

Contract law – intention to contract



Contract Law 1 Intention to Create Legal Relations In order for a contract to be valid there must be intention to create legal relations. Enright notes ' the requirement of intention to create legal relations is a final doorkeeper in contract. It determines which agreements supported by consideration shall be covered by contract law and which shall merely be morally binding. ' This requirement was expressly stated for the first time in *Heilbut, Symons & Co V Buckleton*.

Friel notes that important as there are a great many agreements and arrangements that, though possessing many of the characteristics of contract, probably are not intended to attract legal consequences. Intention to be legally bound operates on the basis of presumptions. The test for intention is objective. The court will impute intention to create legal relations to the parties on the basis on external factors rather than on the workings of the parties' minds. Intention and Presumptions There are two presumptions in this area: 1.

There is a presumption that agreements between family members or friends are not intended to be legally binding. 2. There is a presumption that agreements which are made in a commercial context are intended to be legally binding. Social and Domestic Arrangements A close family of social relationship raises a presumption of lack of intention to create legal relations. The seminal case, *Balfour V Balfour* involved maintenance payments to be sent home to his wife while he was working abroad. The court held that agreements between husband and wife are not intended to be legally binding.

The closer the blood relationship the more readily the presumption will be raised and the more distant the degree of blood relationship, the more likely the courts will infer an intention to be legally binding. This can be seen in *Simpkins V Pays* where an informal agreement between a landlord and his lodger, to enter into a weekly competition, held lodger entitled to share of winnings, despite landlord's evidence that there was no intention to be legally bound. *Rogers V Smith* shows the same principal in *Balfour V Balfour* applied to other family relationships. It was held in this case that the agreement between a mother and her son did not attract legal relations. Likewise in *Mckay V Jones* where a nephew had worked on his uncle's farm for some years without payment, claimed that the uncle had promised to the farm when he died. Deale J. Ruled that it was nothing more than a statement of intention or wish by the deceased..... no promise was made as the agreement was between family members. In contrast to this case is *McCarron V McCarron* where a child worked without reward for 16 years. The child was said to have lost out more in *McCarron* and therefore had a greater detriment or reliance on the compensation promised.

The dates between these cases may explain the different points of view. In *Leahy V Rawson* found that an agreement between her non-marital partner's brother, did not attract the presumption as it only applies to the closest family kinships, such as parent and child and spouses. The courts also held the same principal in social arrangements as was shown in *Hadley V Kemp*. In this case the court raised the presumption that an agreement as to the sharing of songwriter's royalties with other members of his band (*Spandau Ballet*) was not intended to create legal relations.

Enright notes that a degree of intimacy is required between the parties in order to raise the presumption. The issue is not of status but closeness. We can contrast Balfour with Merritt V Merritt. As in Balfour, the parties were husband and wife and the agreement concerned an allowance, yet, in Merritt, the court chose to enforce the agreement. Merritt is distinguished however, on the grounds that the husband and wife were separated, so they were not in a close relationship any longer and so the presumption of lack of intention to create legal relations could not be raised.

For the same reason, and as it appears in Courtney V Courtney, a separation agreement will not attract the presumption of lack of intention to create legal relations. It is the parties' relationship at the time of contracting which matters. That is clear from the mother-daughter case of Jones V Padavatton. In this case, the mother agreed to maintain her daughter if she came home and studied for the Bar. Over time their relationship broke down but the presumption of lack of intention to create legal relations stood because of their close relationship at the time. Rebutting the Presumption

There is some authority to the effect that the courts are more likely to find that the presumption of lack of intention to create legal relations has been rebutted where one party has relied on the agreement. This is seen in Parker V Clarke, involved two couples who were close friends. The Clarks told the Parkers if they sold their cottage they could move in with them, that the Clarks would leave some of their considerable estate to the Parkers on his death. Sometime after the couple moved in they fell out and the Parkers were forced to move out. They sued the Clarks for breach of contract.

Because of the parties close relationship at the time of contracting, the presumption was that it was not intended to be legally binding. However, the court found that the Parkers' detrimental reliance on the agreement in leaving their home was a factor strong enough to rebut the presumption, and intention to create legal relations was thereby found. The party alleging that a family agreement was intended to be legally binding bears the onus of rebutting the presumption that it was not so intended. It is significant that in a family agreement was made in a business context.

So, for example, an agreement made in connection with a family business, such as that between brothers, directors of the company in *Snelling V John G Snelling Ltd*, is unlikely to fall foul of the presumption of lack of intention to create legal relations. The words used by the parties in setting out their agreement and, in particular, the level of certainty attaching to the agreement were also important. The fact that the parties have taken time to set out their agreement with formality and precision suggests that they intended it to be legally bound.

On the other hand, where an agreement is expressed in vague terms, it tends to suggest that the parties did not intend to create a legally binding agreement. This is clear from *Vaughan V Vaughan*. This case concerned a couple who were no longer living in amity. They had agreed that the wife could stay in the matrimonial home. However, they had not decided how long she could stay for, or on what terms. Accordingly, their agreement was so vague in its essentials that the Court could not confer intention to create legal intentions in it.

Commercial Agreements Commercial agreements raise the presumption that intention to create legal relations is present. It is difficult to rebut this assumption. The burden of proof is on the party seeking to deny it and that burden, according to *Edwards V Skyways*, is a heavy one. Vagueness on the essential terms of the contract tends to suggest an absence of intention to create legal relations. For example, the courts will rarely be able to find intention to create legal relations in so-called sales puffs.

