

Lecture 4 – Intention to be Bound

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Key Features for a Binding Contract



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1. Offer

- Expression of willingness to contract on certain terms

2. Acceptance

- Needs to correspond to the offer

3. Consideration

- An act or promise given in exchange for the offer

4. Intention to Be Bound

- Objective intention to create legal relations





“If any **REASONABLE** observer of the promisor’s conduct would have supposed that the promisor was making a particular promise, (...) then the promisor (and the promisee) will be bound”.

—*Objective Interpretation*

Objective Test



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Destiny 1 Ltd v Lloyds TSB Bank Plc [2011] EWCA Civ 831



D wanted to transfer their accounts to L. The negotiations broke down, but D argued that they had nonetheless reached a binding agreement in respect of one of the proposed transactions.



How should we assess if such agreement has been reached?



By looking at what a reasonable person **in the position of the recipient** would have understood.





ID: 166 – 705 – 610

(questions 1 – 3)

Question 1



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Which of the following usually amounts to an offer?

49



Goods sold through a machine

31 (63.27%) ✓

Advertisements

3 (6.12%)

Display of goods

0 (0%)

An invitation to submit a tender

15 (30.61%)

Correct responses 31 (63.27%)

Correct answer

Goods sold through a machine

Correct answer explanation

Where goods are sold through a machine, the general rule is that the machine is making an offer. In all other cases, the person who has knowledge of the offer or tender, or who sees the goods on display, is charged with making an offer if they want to proceed with the purchase.

Question 2



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An offer can be terminated in a number of ways. Which one of the following is NOT an effective way to terminate an offer?

45



Rejection by the offeree

3 (6.67%)

Revoking the offer following acceptance

29 (64.44%)



Lapse of a reasonable time

8 (17.78%)

Death of the offeror

5 (11.11%)

Correct responses 29 (64.44%)

Correct answer

Revoking the offer following acceptance

Correct answer explanation

Both revocation of an offer AND revocation of an acceptance are not effective when the parties are already in a contract. Unilateral variations to contracts are possible only in exceptional circumstances (e.g. force majeure, performance becomes impossible, etc.).

Question 3



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Which of the following statements regarding acceptance is FALSE?

45



Silence is a form of valid acceptance

35 (77.78%) ✓

An offeree cannot accept an offer of which they were not aware.

7 (15.56%)

Generally, the offeree shall communicate their acceptance to the offeror (except in unilateral contracts).

1 (2.22%)

Generally, acceptance needs to precisely match the terms of the offer.

2 (4.44%)

Correct responses 35 (77.78%)

Correct answer

Silence is a form of valid acceptance

Correct answer explanation

Silence does not constitute valid acceptance, although a number of academics have argued that, in certain situations, silence/acquiescence (which is a form of conduct) could amount to valid acceptance.

