

РАЗВИТИЕ СИСТЕМЫ КОНТРАКТНОГО ПРАВА АНГЛИИ

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В мире выделяются две основные традиции права: общее право и гражданское право. Общее право используется в таких странах, как Англия, Уэльс и Северная Ирландия, находящиеся в составе Великобритании, республика Ирландия, США, Канада и многие другие англоговорящие государства. Общее право не кодифицировано и основывается на доктрине прецедента – судебных решений, принятых ранее в подобных случаях. Прецеденты основываются на решениях судей и судебных процессах. В то же время, Общее право может опираться на статуты, законодательные решения. Председатель судебного состава определяет, какой прецедент должен быть применен к данному делу. Соответственно, роль судьи в странах, пользующихся Общим правом, крайне велика. Система Общего права значительно отличается от системы гражданского права. Для понимания разницы между ними изучены и проанализированы исторические факторы формирования системы общего права в Англии и выделены основные стадии этого процесса.

Ключевые слова: общее право, контрактное право, система права, развитие контрактного права, английское право.

In Roman law, the key feature of any contract is mutual agreement between parties, or the so-called “consensus”. In Europe, the notion of a contract as the agreement between parties was formulated only at the end of the 19th century. Along with it, in such countries as England and the USA, another concept was formulated; it was based on the principle that the ground of any contract is a promise made by one party to another. As I.V. Beklenisheva states, the main role here was given not to the mutual agreement between the parties, but to the promise made by one party to another, which another party expects to be fulfilled [1, C. 120].

Such approach can be accounted for by a complicated historical, political and economic situation in England, which had a direct influence on the development of the Law of Contract.

Many Russian and foreign scholars have studied the historical aspects of English Contract Law, for example: K.K. Yaichkov, A.S. Komarov, I.V. Beklenisheva, A.D. Koretsky, R.O. Halfina, V. Anson, F. Pollok, E.A. Farnsworth, Konrad Zweigert, Hein Kutz and others [9-10].

Their studies have revealed that in historical legal documents great attention

is paid to regulating issues concerning trespassing, however next to nothing is written about contract obligations [2, C. 7]. According to R.O. Halfina, in Anglo-Saxon Law there was not any notion like “a contract”, however single exchange acts based on agreements took place and were under primitive juridical protection [3, C. 13].

In the late 11th century, the Norman Conquest put England closer to European countries and contributed to the development of the Roman law in the country [4, C. 351–360]. This period witnessed the emergence of economic, political and cultural ties between England, France, Germany and Spain; exchange links resulted in a growing need for contracts and agreements.

The strongest influence of the Roman Law was in the 12th-13th centuries, when the principles of Roman law were thoroughly studied and described in literature. Roman Law was taught at universities and attempts to establish English law on its basis were made. However, according to R.O. Halfina, England was not economically ready to adopt all the ideas and principles of the Roman law; since the exchange relationship was just in an embryo state, economic ties were weak and

social relations were still feudal [3, C. 26]. Even with the expansion of interstate relations, with the development of the exchange and with growth of cities, the principles of the Roman contract law were not adopted by England. It came as a result of the struggle against the influence of the Roman Catholic church, which took place in the 14th and 15th centuries. R.O. Halfina states that one of the features of the struggle was limiting jurisdiction of the church courts, where the Roman law was widely used [3, C. 27].

Thus, the regulation of contract relations in England developed within the Common Law system, was formulated in Royal Courts and based on traditions, customs and legislation of the Anglo-Saxon period. In England, there were three Common Law Courts: Court of King's Bench, Court of Common Pleas and Court of the Exchequer of Pleas. The first one dealt primarily with criminal cases, the second – with the civil ones and the third – with taxes and fees. However, there was no strict distribution of duties.

Another typical characteristic of English law lies in the fact that apart from Common Law there is another branch – Law of Equity. According to V. Anson, this branch was formed in the second half of the 14th century and was based on the decisions of Chancery. This law was more modern and flexible and later the opposition between Common Law and Law of Equity played a significant role in the formation of the English Contract Law system [5, C. 6].

In the 13th century there appeared two forms of action which defended the rights which can now be called “contract”. These were “covenant action” and “debt action”. The covenant action was accepted in courts only in case the agreement between the parties was written and sealed in wax. R.O. Halfina asserts that it was a significant step forward in the development of the English Contract Law, since for the first time in history it was formally acknowledged that an agreement between

parties brought about certain responsibilities [3, C. 37].

