

Name		Facts	Issue	Decision	Reason	Additional
<i>Taylor v Johnson</i> (First hearing)	<b>Contract; vitiating circumstances; unilateral mistake; effect of unconscionability</b>	<ul style="list-style-type: none"> <li>• Johnson offered in writing to sell 10 acres of land to Taylor for \$15,000.</li> <li>• Taylor must have known this was an extremely good deal but said nothing and quickly accepted the offer.</li> <li>• Johnson then said she had made a mistake and had intended to offer the land for sale at \$15,000 per acre, not for the whole 10.</li> <li>• There was evidence T deliberately set out to ensure J did not become aware of the mistake.</li> </ul>	Did Johnson's mistake justify aside the contract?	<ul style="list-style-type: none"> <li>• The court that first heard the case applied two established common law rules: <ul style="list-style-type: none"> <li>• A contract will be enforced according to its agreed terms.</li> <li>• What has been agreed is judged objectively.</li> </ul> </li> <li>• In Taylor's case, it appeared (objectively) that the parties had agreed to sell the ten acres for \$15,000. A mistake by one party as to the agreed terms of a contract does not</li> </ul>	<ul style="list-style-type: none"> <li>• In Taylor's case, it appeared (objectively) that the parties had agreed to sell the ten acres for \$15,000. A mistake by one party as to the agreed terms of a contract does not affect objective agreement.</li> <li>• The court decided to enforce the contract on its stated terms, despite Johnson's mistake. Johnson appealed against this decision to the New South Wales Court of Appeal and was successful. Taylor then appealed to the High Court.</li> </ul>	

				<p>affect objective agreement.</p> <ul style="list-style-type: none"> <li>The court decided to enforce the contract on its stated terms, despite Johnson's mistake.</li> </ul>		
<p><i>Taylor v Johnson (1983)</i> 151 CLR 422</p> <p><b>(NSW Court of Appeal granted Johnson's appeal and Johnson appealed to the High Court)</b></p> <p>Pg.</p>		<ul style="list-style-type: none"> <li>See above</li> </ul>	See above	<ul style="list-style-type: none"> <li>The contract should be set aside</li> </ul>	<ul style="list-style-type: none"> <li>This was a case of unilateral mistake, which on its own does not make a contract void. However, if one party enters a contract under a serious mistake in relation to a fundamental term, the contract will be made void if the other party was aware of circumstances that indicate the first party is mistaken, and deliberately sets out to ensure that they did not discover the error until it was</li> </ul>	<ul style="list-style-type: none"> <li>The ratio decidendi of Taylor's case can be stated as:</li> <li>In equity, it is contrary to good conscience to enforce a contract if: <ul style="list-style-type: none"> <li>one of the parties is seriously mistaken, and</li> <li>the second party was aware of circumstances that indicate the first party</li> </ul> </li> </ul>

					<p>too late.</p> <ul style="list-style-type: none"> <li>In such cases it is contrary to good conscience (<i>contrary to equity</i>) for the party who deliberately ignored the signs and acted to prevent discovery of the error to hold the mistaken party to the contract.</li> </ul>	<p>is mistaken, and</p> <ul style="list-style-type: none"> <li>the second party deliberately acts to ensure the error is not discovered until it is too late.</li> </ul>
<p><i>Balfour v Balfour [1919]</i> 2 KB 571</p> <p>Pg. 76</p>	<ul style="list-style-type: none"> <li>Mr and Mrs Balfour travelled to England from Sri Lanka. When it was time to return, Mrs Balfour became unwell and the doctor advised her to stay in England and re-join her husband when she was better.</li> <li>Mr Balfour promised to pay his wife 30 pounds each month until she re-joined him</li> <li>Later the couple separated and divorced</li> </ul>	<p>Was an agreement of this type, made between married persons, legally enforceable?</p>	<ul style="list-style-type: none"> <li>The agreement was not legally enforceable because, in the circumstances, it could not be inferred that it was intended to be legally enforceable.</li> <li>When married persons enter into domestic agreements, the reasonable assumption is that they do not intend such agreements to be</li> </ul>	<p>Spouses make many domestic agreements, but these agreements do not become legally enforceable "...because the parties did not intend that they should be attended by legal consequences". The courts would be swamped if such agreements could be sued on. - Atkin LJ (579)</p> <p>"[Such agreements] are not sued upon, not because the parties are reluctant to enforce their legal rights when</p>	<ul style="list-style-type: none"> <li>This <i>ratio decidendi</i> is only <b>persuasive</b> in Australian court</li> </ul>	