01

Domestic and Social
Transactions

02

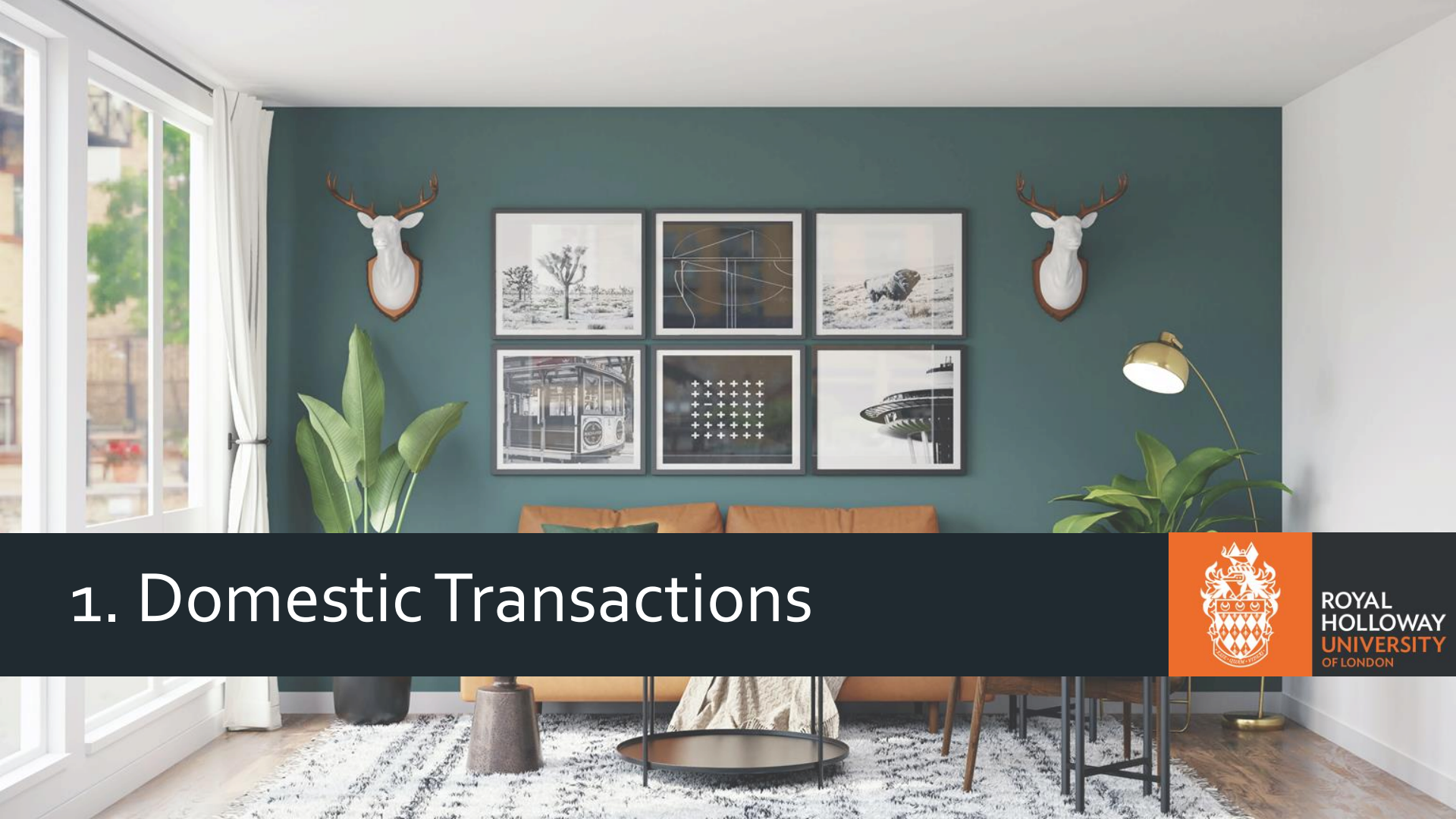
Commercial
Transactions

03

Borderline
Transactions



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1. Domestic Transactions



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NO Intention



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Balfour v Balfour [1919] 2 KB 571 (CA)



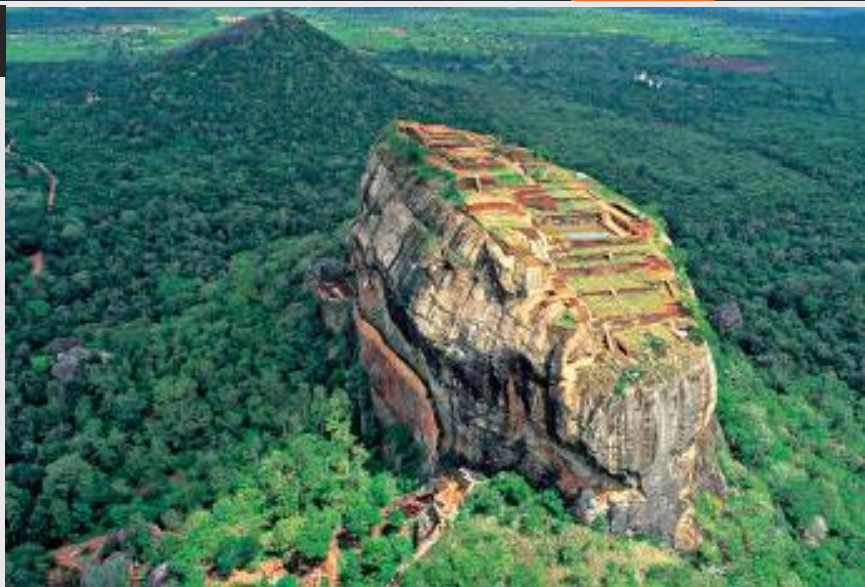
Wife sued husband for failure to maintain the oral promise of paying her a monthly allowance while he was on Government's business in Sri Lanka.



