various customary practices.

It is crucial to consider whether husbands should be granted the authority to deal with the *streedhan* (gifts given to the wife) as a customary practice. Allowing such representation could potentially lead to situations where many men would sell the gold and jewelry received by the woman during marriage. Hence, it is possible that excluding men from this representative character could be a customary practice. These examples highlight the intriguing nature of customs as a source of law.

Custom, legislation, case law, international law, and comparative law are all significant sources for understanding contract law. It is important to explore these diverse sources to gain a comprehensive understanding of the law. This applies not only to private contracts but

also to government contracts. International law can indeed play a vital role in government contracts. For instance, bilateral investment treaties (BITs) involve the government as a party, and government entities often benefit from these treaties and may be involved in related disputes. Understanding these sources of contract law allows for a holistic and integrated interpretation of the subject.

By examining these various sources, we can develop a more comprehensive understanding of contract law and its application in both private and government contexts.

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In India, it is important to examine why we have a central contract law and whether state governments can also enact laws governing contracts. To understand this, we need to consider the constitutional distribution of responsibilities among the central government, state governments, and local governments. Currently, the 73rd and 74th Amendments to the Constitution of India, implemented in 1992, grant certain powers to municipalities and panchayats for governance.

the Seventh Schedule of the Indian Constitution, we find that certain subjects are reserved exclusively for the Union Government, some are reserved for the state governments, and there is also a concurrent list. The Union Government has the authority to legislate on subjects such as foreign affairs, currency, and defense. These powers are exclusively reserved for the central government.

However, when it comes to contract law, it falls under the concurrent list, which means both the central and state governments can legislate on this subject. This implies that while there is

a central contract law, state governments also have the power to enact their own laws governing contracts.

It is essential to analyze the constitutional provisions and the division of responsibilities to understand the framework for contract law in India and the role of the central and state governments in its legislation.

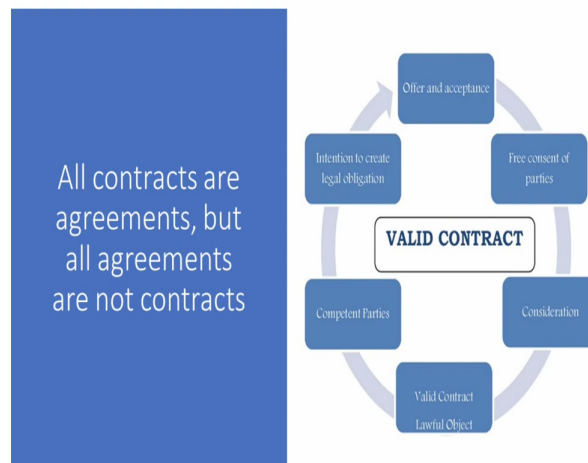
The division of powers between the central and state governments in India is outlined in the Constitution through various subject matters. The state governments are entrusted with powers such as police administration and public health within their respective states. It is important to note that while public health is a subject for state governments, matters pertaining to interstate public health fall under the jurisdiction of the central government. This division ensures that both levels of government have their respective governance roles.

The subject matters falling under the Concurrent List, known as List 3, are those on which both the central and state governments can legislate. However, if the central government enacts legislation on a concurrent subject, it will prevail over any conflicting state laws. This is because India is a union and a federation, and the central government holds significant authority.

Therefore, while both the central and state governments have the power to legislate on subjects in the Concurrent List, the central laws will have supremacy over state laws in case of any inconsistencies or conflicts.

The Indian Contract Act is a central law that was originally enacted during the British rule and is applicable to the entire territory of India. Initially, there was an exception for Jammu and Kashmir when the Constitution was adopted. However, due to the reorganization of Jammu and Kashmir, the Indian contract law now applies to the entire territory of India, including Jammu and Kashmir.