		<ul style="list-style-type: none"> <li>Mrs Balfour brought action against Mr Balfour to enforce payment of the promised maintenance</li> </ul>		<p><b>legally</b> enforceable.</p>	<p>the agreement is broken, but because the parties, in the inception of the agreement, never intended that they should be sued upon."</p>	
<p><i>Cohen V Cohen (1929) 42 CLR 91</i></p> <p>Pg. 76</p>		<ul style="list-style-type: none"> <li>Ms Cohen alleged that, before she married the defendant in 1918, he has promised to pay her 100 pounds a year as a dress allowance. The money would be paid in quarterly instalments of 25 pounds.</li> <li>The money was paid until early 1920</li> <li>In 1923 the parties separated</li> <li>Ms Cohen claimed that Mr Cohen owed her 278 pounds, being unpaid instalments of the promised dress allowance</li> </ul>	<p>Was the promise to pay a dress allowance intended to create a legally enforceable agreement?</p>	<ul style="list-style-type: none"> <li>Dixon J concluded that in the circumstances it could not be inferred that legally enforceable relations were intended</li> <li>When married persons enter into domestic agreements, the reasonable assumption is that they do not intend such agreements to be <b>legally</b> enforceable.</li> </ul>	<p>On arrangement between a couple engaged to be married, Dixon J said (96): "But these matters only arise if the arrangement which the plaintiff made with the defendant was intended to affect or give rise to legal relations or to be attended with legal consequences (Balfour v Balfour...) I think it was not so intended. The parties did no more, in my view, than discuss and concur in a proposal for the regular allowance to the wife of a sum which they considered appropriate to their circumstances at the time of marriage..."</p>	<ul style="list-style-type: none"> <li>This <i>ratio decidendi</i> is <b>binding</b> on Australian courts that are below the High Court of Australia in the court hierarchy (i.e all courts but the High Court)</li> </ul>
<p><i>Merritt v Merritt [1970] 1 WLR 1211</i></p>		<ul style="list-style-type: none"> <li>After getting married in 1941, Mr</li> </ul>	<p>Was the promise to</p>	<ul style="list-style-type: none"> <li>We can state the ratio in <i>Merritt's</i></li> </ul>	<ul style="list-style-type: none"> <li>Whether or not an agreement is</li> </ul>	<ul style="list-style-type: none"> <li>This <i>ratio decidendi</i> is</li> </ul>

and Ms Merritt borrowed money from a bank to build a house. They lived in it over the years, both contributing to paying off the loan.

- The house was originally owned by Mr Merritt alone but in 1966 it was put into joint ownership.
- Some time after Mr Merritt began an extramarital relationship with another woman and left his wife.
- Having separated, the couple met to discuss their financial position. Ms Merritt agreed to finish paying off the loan on the house and in return Mr Merritt promised that when the loan was completely repaid, he would transfer the house to Ms

transfer the house to Ms Merritt intended to be a legally enforceable one, despite the parties being spouses?

case as: “When married persons **whose relationship has already broken down** enter into agreements, even of a domestic nature, the reasonable assumption is that they **do** intend such agreements to be legally enforceable.”  
amity

intended to be legally enforceable is something that is decided objectively. The court asks what intention can reasonably be inferred from the circumstances at the time of the agreement. Lord Denning MR:

“...In the present case, the court decided that when the goodwill between married persons has broken down, it can be inferred that they no longer rely on honourable understandings, and that they intend their agreements to create legal obligations.”

only **persuasive** in an Australian Court. But it seems to be based on a valid distinction made between the different cases. It is very likely to be followed.

- *Merritt’s* case does not mean that *Balfour* and *Cohen’s* cases are wrong but we need to refine the ratio laid down in those cases: e.g. “When married persons **who are living in amity** enter into domestic agreements, the reasonable assumption is that they do

		<p>Merritt's sole ownership.</p> <ul style="list-style-type: none"> <li>Mr Merritt signed a letter but, when the time came, he refused to transfer the house to Ms Merritt. Ms Merritt brought a legal action to enforce it</li> </ul>				<p>not intend such agreements to be legally enforceable.</p>
<p><i>Ermogenous v Greek Orthodox Community of SA Inc (2002) 209 CLR 95</i></p> <p>Pg. 79</p>	<p><b>Contract; formation; intention to be legally bound; relevant factors</b></p>	<ul style="list-style-type: none"> <li>Greek Orthodox Community of SA invited Ermogenous (then in America) to become the head of the Greek Orthodox Church in Australia.</li> <li>Ermogenous accepted the offer and came to Australia to serve as archbishop for 23 year.</li> <li>He was paid a salary by the community.</li> <li>At the end of his appointment, the Community refused to pay him for the accumulated leave that Ermogenous would have been</li> </ul>	<p>Could it be inferred from the circumstances that the appointment of the archbishop was intended to be a legally binding contract of employment?</p>	<ul style="list-style-type: none"> <li>The agreement was <b>intended to be a legally binding contract</b></li> <li>Ermogenous was entitled to payment for accumulated leave</li> </ul>	<ul style="list-style-type: none"> <li>Existence of intention was judged on the basis of all relevant facts</li> <li>An agreement with a minister of religion does not in itself mean the agreement is not intended to be legally binding if other circumstances indicate otherwise <ul style="list-style-type: none"> <li>Such as when an incorporated non-religious body makes the agreement and provides monetary and economic benefits to the</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Facts more heavily relied on rather than assumptions of relationship Agreement was treated more like an employment agreement</li> <li>We focus more on the nature of the agreement rather than the circumstances or relationship between the parties like in Cohen and Balfour</li> </ul>