Is this an enforceable contract with clear intention to be bound?



No. The alleged agreement did not constitute a legal contract, but was only an ordinary domestic arrangement which could not be sued upon.





“It may be, and I do not for a moment say that it is not, possible for such a contract as is alleged in the present case to be made between husband and wife. The question is whether such a contract was made”.

—*Balfour v Balfour*
[1919] 2 KB 571, 574 (Warrington LJ)



“The proposition that the mutual promises made in the ordinary domestic relationship of husband and wife of necessity give cause for action on a contract [...] would lead to unlimited litigation in a relationship which should be obviously as far as possible protected from possibilities of that kind”.

—*Balfour v Balfour*
[1919] 2 KB 571, 577 (Duke LJ)

YES Intention



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Merritt v Merritt [1970] 1 W.L.R. 1211 (CA)



Before leaving his ex wife, the husband promised in writing that he would transfer the house to her if she completed the mortgage repayments. She did, but the ex-husband refused to transfer his share in the house to the ex-wife.



Was the promise a legally binding document?



Yes. The presumption of fact against an intention to create legal relations between husband and wife living in amity does not apply to arrangements made between them when they were separated or about to separate.



NO Intention



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Jones v Padavatton [1969] 1 W.L.R. 328 (CA)



A mother promised to her daughter to provide a monthly maintenance (later, pay for a house) if she read for the Bar. Upon her failure to sit for exams, the mother tried to repossess the house.



Is the attempt to repossess the house in breach of an enforceable contract?



No. The arrangement was a domestic one, not intended to be legally binding. As a result, the mother was entitled to possession.



YES Intention



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Parker v Clark [1960] 1 W.L.R. 286



In 1955, P sold his house and moved with his wife to C's house, to look after his parents. Cs promised to give Ps their house upon their death. The terms were agreed in a memorandum, accepted by C. As things didn't go well, Cs forced Ps to move out.



Was the memorandum a legally binding document?



Yes. The language of the letter and the circumstances surrounding it showed that the parties wanted to enter into a binding agmt and not a mere unenforceable family arrangement.



Intention – Burden of Proof



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Coward v Motor Insurer's Bureau [1963] 1 Q.B. 259 (CA)



C's husband died when he was a pillion passenger on a motor-cycle. The insurance covered damages for passengers carried "for hire or reward". C proved the existence of regular payments for driving C's husband to work.



Was the evidence sufficient to prove a contract of carriage?



No. The claimant failed to provide sufficient evidence that this was a commercial contract of carriage rather than a social arrangement.



- Intention to be bound is required for all types of contracts, including those entered in a domestic or social environment;
- Courts are extremely reluctant to intervene in domestic arrangements entered by parties in amicable relationships;
- There is a *rebuttable* presumption that agreements entered in a domestic or social context are NOT legally binding.



Domestic Transactions



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(questions 4 – 5)

Question 4



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In which of the following social situations the law is more likely to presume that the parties intended their agreement to be binding?

54



A father agrees to pay £500 per month to his daughter while she is a university student

6 (11.11%)

A husband agrees to pay maintenance to his wife following their separation

42 (77.78%)



A husband and wife agree to share the cost of running their home equally

6 (11.11%)

A son agrees to look after the family dog while his parents are away

0 (0%)

Correct responses 42 (77.78%)

Correct answer

A husband agrees to pay maintenance to his wife following their separation

Correct answer explanation

Merritt v Merritt [1970] 1 W.L.R. 1211 (CA):

The presumption of fact against an intention to create legal relations between husband and wife living in amity does not apply to arrangements made between them when they were separated or about to separate.