Contracts and partnership laws are included in the concurrent list, which means that both the central and state governments have the power to enact legislation in these areas. Therefore, either the central government or the state governments can legislate on contract and partnership laws, making them applicable to all states. This background information is important to understand the legislative jurisdiction and applicability of contract law in India. (Refer Slide Time: 26:14)



All contracts are agreements, but all agreements are not contracts



The fundamental principle in understanding the basic principles of contract law is the statement "All contracts are agreements but all agreements are not contracts." all contracts are agreements, which means that for a contract to exist, two or more parties must come together and reach an agreement. Traditionally, they would meet in person and agree on the same thing in the same sense. This principle is known as consensus ad idem, which means a meeting of minds. Once they reach a mutual agreement, a contract is formed.

An agreement is crucial for a contract, but not all agreements are considered contracts. The reason for this is that for an agreement to be treated as a contract, it must fulfill certain essential conditions.

Firstly, a contract requires an offer from one party and an acceptance from the other. This offer and acceptance are essential for the formation of a contract.

Secondly, there must be free consent of the parties involved. It means that the parties should not be coerced or forced into making the offer or accepting it. Consent should be given voluntarily.

Thirdly, when the offer and acceptance are made, both parties must have the intention to enter a legal and commercial relationship. This intention distinguishes agreements made in a social context from contracts. Social contracts or obligations may exist, but they may not necessarily be enforceable as contracts.

For instance, an agreement between a husband and wife. It is still an agreement where two parties come together and discuss the same matter in the same sense. However, due to their

social relationship, this type of agreement between a husband and wife or a father and son is not necessarily a contract. It remains an agreement but not a contract. For an agreement to become a contract, the parties involved must have the intention to create a legal obligation. This is why we refer to agreements with a commercial nature as contracts, whereas agreements with a social nature are simply agreements.

Now, when it comes to making an agreement, it is a simpler process and one does not necessarily need to be competent. However, if that agreement is to be treated as a contract, the parties must be competent to enter a contract. According to the law, one must be above 18 years old and of sound mind to be considered competent. This principle also applies to companies; their competency to enter into a contract needs to be assessed. This is crucial; otherwise, it will be an agreement, but not a contract.

Furthermore, consideration is a vital element of a contract. Without consideration, there can be no contract. Consideration refers to something of value that is exchanged between the parties involved. It serves as the basis for supporting the contract, and only with consideration can an agreement be treated as a contract.

Finally, it is important to understand that agreements can only be treated as contracts if they are valid and have a lawful object. When an agreement is treated as a contract, it means that you have the rights and remedies provided by the law, and you can seek protection from the court in case the other party breaches the contract. However, in a simple agreement, the parties have to bear their own risks because not all types of agreements are supported by the law. The law only supports those agreements that meet the requirements to be considered and enforced as contracts.

For an agreement to be considered a valid and enforceable contract, it must comply with certain essential conditions of the law. Without meeting these conditions, an agreement remains just an agreement and not a contract. It is important to understand that while all contracts are agreements, not all agreements qualify as contracts.

The first step towards enforceability is reaching an agreement between the parties. This agreement must be made with the intention to create legal obligations, and the consent of the parties should be freely given. Additionally, the parties involved must be competent to enter a contract, there must be consideration exchanged, and the object of the contract must be

lawful. Only when these essential conditions are met can an agreement be recognized as a contract and be enforceable under the law.

These principles were initially developed for oral and implied contracts, as well as paper contracts. In oral contracts, the fulfillment of these conditions needed to be proven before a judge could intervene. Paper contracts were introduced to provide evidence of the agreement, the competency of the parties, and the terms and conditions of the contract.

With the advancement of technology, we now have electronic or digital contracts, where parties may not even meet face to face. However, even in modern forms of contract, these basic principles still hold true. Failure to fulfill these conditions can prevent the enforcement of contracts, including emerging forms such as smart contracts.

It is crucial for parties entering into contracts to ensure that they fulfill these essential conditions if they want their contracts to be considered valid and receive the protection of the courts of law.