		<ul style="list-style-type: none"> <li>entitled to under a legally binding contract of employment.</li> <li>The Community argued that their agreement was not intended to be legally binding</li> </ul>			<p>minister</p> <ul style="list-style-type: none"> <li>The notion of '<i>presumptions</i>' operating against intention (e.g. reasoning in Balfour and Cohen) distract from the true task - a proper evaluation of the particular circumstances</li> </ul>	
<p><i>Esso Petroleum Ltd v Commissioners of Customs and Excise</i> [1979] 1 All ER 117</p> <p>Pg. 80</p>	<p><b>Contract; formation; intention to be legally bound; commercial agreements</b></p>	<ul style="list-style-type: none"> <li>Esso Petroleum produced a set of 'coins' as collectors' items. To promote sales of its petrol, Esso promised to give motorists a 'free' coin with every 4 gallons of Esso petrol purchased.</li> <li>The commissioner of Customs and Excise argued that despite the 'free' coins being described as a 'gift' (transaction typically not involved in intention</li> </ul>	<p>Did Esso have the intention to be legally bound by the offer to give the coins to motorists who purchased its petrol?</p>	<ul style="list-style-type: none"> <li>Terms of the promotion were intended to be a <b>legally binding promise</b>. The coins were therefore subject to the purchase tax.</li> </ul>	<ul style="list-style-type: none"> <li>The offer of coins was a commercial promotion from which Esso and its station operators stoop to gain, and the coins were only offered to its customers.</li> <li>Thus, although the offer of the coins was described as a 'gift', it could be inferred from the commercial circumstances that it was a promise made with an intention to be legally bound</li> </ul>	<ul style="list-style-type: none"> <li>The court relied heavily on inferences drawn from the commercial circumstances in which the promise was made</li> </ul>

		to contractual relations), Esso intended contractual relations with its customers and thus should be subject to taxation.				
<p><i>Masters v Cameron (1954) 91 CLR 353</i></p> <p>Pg. 80</p>	<p><b>Contract; formation; intention to be legally bound; conditional intention</b></p>	<ul style="list-style-type: none"> <li>• Cameron agreed to sell her farm to Masters.</li> <li>• Both parties signed a written agreement which described the property and set out other details of the agreement.</li> <li>• One of the provisions: This agreement is made subject to the preparation of a formal contract of sale which shall be acceptable to my [Cameron's] solicitors on</li> </ul>	<p>Since the essential terms of a contract had been agreed by the parties when they signed their initial agreement, was a contract created even before the preparation of a formal contract?</p>	<ul style="list-style-type: none"> <li>• It was clear Cameron had <b>intended not to be bound</b> until a formal contract was prepared and signed.</li> </ul>	<ul style="list-style-type: none"> <li>• Making an agreement subject to a condition does not always have the same effect, Depending on the circumstances, the facts may show one of the following: <ul style="list-style-type: none"> <li>• Parties intended to be immediately bound by the agreement and required to perform it, so that written contract would only restate the agreed terms more fully or precisely;</li> <li>• The parties</li> </ul> </li> </ul>	<p>The words "subject to" the preparation of a formal contract were sufficient to indicate that Cameron did not intend to be legally bound at all until a formal contract was prepared and signed</p>

		the above terms and conditions...			intended to be immediately bound by the agreement, but to suspend any performance until formal documents are signed; or <ul style="list-style-type: none"> <li>The parties did not intend to be legally bound by the agreement at all unless and until the formal documents are prepared and signed.</li> </ul>	
<i>Thomas v Thomas (1842)</i> 114 ER 330  Pg. 84	<b>Contract; formation; token (inequivalent) consideration sufficient</b>	<ul style="list-style-type: none"> <li>Mr Thomas wanted that, if his wife survived him, she should be allowed to live in his house until her death.</li> <li>After his death, Mr Thomas's executors took account of this wish and entered into a lease agreement with Ms</li> </ul>	Had sufficient consideration been provided by Ms Thomas to make the agreement legally enforceable?	<ul style="list-style-type: none"> <li>Ms Thomas was <b>entitled to enforce</b> the agreement.</li> </ul>	<ul style="list-style-type: none"> <li>There is no requirement that consideration be of equivalent value</li> </ul>	<ul style="list-style-type: none"> <li>Consideration must be of "some value"</li> </ul>

		Thomas, allowing her to occupy the house in return for her promising to pay €1 a year and promise to keep the house in good repair.				
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