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IMPLIED CONTRACTS: DOCTRINAL DEVELOPMENT, JUDICIAL TREATMENT, AND CROSS-JURISDICTIONAL APPLICATION

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I. INTRODUCTION

Not every binding agreement is committed to paper. Contract law has long recognized that enforceable commitments can spring from conduct, surrounding circumstances, and the reasonable inferences drawn from them [1]. These are implied contracts—obligations the law upholds even when no one sat down to draft an express term—and they serve a critical gap-filling role in commercial life where formal agreements are absent or incomplete [2].

Consider an everyday scenario: a commuter hails a taxi, states a destination, and the driver begins the journey. No written agreement is exchanged, yet both sides understand that the passenger will pay the fare upon arrival. The law treats this as an enforceable contract because the essential elements—offer, acceptance, consideration, and an intention to create a legal relationship—are all present, merely inferred from conduct rather than spoken or written [2].

Two broad categories are recognized across common law systems. *Implied-in-fact* contracts arise from the parties' mutual conduct and share every essential element of an express contract [2]. *Implied-in-law* contracts, conventionally called quasi-contracts, are not true contracts at all; they are judicial constructs imposed to prevent one party from being unjustly enriched at the other's expense [4]. Both categories have evolved substantially from their ancient roots and continue to be reshaped by judicial interpretation and statutory reform across jurisdictions.

This blog traces the doctrine through four stages: its historical antecedents in Roman, medieval English, and pre-colonial Indian law (Section II); the statutory framework established by the Indian Contract Act of 1872 (Section III); judicial treatment with key case law from Indian courts (Section IV); and a comparative perspective spanning five major common law jurisdictions (Section V).

Keywords—Implied contracts, quasi-contracts, business efficacy, Indian Contract Act, unjust enrichment, good faith, comparative contract law

II. HISTORICAL ANTECEDENTS

A. Roman Foundations

The conceptual roots of implied contracts lie in Roman jurisprudence, which classified enforceable agreements into verbal, real, literal, and consensual categories [3]. Early Roman law demanded strict compliance with prescribed formulae—the verbal contract of *stipulatio*, for example, required precise question-and-answer exchanges before any obligation arose. Over time, however, Roman jurists moved toward a more flexible outlook.

The principle of *bona fides* (good faith) was instrumental in this shift. It allowed courts to recognize that certain duties flowed from the nature of a commercial relationship itself, even where the parties had not explicitly articulated them. Sellers of goods, for instance, were

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understood to provide implied assurances regarding quality and fitness, on the reasoning that merchants should not profit from defective merchandise while buyers relied on their expertise [1]. This gradual transition from rigid formalism to consensualism—accepting that obligations could arise from conduct rather than ceremony alone—laid the intellectual foundation for the implied contract doctrines that would later develop across Europe and the common law world [3].

B. Medieval English Law

English common law charted its own path, though Roman influence remained visible. Before the emergence of a unified contractual framework, English courts operated on the principle that a bare promise, standing alone, did not give rise to an enforceable action. Something more was needed [3].

The action of *assumpsit* became the critical vehicle for change. Originally limited to cases of misfeasance—where a party performed badly rather than not at all—it gradually expanded to cover nonfeasance (a complete failure to perform). This expansion gave courts the ability to enforce promises inferred from the parties' conduct and the commercial context in which they dealt [3]. Alongside this development, the doctrine of consideration took shape as a prerequisite for contractual enforceability. Crucially, medieval courts accepted that implied promises could themselves constitute valid consideration, provided they arose naturally from the parties' conduct and mutual understanding [1]. The combined effect of *assumpsit* and the evolving consideration doctrine created a robust framework for recognizing binding obligations that had never been reduced to express terms.

C. Pre-Colonial Indian Traditions

Before the Indian Contract Act of 1872, the subcontinent operated under a plural legal framework comprising Hindu, Islamic, and local customary traditions. None of these systems provided a single, uniform code governing commercial agreements, yet each recognized forms of implied obligation in its own way.

Hindu jurisprudence, embodied in texts such as the *Katyayanasmriti*, contained detailed provisions on the deposit of raw materials with artisans (a practice known as *silpinyasa*). These provisions imposed implied duties of care and diligent performance on the artisan—obligations that foreshadowed the bailment rules later enacted in the Contract Act [1]. Islamic law, for its part, recognized implied obligations through the concepts of *urf* (custom) and *maslaha* (public interest), which permitted enforcement of agreements based on established commercial practice and the reasonable expectations of the parties. The principle of avoiding *gharar* (excessive uncertainty) further encouraged the development of implied terms that brought clarity and fairness to business dealings [3].

The coexistence of these diverse traditions created significant inconsistency and unpredictability. Different communities followed their own legal norms, and disputes involving parties from different traditions often lacked a clear resolution mechanism. This fragmentation created an urgent need for codification—a need that the colonial legislature would ultimately address through the Indian Contract Act.