Question 5



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In *Jones v Padavatton* [1969], the Court of Appeal considered that the agreement between the mother and daughter was not enforceable as there was no intention to create a legal relationship. Which ONE of these statements summarises the reason for the decision by the minority of the Court of Appeal?



There was a detrimental reliance by the daughter on the promises made by her mother.

2 (3.7%)

The agreement made was not sufficiently certain.

5 (9.26%)

The agreement, while intended to create legal relations, was only intended to last a reasonable time (to pass the bar exam), and that period had expired.

26 (48.15%) ✓

The agreement was one that was of a trivial nature between the mother and the daughter.

21 (38.89%)

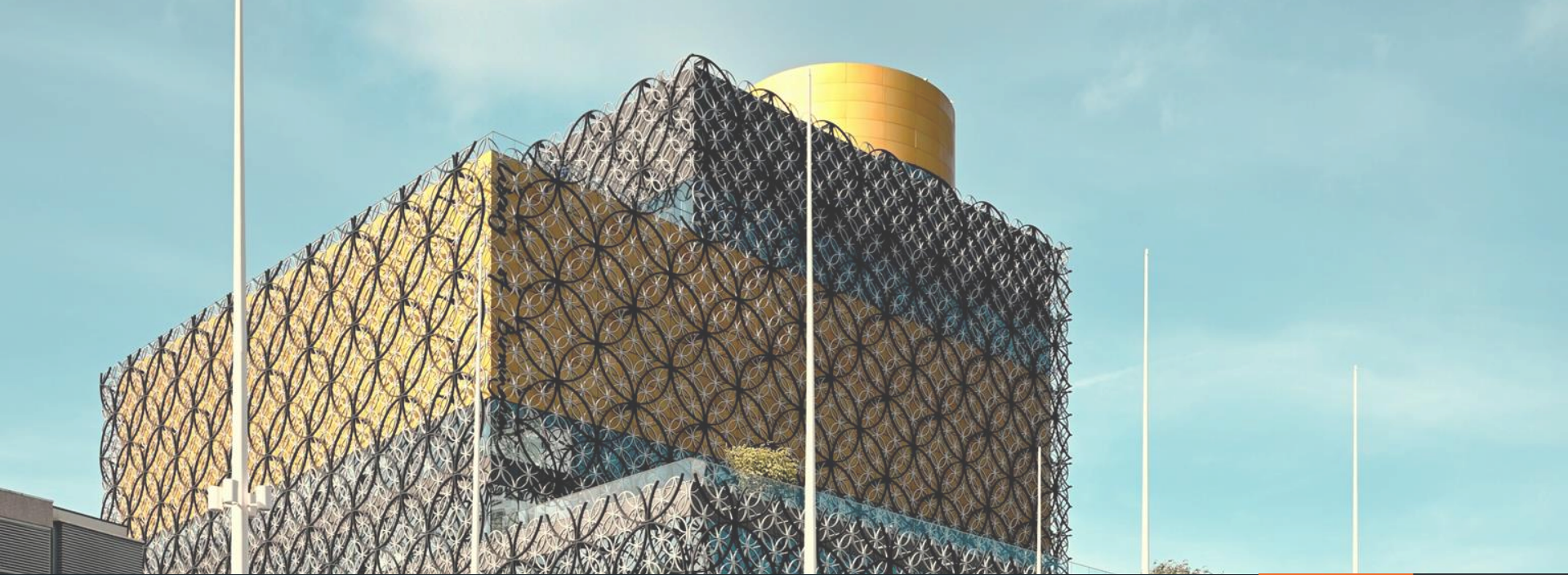
Correct responses 26 (48.15%)

Correct answer

The agreement, while intended to create legal relations, was only intended to last a reasonable time (to pass the bar exam), and that period had expired.