However, according to M.S. Fedorko, the covenant action included only official agreements, thus contradicting the idea of the informal exchange of promises: *“иск “о соглашении” признавал только формальный договор, чем, по нашему мнению, противоречил идее неформального обмена обещаниями”* [6]. Nevertheless, the covenant action laid the basis for formal contracts in modern English law.

The debt action presupposed that the respondent had money or property of the claimant. The responsibility of the respondent consisted in receiving certain material benefit (called *quid pro quo*) and providing certain service or benefit to the claimant. The respondent was found guilty in case he took something from the claimant but failed to fulfil his promise. However, the debt action could not be started if it was impossible to prove that the respondent received any money or property from the claimant. Later, courts expanded the sphere of use of this action so that anyone could claim that their money, material property or anything that was of significant value for the respondent should be returned, including the provided service [1, C. 24].

The debt action had many drawbacks. Firstly, it had no legal force in case promises to perform something in future were given. Secondly, the claimant could receive only a certain sum of money, the repaid debt, etc., but there was no compensation for losses caused by the failure of the respondent to fulfill the promise, even if the losses were considerable. Thirdly, the respondent could escape responsibility by means of denying his debt on oath and by having witnesses confirming his words. Moreover, the debt action could only be started against the respondent but not against his heirs. Apparently, the debt action was hardly effective when defending contract relations and, thus, from the second

half of the 16th century it started to go out of use.

Thus, it can be stated that covenant action and debt action laid the foundations for the beginning of legal contract relations. However, many authors follow the point of view that the introduction of trespass action marked the beginning [3, C. 41–57]. This action was less formal compared to the abovementioned ones and initially it was applied only in cases of serious trespasses. However, with time, the sphere of its use was expanded, so it began to be applied in order to compensate losses.

Another type of trespass action was the one called “deceit on the case”. It was widely used in the 14th – 15th centuries. According to it, each vendor was responsible for the quality of his goods [3, C. 54].

At the end of the 15th century, the courts began to regard respondent’s failure to fulfill the promise as the “assumpsit action” concerning the indemnity of losses. Such type of action defended the interests of the party which fulfilled its part of promise and thus, could receive the compensation of losses. An example of such an action was Slade’s Case (The details of the case are as such: John Slade (plaintiff) grew wheat and rye and sold the wheat and rye to Humphrey Morley (defendant). Morley promised to pay Slade 16 pounds in return. Morley did not pay, and Slade brought an action on the case on assumpsit. Morley argued that assumpsit was not a proper action. (<https://www.quimbee.com/cases/slade-s-case>), which, according to R. David, was the actual beginning of English contract law [7, C. 263]. R.O. Halfina asserts that this case was of a significant importance, as for the first time, a promise was legally defended [3, C. 62].

The English Contract Law was formed completely at the beginning of the 17th century. The assumpsit action was used to defend all the informal promises, whereas the covenant action defended all formal contracts. After the reform of the 1875, when all the actions

were abolished, a number of laws were introduced which not only did consolidate the old principles of the common law, but also brought certain innovations. Still, Common Law, due to its precedent nature, could not completely get rid of old principles and provisions, contained in old judicial decisions [2, C. 10].

Thus, it can be concluded that a number of factors had a direct influence on the formation of the English Contract Law. Firstly, it was the rapid development of the exchange relationship in the 12th – 13th centuries, which resulted in the emergence of two types of action: the covenant and the debt one. These actions defended the rights, which now can be defined as “contract” ones. Despite many positive aspects, these actions had drawbacks, the major of which was their ineffectiveness to specify the responsibility of the parties in informal promises. Later on, other types of actions emerged, such as trespass and the assumpsit one. Thus, all these forms laid the basis for modern English Contract Law.

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DEVELOPMENT OF ENGLISH CONTRACT LAW SYSTEM

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There are two main legal traditions in the world – Common Law and Civil Law. Common Law is used in England, Wales and Northern Ireland in the UK, the Republic of Ireland, the USA, Canada and many other English-speaking countries. Common Law is not codified. It is based on the doctrine of precedence: judicial decisions that have been previously made in similar cases. Precedents are binding upon the judges and the court procedure. However, sometimes Common Law relies on statutes, which are legislative decisions. The presiding judge determines what precedents are to be applied to a new case. In consequence, judges play an enormous role in the countries with the Common Law tradition. Common Law system greatly differs from that of Civil Law. To understand the difference between the two is it important to analyze and study historical factors under which Common Law system was formed. The article describes the main factors that had direct influence on the development of Common Law system in England and singles out main stages of this process.

Keywords : common law, contract law, legal system, the development of contract law, English law.

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