

## Vanishing Contract Law

English contract law provides the invisible framework that underpins and enables much contracting activity in society, yet the role of the law in policing many of our contracts now approaches vanishing point. The methods by which contracts come into existence, and notionally create binding obligations, have transformed over the past forty years. Consumers now enter into contracts through remote and automated processes on standard terms over which they have little control. This book explores the substantive weakening of the institution of contract law in a society heavily dependent on contracts. It considers significant areas of contracting activity that affect many people but that escape serious and sustained legal scrutiny. An accessibly written and succinct account of contract law's past, present and future, it assesses the implications of a diminished contract law and the possibilities, if any, for its revival.

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## Common Law in the Age of Contracts

CATHERINE MITCHELL

University of Birmingham



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## Preface

Contracts are a powerful instrument in modern society. They are a mechanism through which we can be conferred with new capacities and capabilities, a way of changing status and generating rights and obligations that did not exist before. Many of our most important relationships are created, structured or constituted by voluntarily assumed, consensual and legally enforceable obligations. Contracts are the means by which we not only satisfy many of our day-to-day needs but also pursue the larger projects and plans that confer meaning on our lives. Contract norms permeate our existence, suffusing our interactions with symbolism and imagery: haggling and handshakes; small print and signatures; promising and performing; commitments and constraints. Contract trappings are so familiar to us that it is easy to overlook the significance of contract itself, particularly when much modern contracting activity is conducted through automated methods in online environments. The ambivalent attitude that most of us display towards contracts – an inevitability that must be tolerated in order to get what we want – means that the prevalence of contract norms in society, as well as the implications of their increasing dominance, mostly escapes our notice.

It seems it has also escaped the notice of the law of contract. The English law of contract provides an invisible framework that underpins and enables contractual liability. However, the role of general contract law in policing our contracts approaches vanishing point. Against the backdrop of the contractualisation of society, this book examines the role of English contract law in regulating modern contracts. It is prompted by the observation that, notwithstanding the expansion of the role of contract in all our lives, the general principles of contract law as applied and developed by the judiciary are increasingly formal and minimalistic in character, reverting to the precepts of

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the much-maligned classical contract model. Though contract law has been pronounced dead, or dying, many times previously, it is clear that contracting itself is very much alive and well – just not regulated (much) by traditional contract law. This work will examine the contraction of contract law, draw out the effects of it and assess the possibilities, if any, for the revival of common law. The substantive weakening of the institution of contract law in a society heavily dependent on contracts may not be regarded as a problem – there are plenty of other forms of regulation that can substitute for the law. But I believe it has implications that should be identified and addressed. I have tried to undertake this task here. I hope anyone with an interest in contract law will find something of value in it.

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