

Case Law Summary and Legislation

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Chapter 5: Making the contract

<p>Carlill v Carbolic Smoke Ball Co [1893] 1 QB 256</p>	<p>Carbolic marketed 'smoke balls' as means of preventing influenza. Ad on newspp offering to reward 100 pounds who purchased the smoke balls, used correctly but still caught influenza. Company demonstrated by depositing 1000p in bank. Carlill saw ad, used s/b as directed but got ill. Carlill required Carbolic to pay, company denied</p>	<p>Was promise to pay advertised reward intended to be legally binding? Yes. There is sufficient circumstances that it was.</p>	<p>. Unlike other ad, an act of stating expressly 1000p deposited in the bank for the purpose of making payment was intended to be legally binding</p>
<p>Balfour v Balfour [1919] 2 KB 571</p>	<p>Husband promised his wife 30 pounds each month until she rejoined him. Then, they divorced. Wife brought action against husband to enforce payment</p>	<p>Was an agreement of this type (domestic agreement) legally enforceable? . No.</p>	<p>"Because parties did not intend that they should be attended by legal consequences" ... "...parties, in the inception of the arrangement, never intended that they should be sued upon"</p>
<p>Cohen v Cohen (1929) 42 CLR 91</p>	<p>Ms Cohen sued her husband because before they got married, he promised to pay her \$ as a dress allowance. Now they got separated</p>	<p>Was the promise to pay intended to create a legally enforceable agreement? . No</p>	<p>Arrangement btw couple engaged. "parties did no more than discuss and concur in a proposal for regular allowance to the wife of a sum they considered appropriate"</p>
<p>Merritt v Merritt [1970] 2 All ER 760</p>	<p>Mr & Mrs Merritt jointly owned a house before got divorced. Originally, it was husband's. They agreed that wife would finish paying off the loan and house will be transferred to wife's sole ownership. However, when wife completed with the loan, husband refused to transfer house to wife</p>	<p>Was the promise to transfer house intended to be legally enforceable? Yes.</p>	<p>Facts show goodwill between married persons has broken down. => No longer rely on honorable understandings. Thus, agreements were intended to create legal obligations. This is exception to intention to be bound btw spouses.</p>
<p>Wakeling v Ripley (1951) 51 SR (NSW) 183</p>	<p>Ripley living in Sydney, wrote letter inviting his sister, Wakeling, and her husband to leave England and move to Sydney w/ him. He promised Wakeling could live in rent free house and leave all his property to them in his will. Wakeling sold home in Eng, left job and move to Syd. After a year, quarrel</p>	<p>Was the agreement intended to be legally binding? Yes, even though btw fam members.</p>	<p>The consequences were economically serious. Wakelings left what they'd had only when they assured they had a definite agreement</p>

	occurred. R sold his house and changed his will to excl. Wakelings. They sued.		
Teen Ranch Pty Ltd v Brown (1995) 87 IR 308	Brown volunteered to work for Teen Ranch, NFP org. Brown received some benefits from Teen Ranch but no wages. Brown was injured and claimed he was entitled to receive workers' compensations.	Was the agrmt intended to be legally binding , entitling Brown to compensation? No contract of emplmt existed => not entitled	No intention by parties to legally binding. Although Brown received some benefits and was expected to obey camp rules while on duty. Brown's work was purely voluntary and there was no contract of emplmt.
Esso Petroleum Co Ltd v Commissioners of Customs and Excise [1976] 1 All ER 117	Esso Petroleum promoted sales by giving free coin to its customers as a gift. Commissioners of C & E argued the coins were subjected to a purchase tax	Terms of the promotion were intended to be legally binding promise, thus coins were subjected to tax.	Although it's described as a 'gift', offer of the coin was commercial promotions. Thus, it was a promise made with an intention to be legally bound.
Master v Cameron (1954) 91 CLR 353	Cameron agreed to sell her farm to Masters. Both sign document w/ provision: "this argmntn made subject to the preparation of a formal contract"	Parties are not yet ready to be legally bound	3 possibilities: +) reached agrmt & ready to be bound imdly -> later agrmnt will simply restate the agreement +) reached agrmt & ready but performance is conditional upon preparing & signing written doc. +) not yet intend to be bound unless & until formal written doc is prepared & signed
Perri v Coolangatta Investments Pty Ltd (1982) 149 CLR 537	Perri agreed to buy a property from Coolangtta Inv. The performance of this contract was made subject to the cond that Perri should first sell his property in Lilli. Perri failed to do so within reasonable time	Perri was in breach of contract that has been created btw himself and Cl	Court interpreted the condition as merely a condition for performance (essential terms), rather than a condition precedent to formation of a contract. It was only performance of the contract that was made conditional , rather than the completion of the contract itself. The contract has therefore come into existence. Facts may show that only performance of their agrmt is intended to be delayed, in which

			case the agrmt becomes legally binding even before it's formalized.
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