III. THE INDIAN CONTRACT ACT 1872

A. Statutory Basis

The Indian Contract Act of 1872 was a landmark exercise in codification, bringing systematic organization to what had previously been a patchwork of personal and customary laws. The statute does not define the term 'implied contract' in so many words, but Section 9 draws the decisive line: where a proposal or acceptance is made in words, the promise is express; where it is made otherwise than in words, the promise is implied [1][2]. This straightforward provision establishes the legal basis for recognizing obligations that emerge from actions and circumstances rather than from written instruments or verbal statements.

Section 8 of the Act reinforces this principle. It provides that performance of the conditions of a proposal, or acceptance of consideration for a reciprocal promise offered with a proposal, is itself an acceptance of that proposal [1]. In practical terms, this means that a party who begins performing under an offer has effectively accepted it, even without saying a word. These two provisions together—Sections 8 and 9—underpin the vast majority of implied-in-fact contractual relationships encountered in everyday commercial practice.

B. Types of Implied Contracts

Implied-in-fact contracts are the more straightforward category. They arise wherever parties demonstrate mutual assent through their actions, despite never articulating the terms explicitly. The taxi ride discussed in the introduction is one example; another is the restaurant transaction, where ordering and consuming a meal implies an agreement to pay the listed price [2]. In every such case, the essential elements of a valid contract—offer, acceptance, consideration, and intent to create legal relations—are present but inferred from conduct rather than expressed in words.

Quasi-contracts operate on a fundamentally different logic. Governed by Sections 68 through 72 of the Act, they impose obligations by law regardless of whether any actual agreement exists between the parties [1][4]. Section 68 covers the supply of necessaries to persons incapable of contracting (such as minors or persons of unsound mind); Section 69 provides for reimbursement when an interested person makes a payment that another was bound to pay; Section 70 addresses non-gratuitous acts performed for another's benefit; Section 71 deals with the finder of goods; and Section 72 covers payments received by mistake or under coercion. The common thread across all five provisions is the prevention of unjust enrichment—ensuring that no person benefits unfairly at another's expense [5].

C. The Business Efficacy Principle

When courts are asked to imply a term into an existing contract, the standard they apply is business efficacy: a term will be implied only where it is necessary to make the agreement work in the manner both parties must have intended [4][6]. The origin of this test lies in the English case of *The Moorcock* (1889), where Bowen LJ held that courts should imply terms only when the contract would otherwise be unworkable [6].

Courts apply this power with considerable restraint. A term that is merely convenient, commercially sensible, or even highly desirable will not be implied unless it is truly necessary for the contract's functionality. The companion test—the 'officious bystander' standard from *Shirlaw v. Southern Foundries* (1939)—asks whether the proposed term is so obvious that any reasonable bystander, upon suggesting it, would be met with an impatient 'of course' from both parties [11]. Together, these two tests set a deliberately high bar for judicial intervention in contractual arrangements.

IV. JUDICIAL TREATMENT

A. Landmark Supreme Court Decisions

***Nabha Power Ltd. v. Punjab State Power Corp. Ltd.* (2018):** This decision is arguably the most important modern pronouncement on implied terms in Indian law.

The Supreme Court held that a contract should be read as it reads—according to its express terms—and that implied terms should be recognized only where there is strict necessity. The Court identified three tests that must be satisfied before a term can be implied: necessity, business efficacy, and the officious bystander standard. Importantly, the judgment cautioned that standardized principles should not be substituted for a careful assessment of the parties' actual commercial understanding [7].

***Satya Jain v. Anis Ahmed Rushdie* (2013):** Here the Court articulated the classic formulation: a term should be implied to give such business efficacy to the transaction as must have been intended by both parties acting as reasonable commercial persons. The test is applied restrictively—there must be positive evidence that both sides contemplated the term at the time of agreement, and any affirmative evidence against its existence defeats the implication entirely [8].

***Adani Power (Mundra) Ltd. v. Gujarat Electricity Regulatory Commission* (2019):** The Court confirmed that terms can be implied only when literal interpretation fails to give effect to the parties' intended result. A party facing commercial hardship cannot, on that basis alone, ask the court to write new obligations into an existing contract [9]. ***Energy Watchdog v. Central Electricity Regulatory Commission* (2017):** This decision reinforced the Court's purposive yet cautious philosophy, making clear that judicial caution in implying terms is not indifference to fairness but respect for the parties' own bargain [10].

B. Quasi-Contract Case Law

In *B.K. Mondal & Sons v. State of West Bengal* (1962), the Supreme Court applied Section 70 to hold that when a person receives and enjoys the benefit of a non-gratuitous act, the law requires compensation to the performer—even where no express contract exists [5]. The decision established that the obligation arises by operation of law and is rooted in the prevention of unjust enrichment rather than in any consensual agreement.

The Allahabad High Court's decision in *Durga Prasad*

v. Baldeo addressed a related issue, holding that consideration must move from the promisee rather than from a third party [1]. This ruling reinforced the boundary between genuine contractual relationships (which require mutual consideration) and the quasi-contractual constructs that courts impose to achieve restitutionary justice.

