

CHAPTER 14:

INTENTION TO CREATE LEGAL RELATIONS

Courts have classified agreements into two categories:

1. **Social or domestic nature**
 - Rebuttable (weak) presumption that the parties did not intend legal relations
 - Where problems arise is when the consequences for aggrieved party are much more serious as court has to determine what parties intended when making their arrangement
2. **Business or commercial nature**
 - Rebuttable (strong) presumption that unless the contrary can be clearly established, it is presumed that the parties did intend to create enforceable contract

For agreement to be legally enforceable as a contract a condition that must be satisfied is *parties intended to create legal relations* – intention can be **express** (words, writing or conduct) or **implied**

Express Intention

- Parties rarely make any direct or express reference to the question of intention to contract within the contract itself
- Where references are made they are generally only found in commercial/business agreements and are invariably expressed in a negative way – that is by way of terms that expressly and clearly state that the parties **don't** intend to be legally bound

E.g.

- 'Binding in honour only' (honour clauses) – *Rose & Frank Company v JR Crompton & Bro Ltd* (1925) and *Jones v Vernon's Pools Ltd* (1938)
- 'This agreement is subject to contract' or 'subject to the preparation of a formal contract of sale which shall be acceptable to my solicitor' *Masters v Cameron* (1954)

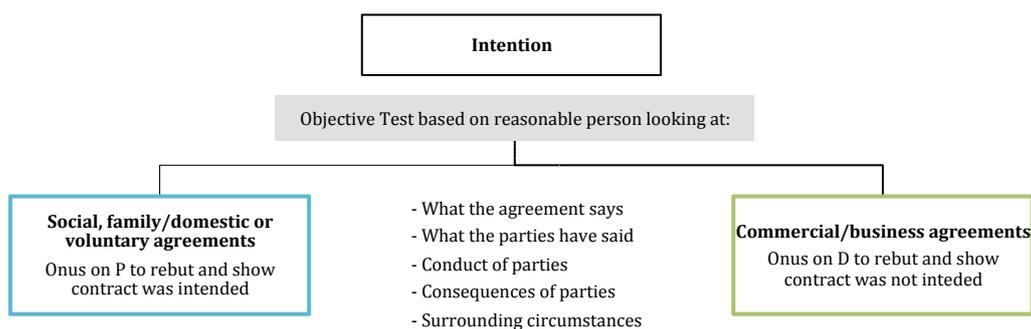
Implied Intention

In the case of most agreements, it is unusual to find the intention of the parties being expressly stated, or even immediately obvious – this is where most problems occur.

To assist in trying to determine what it was that the parties intended, the law has treated agreements as falling into one of two categories, with the determination of intention being resolved by reference to rebuttable presumptions of fact:

- **Social, family/domestic or voluntary agreements** (non commercial agreements), where law assumes/presumes that parties don't intend agreement to have any legal consequences if it is not performed – that is the agreement was unenforceable; or
- **Commercial or business agreements** where it is assumed/presumed that parties do intend to create legal relations

The presumption would not apply if one of the parties could produce sufficient factual evidence to satisfy a court, using an objective test involving a hypothetical reasonable person, that the agreement was intended (or not intended as case may be) to be binding – that is, what inferences would a reasonable person have drawn from the words/conduct of the parties.



Ermogenous v Greek Orthodox Community of South Australia Incorporated

- High Court questioned 'the utility of using the presumptions in this context' – their honours suggested that it was inappropriate to express relevant principles in form of presumptions because circumstances, which might properly be taken into account were so varied that they made it almost impossible to apply any prescriptive rules
- Rather, they suggested they were merely useful tools to identify who should bear onus of proof

Non-commercial agreements

Social Arrangements – lotteries and competitions

As general rule – no difficulty in inferring parties never intend to create legal relations

However in the event of a win the inference may be that parties had intention to create legal relations – onus is on plaintiff to establish on the balance of probabilities that the parties would have contemplated sharing winnings.

Trevey v Grubb (1982)

Three person syndicate won \$218 000 in the lottery – ticket was in name of defendant who refused to share prize with plaintiff

Decision:

- High Court found, although social agreement, nature of agreement between parties was such that they must have contemplated it would be enforced in event of winning
- Thus, there was contract and plaintiff was entitled to share to extent plaintiff contributed to regular entry fee

Domestic Partners

Traditionally agreements made in family context considered unenforceable – for example in case of agreement made while husband and wife still live together or in continuing de facto relationship, assumed parties don't intend to create legal relations in relation to any promises made

Cohen v Cohen (1929)

Facts:

- At time of being engaged in 1918, defendant promised to pay fiancée annual dress allowance
- Defendant paid allowance after marriage until 1923
- Parties separated in 1923 and in 1928 plaintiff commenced action to recover money claimed as outstanding for dress allowance between 1921 - 1923

Decision:

- High Court considered arrangement as domestic one as parties didn't intend such arrangement to be attended by any legal consequences

Shortall v White (2007)

Facts:

- Parties lived in de facto relationship that had broken down but continued to see each other
- Respondent wanted some security so appellant gave her a letter indicating he held shares in trust for her in public company, however said he would not sign unless respondent gave him \$22 000, which she did – appellant gave respondent letter stating he held 220 000 shares in company in trust for her and would transfer shares on 1 Aug 2003
- Unknown to respondent shares were held by third party (subject to an escrow) and could not be transferred until 1 Nov 2004
- When appellant refused to honour agreement she sued for breach of contract (and breach of trust) based on appellant's failure to transfer shares on request
- Court first found letter gave rise to contractual obligation – appellant appealed decision

Decision:

- NSW Court of Appeal held that respondent should succeed as presumption against intention to create legal relations doesn't apply when parties are separated – at time of agreement parties had separated

Other Domestic Arrangements

Domestic arrangements extends to other family members including brothers and sisters, aunt, uncles, nephews and in-laws – in each case onus is on the plaintiff to produce evidence to show that contract was intended

Wakeling v Ripley (1951)

Facts:

- Defendant, wealthy old man who lived in large house in Sydney wrote to plaintiffs, his sister and her husband, to move to Sydney from England where they lived
- He promised to provide them with a home and leave them all his property on his death – on basis of this promise they sold their home in England and husband resigned his job
- After plaintiffs lived with defendant for over a year, he quarreled with them, sold the house and changed his will – Plaintiffs sued for breach of contract

Decision:

- NSW Supreme Court found that there was ample evidence that parties did intend to enter binding and enforceable contract as 'consequences for plaintiff were so serious

Voluntary Agreements

Participation in charitable or other voluntary organisation where person provides services for free is another situation in which parties don't normally intend to create legal relations.

Teen Ranch Pty Ltd v Brown (1995)

Facts:

- Brown was volunteer worker at non-profit Christian youth centre
- He received accommodation, food and use of camp facilities and was expected to obey camp rules – received no wages however
- While working at camp he was injured and claimed workers' compensation

Decision:

- NSW Court of Appeal held there was no evidence of intention to create legal relations by parties and so no contract of employment could be said to exist – work was voluntary therefore not entitled to worker's compensation

IN BRIEF

Relevant factors in determining intention in non-commercial agreements:

- Type of relationship
- Degree of closeness of relationship
- Nature of relationship at time of alleged agreement
- Intention of both parties
- Whether consensus among parties
- Extent to which expressed to definitive of concurrence – how clear terms setting out rights and obligation of parties are
- Subject matter or topic of agreement
- Way it came into existence
- Seriousness of conduct involved