

# Index

Adams, John N., 40 adjudication, 146 'Agree', box, 4 Al Nehayan v. Kent, 186 alternative dispute resolution (ADR), 152, 157-158 Amazon, 158 appeal courts, 5 Arbitration Act, 79, 199 Arnold v. Britton, 8 Australia, courts in, 191 automation, 160-174, 181 autonomy, 26 Baker, J. H., 28 basis clauses, 64 Bates v. Post Office Ltd, 182, 185, 198 Beavis v. ParkingEye, 8 Becher, Shmeul I., 79 Belmont Park Investments PTY Ltd v. BNY Corporate Trustee Services Ltd, 97 Benoliel, Uri, 79 Bhasin v. Hrynew, 186, 189 bias, 160 Bitcoin, 172

blockchain, 164, 168, 170

Braganza v. BP Shipping Ltd, 57, 196

Browne-Wilkinson, Lord, 127, 177

Boustany v. Piggot, 127

Brexit, 50, 148

ABC v. Telegraph Media Group Ltd, 138-139

acknowledgement of non-reliance, 11

C M Callow Inc v. Zollinger, 189 Campbell, David, 39 Canadian Supreme Court, 189-191 car parking, 83 Cavendish v. Makdessi, 57, 59, 69, 132 CFH Clearing Ltd v. Merrill Lynch International, 96 CFL Finance Ltd v. Laser Trust and Gertner, 117 Chitty, Joseph, 29, 58 Civil Justice Council, 153 Civil Procedure Rules, 163, 199-200 Claims Portal, 163, 169, 172 classical contract law, 28-30, 34, 36, 38, 43, 48-49, 177, 188, 204 lack of differentiation, 67 Classical Period, contract law in, 30-32 classical-law, 53 click-wrap, 82 Cloatre, Emilie, 154 coding, 171 Collins, Hugh, 31, 39, 44 commercial contract, 11 Commercial Court, 148 commercial exchange, 202 commercial law, 147 commodity, law as, 147-152 common law, 2, 5-9, 35, 46, 86, 148, 204 criticism of, 6 developing, 5-9

Brownsword, Roger, 40, 46

browse-wrap, 82



# 228 Index

common law, (cont.)	transactions, 73
innovations, 5–9	transformations of, 1-5
legacy of, 4	trends, 1-5
legitimacy, 5-9	in 21st century, 1-5
loan contracts and, 132	contracting state, 48
primary role of, 7	contractual justice, 44
principles produced by, 9	contractualisation, 74
redundancy, 5-9	assuming contractual liability, 76
reviving, 5–9	contract law contribution to, 76
rule engagement, 53	defining, 73
Competition and Markets Authority (CMA),	effect of, 73
85, 89	objectivity, 76
Competition Appeal Tribunal, 199	standard form contracting, 76
consideration, 116-119	Coronavirus Act, 180
consumer contracts, 40, 67-72	Corporate Insolvency and Governance Act,
Consumer Credit Act, 35, 48, 117, 122-124,	179
131	Court of Appeal, 110, 119, 138, 199
consumer debt, 116-119	courts, 37, 50, 57, 127, 142, 205
Consumer Rights Act, 2, 79, 81, 84, 102, 126,	anti-adjudication climate, 153
128, 131, 199	consumer contracts in, 120–128
Consumers' Association, 90	developing contract law, 176
Contract (Rights of Third Parties) Act 1999, 9	on freedom of contract, 26
contract law, 1-5, 49, 54, 170	government policy, 175
affecting society, 146	judicial powers, 120–128
alignment of, 73	limits of, 20
capture by commercial interests, 98	long-term agreements, 185
in Classical Period, 1–5	privatising justice, 120–128
contribution to contractualisation, 1–5	relational contracts, 185
death of contract law, 49	technological advances and, 120-128
developing, 17	Covid-19, 153, 158, 179
doctrine, 122	credit, 120–121, 125
Formalist revival in, 1–5	Credit Derivatives Determinations Committee
function of, 7	(DC), 154
future challenges for, 1–5	Crestsign Ltd v. National Westminster Bank,
individualism and, 75	108
interpretation, 1–5	Crowther Report on Consumer Credit, 123
liberal contract law, 1–5	cryptocurrency, 172
non-disclosure agreements and, 136	er/productions/, 1/2
perception of, 149	Dagan, Hanoch, 10, 47
pre-Classical era, 1–5	Davies, Paul S., 55
private ordering and, 1–5	Debt Management Plans (DMP), 118
replacing, 1–5	Debt Relief Orders, 117
	decentralised delivery, 74
reversion to classical-style model, 3 reviving, 1–5	decision-making, 13
self-exclusion of, 53	defaults, 25
	Department of Trade and Industry, 125
through gaps, 1–5	Department of fraue and moustry, 125