Thus, in *Lambert V Lewis*, no contract arose from a manufacturer's statement that his product was 'foolproof' and 'required no maintenance' because his statements were 'not intended to be, nor were they, acted on as being express warranties'. A lot depends on the facts of the case at hand. In *Esso Petroleum V Commissioner of Customs and Excise*, a binding contract was deemed to arise from a transaction in which football tokens were offered to anyone who purchased four gallons of the plaintiff's petrol.

According to Lord Simon '.... the whole transaction took place in a setting of business relations...', the purpose of the offer being commercial: Esso wanted the public to buy its petrol. Rebutting the Presumption *Cadbury Ireland Ltd V Kerry Co-Op* shows how a number of factors can operate to rebut the presumption of intention to create legal relations. In this case, a clause held not intended to be legally binding despite its solemnity: it was an argument to draw up a detailed agreement, but could not be relied upon itself.

Even in a commercial context, the presumption in favour of the intention to create legal relations can be dispatched by a very clear expression of lack of

intention. A classic example of this is in *Rose and Frank Co V Crompton Bros*. In this case, the parties had agreed that the plaintiff would be permitted to distribute the defendants' goods in the US. The agreement however contained an 'honourable pledge clause'. The court held that the agreement could not be enforced because of this clause. The court also found the wording precise enough to rebut the presumption in *Jones V Vernon's Pools Ltd*.

Collective Agreements Where a trade union negotiates an agreement with an employer on behalf of its members, does this agreement attract the presumption of intention to create legal relations? In the English case of *Ford Motor Co Ltd V Amalgamated Union of Engineering and Foundry Workers*, it is said that the presumption in relation to collective agreements is that they are not made with the intention to create legal relations. However, Irish Law takes a contrary view, tending to favour the enforcement of collective agreements via contract.

So in *Ardmore Studios V Lynch*, it was suggested that a collective agreement which is set out in a clear specific manner will take legal effect. The Supreme Court took up this thread in *Goulding Chemicals V Bolger*. For the purposes of Irish Law, it seems safe to say that collective agreements can be enforced in the same manner as any other commercial agreement and attract the presumption that the intention of legal relations is present. In *O'Rourke V Talbot Ireland*, Barrington J treated a collective agreement as a commercial agreement.

Similarly, in *King v Aer Lingus* the Supreme Court took the view that some of the commitments given by Aer Lingus to its employees as part of a collective agreement were binding. A problem that continues to afflict collective agreements, however, is their characteristically vague language – the majority of collective agreements will be void for uncertainty. Letters of Intent v Letters of Comfort Enright notes that a letter of comfort is a document designed to reassure the person to whom it is provided about certain matters while stopping short of making any binding promise.

A good example of the effects of a letter of comfort arose in *Kleinwort Benson v Malaysia Mining Corp. Bhd.* In this case, the plaintiff bank had agreed to lend money to the subsidiary of the Malaysia Mining Corporation. In the course of negotiations for the loan, the bank received a letter of comfort stating that: ‘ it is policy to ensure that the business of our subsidiary is at all times in a position to meet its liabilities to you under the above arrangements. ’ Despite this reassurance, the Court of Appeal concluded that this statement did not bind the defendant.

The letter was not, in fact, purporting a binding promise. It was simply stating that company’s policy, a policy that might be changed or adjusted in response to novel circumstances. It is important to note, however, that there is no concrete rule precluding a letter of comfort from giving rise to legal relations. Whether or not such letters creates a legally binding promise is a matter to be discerned primarily from the language used. The simple fact that the words ‘ letter of comfort’ have been used, while evidently relevant, may not conclusively prevent the agreement from having legal implications. There is a lot of uncertainty in this area as in seen in the case of *Wilson*

Smithett & Cape (Sugar) Ltd V Bangladesh Sugar and Food Industries Corporation. A letter of intent, in contrast to a comfort letter, is one in which a person or company seeks to induce another entity to undertake work to incur expenditure, while denying or limiting liability to that other entity, often by insisting that liability turned on concluding a formal contract at a later date.

In AC Controls Ltd V BBC, the court summarised the principals in relation to letters on intent. The general principal on letters of intent that seek to authorise work, materials or services pending the conclusion of a later contract is that such letters will be viewed as contracts in themselves as long as objective is present. In ERDC Group Ltd V Brunel University, the Court held that the work done prior to September had all been on the authority as set out in the series of Letters of Intent.

The judge thought that the usual requirements for a contract were all there (intention to create a legal relationship, certainty, etc) and had all been there until 1 September. He therefore found that there had been a contract until then. Accordingly, ERDC was to be paid on the basis specified in the letters – the JCT rules. Conclusion It is contended that the requirement of intention to create legal intentions largely makes sense.

Social and domestic agreements have the presumption as not having intention to create legal relations as there is a belief that such formalities are not required in this type of relationship. Enright notes that there are two reasons why this is employed. Firstly, if the rule were that social and domestic agreements were always legally binding, the courts might be

flooded with petty disputes and the second is because it is felt that people should have the freedom to make certain types of private, personal agreements without drawing the interference of the law into their lives.

It is also understood that Commercial Agreements are correct as they do have the intention to create legal relations as there is the acceptance that such formalities should be required in this type of relationship. The ways to rebut this assumption also makes sense as it can be rebutted if the essential terms of the contract are vague or if the party seeking to deny it can prove that there was no intention. Enright notes the burden of proof is on the party seeking to deny it and that burden according to *Edwards V Skyways*, is a heavy one.