

# Business common law assignment

Law



Explain why it is important to have an intention to create legal relations when making a contract and why is consideration of the parties to the agreement necessary-: Intention to create legal relations can be defined as follows. ‘ An agreement will only become a legally binding contract if the parties intend this to be so.

This will be strongly presumed in the case of business agreements but presumed otherwise if the agreement is of a friendly, social or domestic nature. ‘ Source (HNC unit 5 Business law course book) In determining whether the parties intend their agreements to be legally binding the court is guided by two presumptions. Parties to a domestic or social agreement do not intend to be legally bound. Parties to a business agreement intend to be legally bound.

These are presumptions only and can be rebutted by sufficient evidence to the contrary. Domestic and Social Agreements *Balfour v Balfour* (1919) *Merritt v Merritt* (1976) *Simpkins v Pays* (1955) Business Agreements *Jones v Vemons Pools* (1938) Source (HNC Business law notes) One of the essential elements in the creation of a binding contract, this intention is implied by the fact that it is not expressly denied. If expressly denied (as in a so-called gentlemen’s agreement) the contract may not be enforceable.

Consideration {text: bookmark-start} {text: bookmark-end} If you look at a legal agreement or contract, you will generally see a phrase in the opening paragraph indicating that the parties agree on an amount of money or “ other good and valuable consideration. ” The concept of consideration has a long history in the law, but simply means something of value. An exchange

of consideration between the parties to an agreement is necessary for the agreement to be legally enforceable. Each party to an agreement must both give and receive something of value in order for a contract to be legally enforceable.

The “ something of value” may be either something that the person actually hands over (that they would not otherwise be obligated to hand over) or some right that they give up (that they would otherwise have been entitled to exercise). For example, if you agree to buy a car for cash, you agree to deliver cash to the seller, and the seller agrees to deliver the car to you. In that situation, there is legal consideration, or sufficient value, for the agreement to be enforceable. Another example is a mutual release of claims. Suppose you accidentally hit a parked car, and you agree to pay the owner of the car ? 00 in cash to settle. In that case, you agree to deliver cash to the owner of the car, and the owner agrees that he or she will not file a lawsuit against you. (In such a situation, always get a written release of liability, or “ release,” from the owner of the car to prove that you have settled up. ) The consideration from your side is the cash, and the consideration from the owner’s side is that he or she gave up the right to sue you for the damages. Although the owner didn’t give up anything physical, there is consideration to support the agreement because the owner gave up a legal right.

Source: (<http://onlinelegalforms.com/legalforms/freedraftingtips.html#consideration>) Dunlop v Selfridges (1915) Hol. Defined consideration

as ‘ An act or forbearance of one party or, the promise thereof, is the price for which the promise of the other is brought and the promise thus given for value is enforceable’ Types of consideration -: Executory This is a promise to  
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perform an action at some future time. A contract can thus be made on this basis of an exchange of promises as to future actions.

Executed In the case of unilateral contracts, where the offeror promises something in return for the offerees doing something, the promise only becomes enforceable when the offeree has actually performed the required act. Past consideration -not valid This category does not actually count as consideration-with past consideration the action is performed before the promise that it is supposed to be consideration for such action is not sufficient to support a later promise. (ref-: McArdle 1951) Rules relating to consideration Consideration must not be past. Performance must be legal. Performance must be possible.

Consideration must move from the promise. (Tweddle v Atkinson(1861))

Consideration must be sufficient but need not be adequate. The court will not intervene to require equality in the value exchanged as long as the

agreement has been freely entered into. ( Chappell + Co v Nestle co(1959))

In Pinnels case 1602 it was stated that payment of a lesser sum cannot be any consideration for the whole amount owed. This opinion was approved in (Foakes v beer (1884)). However the following will operate to discharge an outstanding debt fully-: Payment in kind. Payment at a different place.

Payment of a lesser sum by a third party. A composition arrangement between creditors that they will accept part payment of their debts. Source (course notes). Explain why it is important that a contracting parties have the appropriate legal capacity to enter into a binding agreement -: Capacity -: ‘ If there is one thing which more than another public policy requires it is

that men of full age and competent understanding shall have the utmost liberty of contracting and their contracts when entered into freely and voluntarily shall be held sacred and shall be enforced by courts of justice'. Sir George Jessel, 1875) This classical statement of freedom of contract by a 19th century Master of the rolls still essentially holds good today-it is assumed that everyone is capable of entering into a contract. There are, however some groups of people who are in need of the law's protection either because of their age or inability to appreciate their own actions. The groups which are covered by special rules are those under the age of 18(minors), mental patients and drunks.

Minors Minors (people under 18) are legally capable of making most kinds of contracts and may take steps to enforce them against the other party. The law protects minors by restricting the extent to which their contracts can be enforced against them. Some 'like a contract to lend money to a minor' are never enforceable by the creditor; others are binding only to a limited extent. Contracts capable of binding a minor Contracts to purchase necessaries are capable of binding a minor. Necessaries' are defined by Section 3 of the sales of goods act 1979, as 'goods suitable to the condition in life of the minor and to his actual requirements at the time of sale and delivery'. There are two issues here : Are the goods capable of being Necessaries? The lifestyle and social standing of the minor may be relevant. Peters v Fleming (1840) Were the goods Necessary to the minor's requirements at the time of sale and delivery? Nash v Inman(1908) The concept of necessaries also, by analogy, covers services.

All the following are capable of being necessities : food, clothing, lodgings, transport to work, legal advice, education. Beneficial contracts of employment are also capable of binding a minor. These include training and apprenticeship contracts, but not trading contracts. The contract is binding on the minor if over all it is for the minor's benefit, but not unduly burdensome. *De Francesco v Bamum*(1890) All contracts which do not fit into the categories discussed above are not binding on minors. The commonest unenforceable contracts are for loans of money or the sale of non- necessary goods or services.

**Legality** The principle of freedom of contract is subject to the basic rule that the courts will not uphold an agreement which is illegal or contrary to public policy. A contract which is illegal from the start will be void and unenforceable. Insanity, mental illness, or mental/medical condition Individuals may have an inherent physical condition which prevents them from achieving the normal levels of performance expected from persons of comparable age, or their ability to match current levels of performance may be caused by contracting an illness.

Whatever the cause, if the resulting condition is such that individuals cannot care for themselves, or may act in ways that are against their interests, those persons are vulnerable through dependency and deserve the protection of the state against the risks of abuse or exploitation. Hence, any agreements that were made are voidable, and a court may declare that person a ward of the state and grant power of attorney to an appointed legal guardian (in England and Wales, this is a specific function of the Court of Protection) source(www.

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Wikipedia. com) Drunkenness/drug abuse Section 3 of the sales of goods act 1979 provides that they are required to pay a reasonable price for necessaries in the same way as minors. Other kinds of contract are governed by common law. If a person is drunk at the time of making the contract, he will be able to avoid his liabilities if he can show that he did not understand what the agreement was about and the other person was aware of this.

Source(business law Denis Keenan and Sarah Riches)