C. Contemporary Trends

The overall trajectory of Indian case law reveals growing judicial restraint. Modern courts emphasize that sophisticated commercial parties have ready access to professional legal drafting and should be held to the terms they expressly agreed upon [7][9]. The trend favors textual interpretation and minimal supplementation, influenced by global commercial norms where comprehensive contractual documentation is standard practice [18]. At the same time, courts have not abandoned their equitable role entirely—they retain the power to imply terms where genuine necessity is demonstrated, ensuring that the doctrine remains a living instrument of commercial justice.

V. COMPARATIVE PERSPECTIVE

TABLE I

Implied Contract Doctrine Across Jurisdictions

Jurisdiction	Primary Tests	Distinctive Feature
UK	Business efficacy; officious bystander	Restrictive; party autonomy paramount [3][11][12]
US	Meeting of minds; restitution	Generous quasi-contractual recognition [14][15][16][17]
Australia	Reasonable, necessary, obvious, clear, consistent	Implied duty of cooperation [3]
India	Statutory (Ss. 9, 68–72); business efficacy	Literal interpretation; statutory quasi-contracts [1][2][7]
Canada	Officious bystander; good faith	Implied duty of honest performance [13][19]

A. United Kingdom

English law provides the foundational model. Courts distinguish terms implied 'in fact'—arising where strictly necessary to give effect to reasonable expectations—from those implied 'in law,' which attach as necessary incidents of particular contract types [3][4]. The Supreme Court's decision in *Marks & Spencer v. BNP Paribas* underscored that implying terms is a distinct analytical exercise from construing express terms, governed by its own rules [3][12]. The English approach is deliberately restrictive: party autonomy comes first, and courts will not rewrite bargains under the guise of implication.

B. United States

American law recognizes implied-in-fact contracts formed through intentional conduct manifesting mutual assent, and quasi-contracts imposed to prevent unjust enrichment [14][15]. Two landmark instruments—the Uniform Commercial Code (§ 1-304) and the Restatement (Second) of Contracts—jointly impose a pervasive obligation of good faith and fair dealing in the performance and enforcement of all contracts [16][17]. The American system is notably more generous in its recognition of restitutionary claims than many other common law jurisdictions, reflecting a legal culture that places high value on preventing unfair advantage in commercial relationships [20].

C. Australia

Australian courts have synthesized English principles with local commercial requirements, applying a well-known five-part test: any implied term must be reasonable and equitable, necessary, obvious ('goes without saying'), capable of clear expression, and not contradictory of express terms [3]. A distinctive contribution of Australian law is the recognition of an implied duty of cooperation in bilateral contracts, reflecting the modern understanding that commercial relationships are partnerships requiring mutual support. Industry customs and established dealing patterns carry significant weight in determining implied obligations.

D. Canada

Canadian contract law has undergone a particularly notable evolution. The Supreme Court of Canada's landmark decision in *Bhasin v. Hrynew* (2014) established an overarching duty of honest contractual performance as an organizing principle of the common law of contract [13]. Canadian doctrine recognizes three bases for implying terms: custom or usage, legal incidents of specific contract types, and presumed party intention where necessary for business efficacy [19]. The good faith emphasis has created a framework in which implied obligations complement explicit terms to ensure overall fairness and commercial reasonableness—a development watched closely by other jurisdictions.

E. Synthesis

All five jurisdictions share the fundamental distinction between obligations arising from actual agreement and those imposed by law to prevent injustice. A common trend toward more restrictive application of implied term doctrines is evident, driven by the increasing sophistication of commercial drafting [18]. Yet significant differences remain—particularly in the treatment of good faith obligations, the generosity of restitutionary remedies, and the weight given to industry custom. Globalization exerts pressure toward harmonization, but each jurisdiction continues to reflect its own legal tradition and commercial culture in the way it handles implied contracts.

VI. Conclusion

Implied contracts remain indispensable to contract law's ability to deliver both fairness and commercial efficacy. From Roman *bona fides* through medieval *assumpsit* to the Indian Contract Act's statutory framework, the doctrine has repeatedly demonstrated its capacity to adapt enduring principles to shifting commercial realities.

The Indian judiciary's growing preference for literal interpretation and restraint in implying terms reflects the maturity of modern commercial practice, where parties are expected to articulate their bargains with precision. Yet this restraint coexists with the retention of equitable tools—particularly the quasi-contractual provisions of the Act—that ensure no party is left without remedy when unjust enrichment occurs. Meanwhile, developments in Canada and elsewhere show that the doctrine is not static; the expansion of good faith duties represents a significant counterbalancing trend.

The challenges ahead are considerable. Digital technologies are transforming how contracts are formed, performed, and breached. Cross-border commercial relationships are growing in volume and complexity. And the perennial tension between party autonomy and equitable intervention shows no sign of resolution. Meeting these challenges will require continued doctrinal evolution—but the implied contracts doctrine, having survived and adapted across millennia, appears well equipped for the task.

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