

Shortall v White 2007 NSWCA

- S & W were in a **de facto relationship** which began to break down Oct 2002
- W wanted some security so S gave her a letter indicating he held shares in trust for her in public company, however said he would not sign unless W gave him \$22 000 which she did – S gave W letter stating he held 220 000 shares in company in trust for her and would transfer shares on 1 Aug 2003
 - o NB: **disparity** between the cheque amount value of shares – consideration only needs to **be sufficient, not adequate** however Kirby in another case argues when disparity is great enough it indicates a lack of intention
- Unknown to W the shares were held by third party and could not be transferred until 1 Nov 2004
 - o S used this inability as an argument for lack of intention however this was disregarded because it **wasn't a mutually known fact**
- When S refused to honour agreement W sued for breach of contract
- [18]: presumption that parties to a domestic relationship do not intend to enter legal relations
 - o this **presumption does not apply if the relationship has broken down**
- Court found the **letter gave rise to contractual obligation**

Atco Controls v Newtronics 2009 VSCA

- Atco – business as a lighting manufacturer
- Newtronics – subsidiary of Atco and manufactured electronic components
- The companies had at least one director in common and a shared auditor
- Accounts for newtronics were prepared on a 'going concern' basis
- Newtronics secured a loan from Atco which rose from \$729, 884 to \$8, 298, 000
- Feb 1998 Seely Int'l commenced proceedings against Netronics – this litigation resulted in a judgment in December 2001 against Newtronics for \$15.8 million
- Newtronics want to enforce the contract for financial support, Atco doesn't
- A **letter of support** from a parent company to a subsidiary was **held not to be contractually binding** either because there was **no intention** (gathered from the **debenture transaction**)
- Don't have to pinpoint contract formation to a single point: [30] *the weight of modern authority favours the view that, where parties have discussed commercial essentials and put in place necessary structural matters and then gone about their commercial business on the basis of some manifested mutual assent, it may be possible, without being able to identify when a contract resulted, to state that by no later than an identified point in time the parties mutually assented to a sufficiently clear regime for it to be recognised as a contract.*

Laidlaw v Hillier Hewitt Elsley Pty Ltd 2009 NSWCA

- The parties were **negotiation the division of assets** through their solicitors, following the **dissolution of their accounting partnership** and Laidlaw leaving
- Initially the parties contemplated a 50/50 split of goodwill. A division of the client list was proposed by HHE but L said there were omissions and the split was unequal
- On 1 July 2004 L proposed, through her solicitor, that she take over the service of clients on her list with some deletions. The offer required she be given 30K, her computer and some furniture, the client files and access to electronic records
- Negotiation continued but weren't successful
- Laidlaw sued HHE
- L's share of the goodwill at this stage was worth 38% of client base
- Issue: was there an agreement by conduct?