

Секция «Английский язык и право (на английском языке) только студенты
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The Doctrine of Good Faith under English Common Law

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English common law unlike many other jurisdictions of both civil and common law traditions does not recognize overriding duty to act in good faith when concluding and performing contracts. However, the absence of a general principle requiring parties to act in good faith does not mean that this is not a problematic issue for English courts. English common law imposes duty to act in good faith in a number of specific types of contracts e.g. contracts of employment, insurance contracts and agency agreements. Moreover, English courts will enforce express contractual terms requiring parties to act in good faith and, according to recent cases, they also will imply such terms into commercial contracts in certain circumstances.

Lack of unified definition

The content of the duty of good faith depends on contractual context [7]. Generally, it is extended beyond a mere requirement of honesty (a duty not to knowingly provide false information) and includes a requirement of fidelity to the parties bargain. This means complying with reasonable standards of fair dealing, being faithful to the agreed common purpose, and acting consistently with the justified expectations of the parties. However, the duty of good faith does not require parties to subordinate their self interest in the strict manner required by fiduciary duty [10] or to give up a freely negotiated advantage clearly embedded in the contract [11].

Express good faith provision

The courts apply a restrictive approach when interpreting good faith clauses, that is widely criticised [1]. The fact that a good faith or similar provision is included in the contract does not guarantee that the courts will construe the clause as imposing a general duty of good faith upon the parties [8, 9]. The reasons for such construction may be the following: a duty to act in good faith is considered functionless where there was a warranty to perform in any event [6]; the language of the provision is deemed not to support a general duty of good faith [9].

Implied duty of good faith

In 2013 Leggatt J in *Yam Seng Pte Ltd v International Trade Corporation Ltd* held that a duty of good faith could be implied into ordinary commercial contracts (e.g. as opposed to contracts of a fiduciary nature). That was the most significant recent development in this area. Leggatt J. emphasised that so-called “relational” contracts may “require a high degree of communication, cooperation and predictable performance based on mutual trust” (e.g. joint venture agreements, franchise agreements and long-term distributorship agreements) and thus may be subject to an implied duty of good faith. Interestingly, Leggatt J. stated that English law have not reached the stage where it was ready to recognise an implied duty of good faith in all commercial contracts, even as a default rule.

This approach was criticised by many judges who are of opinion that there are absolutely no place for the doctrine at issue in English law, inter alia, because it could be used “to undermine

the terms in which the parties have reached agreement” [3]. However, a number of court decisions confirmed the more limited approach that, in the context of “relational contracts”, a general duty of good faith may be implied in fact [4, 5]. Yet, at the theoretical level this approach is also challenged by some specialists arguing that super-adding of an obligation of good faith where general law implies a duty to co-operate is pointless [2].

In conclusion, it is likely that express good faith obligations, whilst enforceable, will continue to be construed by courts very narrowly. In terms of contract clauses, a specific contract clause would be more likely to be enforceable than a general duty to act in all respects in good faith. English courts, generally, are willing to imply the duty of good faith into “relational contracts”, however, difficulties may arise when determining whether the contract in question is “relational” in nature.

Источники и литература

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- 4) Globe Motors Inc v TRW LucasVarity Electric Steering Ltd [2016] EWCA Civ 396
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- 6) Fujitsu Services Ltd v IBM United Kingdom Ltd [2014] EWHC 752
- 7) Yam Seng Pte Ltd v International Trade Corporation Ltd [2013] EWHC 111
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- 9) TSG Building Services Plc v South Anglia Housing Ltd [2013] EWHC 1151
- 10) CPC Group Ltd v Qatari Diar Real Estate Investment Co [2010] EWHC 1535
- 11) Gold Group Properties Limited v BDW Trading Limited [2010] EWHC 323