#### Index 229

Digital Dispute Resolution Rules, 169 Dingwall, Robert, 154 Diplock, Lord, 37 Director General of Fair Trading v. First National Bank, 67 Director-General of Fair Trading, 68 discretionary power, 195 dispute resolution, 3, 157 distributed ledger technology (DLT), 165-166, Dunlop Pneumatic Tyre Co Ltd v. New Garage

and Motor Co Ltd, 69 Durkheim, Emile, 72

dynamic market individualism, 40

eBay, 158 Education (Student Loans) Act, 129 Employment Rights Act, 135 Employment Tribunal, 142 Enterprise and Regulatory Reform Act, 135 Equality Act (2010), 2 Equality and Human Rights Commission, 135 equity Formalism and, 60-62

equity, marginalisation of, 60-62 estoppel, 62-63, 65 Ether, 172 European Union, 149 Europeanisation, 43

Financial Conduct Authority (FCA), 64, 89 divergence between law and regulation, 105 mis-selling swaps, 105-113 Principles for Business, 179 Financial List in the High Court, 147 Financial Ombudsman Service, 155 Financial Services and Markets Act, 106 First Tower Trustees Ltd v. CDS (Superstores International) Ltd, 65 Fiss, Owen M., 158 formalisation, 74

formalism, 53-54 revival of, 62-67 in service of, 62-67 France, 148

free market, 56

freedom of contract, 26, 54, 73, 94, 143, 176 Freedom of Contract and the New Right, The, future challenges, contract law, 146 automation, 146 law as commodity, 146 privatising justice, 146

Gardner, John, 72, 76 Gartside v. Outram, 140 Germany, 148

Gibbon v. Manchester City Council, 163

Gilmore, Grant, 34

Global Restructuring Group (GRG), 111

Goetz, Charles J., 187 good faith, 188-189, 191 Green v. Wright, 119

Groceries Code Adjudicator, 100, 155 Groceries Supply Code of Practice, 100, 155

Grocery Code of Practice, 178 Group Litigation Order, 198 Guest, AG, 33

Hadley v. Baxendale, 56 Hart, H L A, 48 Hedley Byrne principles, 106 Hedley, Steve, 19 Heller, Michael, 10 Hinchly, Victoria, 150 Hobhouse, Lord, 57

illegitimate pressure, 60

Hoffman, David A., 143 House of Commons Treasury Committee, 133

Individual Voluntary Arrangements (IVAs), 117-119 Insolvency Act (1986), 2 International Swaps and Derivatives Association (ISDA), 92, 95-99 Investors Compensation Scheme, 56 ISDA Master Agreement, 95-99

joint operating agreement (JOA), 184 judges. See courts justice, privatising, 152-160



### 230 Index

Kabab-Ji SAL v. Kout Food Group, 183 neo-formalism, 46, 48 Netherlands, 148, 191 Lampmann, Eric, 143 Neuberger, Lord, 150 'no oral modification' clause, 12 Land Registration Act, 81 'no reliance' terms, 181 Law Commission, 36 ledgers, 164 Nolan, Donal, 39 Lee, James, 62 non-commercial contracting, 115-116, 152 Legal Aid, Sentencing and Punishment of non-disclosure agreements (NDAs), 144 Offenders Act (2012), 16 non-interference, 93 Legal Statement on Cryptoassets and Smart Contracts, 165 objectivity, 76-78 Leggatt, Lord, 182-183 Office of Fair Trading, 67 Office of Fair Trading v. Abbey National plc, 70 legitimate interest, 21 Lehman Brothers Holdings Inc., 97, 151 One Parking Solution Ltd v. W, 84 liberal contract law, 54-55, 57 over-the-counter (OTC) derivatives, 95-96, consumer contracts, 54-55 98 equity, 62 interpretation, 54-55 Paragon Finance plc v. Nash, 68, 195 public policy, 54-55 ParkingEye v. Beavis, 68-69 party autonomy, 204 litigation, 149, 151 litigation, limitations of, 198-201 Patel v. Mirza, 58, 176, 192 Lomas & Ors v. JFB Firth Rixson Inc, 95 payday lending, 120-128 penalty rules, 59, 61, 69 Macneil, Ian, 33, 38, 78, 177, 180 Peninsula Securities Ltd v. Dunnes Stores Maine, Henri, 72 (Bangor) Ltd, 141 Photo Productions Ltd v. Securicor Transport Mance, Lord, 173 Mansfield, Lord, 27, 29 Ltd, 37, 54 market-specific regulation, 44 Plevin v. Paragon Personal Finance Ltd, 125 Mastercard Incorporated v. Merricks, 198 policy assessment, 21 McBride, Nicholas J., 204 Pothier, Robert Joseph, 29 Mik, Eliza, 82 pre-Classical Period, contract law in, 27-29 Millett, Lord, 67 private law theory, 19 Ministry of Justice Claims, 162 private legislation, 88 misrepresentation, 17 private ordering, 1, 87-91 Misrepresentation Act 1967, 65 privatisation, 99 mis-selling. See swaps public interest argument, 200 moneylenders, 131 public policy, 11, 58-60 NDAs and, 58-60 Moneylenders Acts, 122-123 Moorhead, Richard, 150 Quoine Pte Ltd v. B2C2 Ltd., 171-172 MSC Mediterranean Shipping Co SA v. Cottonex Anstalt, 190 Multiservice Bookbinding Ltd v. Marden, 127 Raczynska, Magda, 55 reasonable expectation principle, 52 National Westminster Bank plc v. Morgan, 37 'reasonable person' construct, 77 natural law theory, 27, 29 reciprocal fairness, 18 neo-classical law, 39-40 reciprocity, 190



