

Intention to Create Legal Relations

- Principles
 - For any agreement to be legally binding, the parties must have mutually intended that the agreement will be enforceable in a court of law
 - Designed to ensure that the law of contract only applies to serious agreements between parties, agreements where the parties know they may be sued if they do not comply with what has been agreed
 - *Ermogenous v Greek Orthodox Community of SA Inc* (2002) 209 CLR 95
 - High court found that courts need to make an objective assessment of statements and actions by both parties, and the circumstances under which they occurred
 - Would a reasonable person regard that the agreement was one intended by the parties to be binding
- Terminology
 - Ex gratia
 - Out of grace, without obligation to do so
 - Letter of comfort
 - A letter usually written by a parent company in general terms to a lender about a loan to a subsidiary of the parent company acknowledging the proposed loan, but not legally enforceable
- Social or domestic agreements
 - Where the contract is of a social or domestic nature, the law generally assumes that the parties did not intend their agreement to be legally binding
 - *Keller v Holderman* 11 Mich 248 (1863)
 - Spouses
 - The courts will be prepared to find the necessary intention to create a contract existed if the surrounding circumstances suggest that the contract was intended to be legally binding
 - *Meritt v Meritt* [1970] 1 WLR 1211
 - Applies similarly to a de facto relationship unless it has ended
 - Other family arrangements
 - While family arrangements are generally not regarded as intending an enforceable legal agreement, if one party has changed their life significantly in reliance on the agreement, and this has serious consequences, it may be a binding agreement
 - *Wakeling v Ripley* (1951) 51 SR (NSW) 183
 - Competitions and lotteries
 - Intention to create legal relations can arise from agreements or arrangements to participate in competitions and lotteries where the consequences are more significant
 - *Simpkins v Pays* [1955] 1 WLR 975
 - Voluntary and charity agreements
 - In the context of work carried out on a voluntary basis, the courts have been reluctant to infer an intention to create legal relations
 - *Teen Ranch Pty Ltd v Brown* (1995) 87 IR 308
- Commercial agreements
 - Where there is of a commercial or business nature, it is assumed that the parties did intend to create legal relations
 - *Edwards v Skyways Ltd* [1964] 1 WLR 349

- Two main ways by which it can be shown that legal relations are not intended in a commercial arrangement
 - An express stipulation in the agreement that it was not intended to be enforceable in a court of law
 - Rose & Frank Co v JR Crompton & Bros Ltd [1925] AC 445
 - The wording of the agreement itself
 - Souter v Shyamba Pty Ltd (2002) 11 BPR 20269
- Administrative arrangements
 - Where a government department or authority takes some action required of it by law or under some government scheme, this does not necessarily mean that an enforceable agreement exists between it and the other party
 - Contractual obligations only arise if there was a clear intention that the agreement is to be enforceable in a court of law
 - Administration of Territory of Papua and New Guinea v Leahy (1961) 105 CLR 6
- Ambiguous language
 - If ambiguity arises from the words used by the parties in their agreement, the courts can disregard the words used and ascertain the intention on the parties from the general circumstances surrounding the transaction
 - Edwards v Skyways Ltd [1964] 1 WLR 349
- Letters of comfort
 - A letter of comfort is a statement of intention often given to a creditor by a third party as a substitute for a guarantee and is generally intended to be non-binding
 - Kleinwort Benson Ltd v Malaysia Mining Corporation Bhd [1988] 1 WLR 799
 - Other statements of intention, but do not show an agreement that is to be legally binding
 - Letter of intent
 - Memorandum of Understanding
 - Proposal for Dealing
 - Strategic Alliance
 - Preferred Dealer Proposal