

FREEDOM OF CONTRACT:
AN OVERVIEW

by

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PREFACE

The paper deals with the discussion on the perspective of Freedom of Contract. In the introduction the writer has discussed the purpose, scope and limitation of study. Due to limited time and space the writer has limited the study on the outline of the Freedom of Contract and its restrictions. The writer has also laid down the rationale behind the restrictions on the Freedom of Contract.

Most of the materials in the writing of this paper were collected through research and references made from various textbooks, journals and articles which provided invaluable primary sources.

Limited time and finance for the project paper presents a setback. Therefore the scope and details of the study are presented selectively in order to maintain a reasonable length.

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CHAPTER I

WHAT IS FREEDOM OF CONTRACT

Literally the word freedom means personal or civil liberty of action. In this context the 'freedom of contract means that the parties to a contract in the sense make law for themselves, they can make what rules they like in respect of the subject matter of their agreement. Another concept of freedom of contract was that contracts were the outcome of a free choice and this requires elaboration. One sees the influence of political and economic theories at work, for the freedom of choice which the courts were thinking of was freedom in a very restricted sense. It was freedom in the sense that nobody was bound to enter into any contracts at all if he did not choose to do so, freedom in the sense that in a competitive society every one had a choice of person with whom he could contract, and freedom in the sense that people could make virtually any kind of contract as any terms they chose.¹ But the emergence of standard form contract quickly dispelled this idea of contractual freedom and it is now seen that the bargaining powers of the parties may be so unequal that one can virtually dictate terms to the other. In Chappeiton² v. Barry UDC the plaintiff wished to hire two deck chairs, the chairs were stacked near a notice which read 'Hire of chairs 2d per season of 3 hours. The plaintiffs took the chairs obtained two tickets from the attendant which he put in his pocket without reading. When he sat it collapsed and he was injured. He sued the council who