## 231 Index

regulation, 45, 89–90, 92, 99–102
divergence between law and, 99–102
relational contract, 177–181, 186–188
developing, 177–181
relational theory, 38
relationality, 178
restitution, 34
Rise and Fall of Freedom of Contract, The, 19, 43
Rock Advertising Ltd v. MWB Business
Exchange Centres Ltd, 57, 116
rule of law, 54
rules, 93
Russell Adams v. Options SIPP UK LLP
(formerly Carey Pensions UK LLP), 109
Russell v. Cartwright, 186

Saab v. Angate Consulting Ltd, 139
Sale of Goods Act, 31
Sales, Lord, 173
Samuel v. Newbold, 123
Scott, Robert E., 187
Secretary of State for Education, 129–130
self-invested pension plan (SIPP), 109
Shogun Finance Ltd v. Hudson, 57
Simpson, AWB, 33
Singapore Court of Appeal, 171, 173
Singapore International Commercial Court, 172
smart contract, 167–168, 170
Smith, Stephen A., (Atiyah), 30–31, 34,

37 society, contractualisation of, 72–76 Springwell Navigation Corp v. J P Morgan Chase Bank, 64

standard form contracting, 78–81 Standish v. Royal Bank of Scotland plc and others, 111 static market individualism, 40

student loans, 133–139 Student Loans Company (SLC), 129, 131

Student Loan Contract, 75, 130

Suisse Atlantique, 207 Sumption, Lord, 62, 77 Supreme Court, 11, 57–58, 61, 70, 116, 125, 141–142
Supreme Court of Judicature Acts, 29
Susskind, Richard, 158–159
Swain, Warren, 58
swaps, 105–113

Tan, Zhong Xing, 22

TAQA Bratani Ltd v. Rockrose, 184

Teaching and Higher Education Act, 129–130
terms and conditions, 77

Thornton v. Shoe Lane Parking Ltd., 84

Times Travel (UK) Ltd v. Pakistan
International Airlines Corporation, 60

Tort theory, 49

Toulson, Lord, 58, 192

Trakman, Leon E., 19

UK Jurisdiction Taskforce (UKJT), 165
UN Convention on the International Sale of Goods, 87
Unfair Contract Terms Act, 35, 37, 42, 45, 51, 54, 108
Unfair Terms in Consumer Contract Regulations, 69–70
unfairness, 81
UTB LLC v. Sheffield Utd Ltd, 186

Uber Technologies Inc v. Heller, 191

values, reasserting, 35, 53–54
consumer contracts, 53–54
contract interpretation, 53–54
contractualiation of society, 53–54
equity, 60–62
liberal contract law, 53–54
public policy, 53–54
Varuhas, Jason N.E., 50
victimisation, 142

Waddams, Stephen, 61, 71 Watford Electronics Ltd v. Sanderson CFL Ltd, 55 Weber, Max, 72 Wednesbury-reasonableness, 45, 196 welfarism, 40–41, 43, 46 Welfarism in Contract Law, 41



# 232 Index

Wilkinson-Ryan, Tess, 80 Williams v. Roffey, 56 Wilson, Lord, 142 Wilton & Co v. Osborn, 122 Yam Seng Pte Ltd v. International Trade Corporation Ltd., 181

Yip, Man, 62