Correct answer explanation

Lord Salmon looked at the very specific circumstances of the case and concluded that "the true inference must be that neither the mother nor the daughter could have intended that the daughter should have no legal right to receive, and the mother no legal obligation to pay, the allowance" (at 333). However, he also observed that such arrangement was not a perpetual one.



2. Commercial Transactions



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NO Intention



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Rose and Frank Company v JR Crompton and Brothers Ltd [1923] 2 K.B. 261 (CA)



The parties signed an agmt for the supply of paper tissue. The written agmt was described as not being subject to legal jurisdiction because it was a “honourable pledge”. One of the parties breached the pledge.



Was the agmt a legally binding contract between the parties?



No. The language clarified that the parties did not want to enter into a business relation, despite the commercial nature of their dealings.



NO Intention



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Pretoria Energy Co. v Blankney Estates Ltd [2022] EWHC 1467 (Ch)



PE wanted to get a lease on BE's farm. The parties reached some preliminary agmts, and agreed on some T&Cs and on an exclusivity period. PE started investing to operate the farm. Then in Nov 2014 BE granted a lease to a TP.



Was the agmt a legally binding contract between the parties?



No. The language in the agmt reached by the parties clarified that the only contractual effect of it was for the lockout provision (until July 2014).



YES Intention



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Edwards v Skyways [1964] 1 W.L.R. 349



An airline company agreed with the British Airline Pilots Association to make to redundant pilots "an *ex gratia* payment" of a specified size. The company resisted enforcement on the basis that *ex gratia* payments are not legal obligations.



Did the airline company bind itself to make the *ex gratia* payment?



Yes. The agreement with the pilot association was made in the course of business relations, and the company's behaviour suggested their intention to be legally bound by that agmt.





“[When] the subject matter of the agreement is business relations, [...] the onus is on the party who asserts that no legal effect was intended, and the onus is a heavy one”.

—*Edwards v Skyways Ltd.* [1964] 1 W.L.R.
349, 355 (Megaw J)

YES Intention



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Snelling v John G Snelling Ltd [1973] Q.B. 87



After some family feuds, 3 brothers and shareholders in the family building business agreed to: (1) pump funds in the company; (2) forfeit any claim to that money if they resigned. P resigned and claimed the money back.



Is the agmt between brothers legally binding?



Yes. The agreement was intended to create legal relations and so was binding and enforceable.





“[...] it is difficult to suppose that [the parties] would have gone to such trouble to record so obvious a debt of honour or to phrase the agreement in terms of "forfeit" unless they intended legal consequences to flow from the agreement”.

—*Snelling v John G Snelling Ltd*
[1973] Q.B. 87, 94

YES Intention



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Esso Petroleum Ltd v Commissioners of Customs and Excise
[1976] 1 W.L.R. 1 (HL)



Esso distributed “for free” to motorists buying petrol from them some coins, with the English footballers for the 1970 World Cup.



Did Esso intend to enter into a legally binding obligation with the motorists with reference to the coins?



Yes. The offer was made in a business context and designed it to attract the custom of motorists, and some of them relied on that offer.



Letters of Comfort



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Kleinwort Benson Ltd v Malaysia Mining Corp Bhd
[1989] 1 W.L.R. 379



KB provided a £10m loan to a subsidiary of MM, which issued 2 comfort letters stating that they will ensure that the subsidiary will be in a position to pay. The subsidiary went bankrupt.



Could the intention to create legal relations be inferred from the comfort letters?



No. In comfort letters, a company assumes a moral but NOT legal obligation to help another. As a result, they have no contractual effect.



Letters of Intent



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RTS Flexible Systems Ltd v Molkerei Gmbh & Co. [2010] UKSC 14



RTS supplied packaging machines to M. While the contract was being finalised, their relationship was regulated by letters of intent. Substantial work was carried out but no contract was signed. M failed to pay some supplies, letters expired.



Could the intention to create legal relations be inferred from the letters of intent?



Yes. Reversing the decision of the CA, the SC held that it was unrealistic to suppose that the parties had not intended to create legal relations.



Trade Unions



- Unless specifically stated in the collective agreement, these agmts are not legally enforceable:
 - *Ford Motor Co. v AUEFW* [1969] 2 Q.B. 303;
 - *National Coal Board v National Union of Mineworkers* [1986] 6 W.L.U.K. 214.
- Law has confirmed this interpretation: s.179, Trade Union and Labour Relations (Consolidation) Act 1992.



- Intention to be bound is required for all types of contracts, especially commercial contracts;
- There is a *rebuttable* presumption that business agreements ARE legally binding, where an agmt on essential T&Cs has been reached between the parties;
- The onus to revert the presumption is a heavy one. ONLY express statements not to be bound *usually* prevent the contract from being formed;
- Special rules for letters of comfort, letters of intent and collective bargaining agmts.



Commercial Transactions



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(questions 6 – 7)

Question 6



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An intention to create legal relations will be presumed in which of the following situations?

51



Between husband and wife

1 (1.96%)

Between parties in a commercial relationship who expressed to be binding in honour only

10 (19.61%)

Between parties in a commercial relationship

40 (78.43%) ✓

Between friends and acquaintances

0 (0%)

Correct responses 40 (78.43%)

Correct answer

Between parties in a commercial relationship

Correct answer explanation

There is a rebuttable presumption that business agreements ARE legally binding, where an agmt on essential T&Cs has been reached between the parties.

Question 7



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Two colleagues meet at work, during their lunch break. One of them promises the other to clean their car if they lent them their football boots.

47



The law presumes that there is no intention to create a legal relationship.

22 (46.81%) ✓

The law presumes that there is no intention to create a legal relationship, but this will be rebutted because of the importance of football as the national sport.

1 (2.13%)

The law presumes that there is an intention to create a legal relationship because the relationship was established between colleagues at work.

3 (6.38%)

The law presumes that there is an intention to create a legal relationship because the promises were bargained for, demonstrating that they were intended to be binding.

Correct responses 22 (46.81%)

Correct answer

The law presumes that there is no intention to create a legal relationship.

Correct answer explanation

This is a social context. This presumption is rebuttable.



3. Borderline Transactions



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YES Intention



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Sadler v Reynolds [2005] EWHC 309 (QB)



During an interview, S suggested ghost writing R's autobiography for a 50% share in the proceeds. S found a publisher, came up with a title and wrote the first chapter. R used another writer for his autobiography, but used S' title and chapter.



Was the evidence sufficient to prove intention to create legal relations?



Yes. The claimant was able to prove that the promise was meant to be binding and specific enough to be enforceable in a court.



NO Intention



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Blue v Ashley [2017] EWHC 1928 (Comm)



A (owner of Sports Direct) promised he would pay a consultant £15m if the company's share price reached £8. The promise was made during a pub visit with business purpose.



Was the evidence sufficient to prove intention to create legal relations?



No. The claimant was unable to prove that the statement (if made) was more than a “banter”, and his work did not have effect on the company's share price.



NO Intention



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Moorgate Capital Ltd v Sun European Partners LLP [2020] EWHC 593 (Comm)



MC claimed they were owed a fee of £1m for consultancy services provided for the acquisition of a company. MC claimed the fee as agreed during a phone conversation with SEP's director, followed by a confirmation email.



Was the evidence sufficient to prove intention to create legal relations?



No. The claimant was unable to prove that the agreement was reached, and it was not merely a proposal.



- There is no presumption either way, the outcome depends on the factual circumstances of each case;
- Where a presumption for or against the existence of intention is present, this is less strong than in domestic or commercial contexts;
- The onus is always on the claimant to prove the existence of a binding intention.



Borderline Transactions

Summary



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1. **Domestic and Social Transactions** usually carry with them a factual presumption that parties did not want to enter into a legal relation.
2. **Commercial Transactions** usually carry with them the opposite presumption.
3. In **Borderline Transactions** no presumption applies. The claimant needs to make their case, and the courts will look objectively at the dealings between the parties.