

LEVEL 5 ASSESSMENT SPECIFICATION

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Perhaps to start with, there should there be an introduction to summarise that 'intention to create legal relations' is one of the elements that needs to exist in a contract? What is the effect of dispute on this element and how it can put either party (in contract) at disadvantage. In the end, the absence of such will result for a contract to be invalid. A court must ascertain the existence of intent to create legal relations in order to determine the legality of any contract that would bind parties involved to discharge their obligations as prescribed and agreed in the contract. To further guide in addressing potential ambiguity of such requirement and clearly determine whether the agreements are legally binding contract, the court has established 3 distinctive contexts namely social and domestic agreement, commercial and business agreement, and the agreements made with public bodies or those that affect the public interest. Upon looking at an agreement based on the three contexts mentioned, the court will be able to find the intention to create legal intention in a court case or an agreement, thereby finding out the relevance of taking it into a court action or not. Apart from that, in order for a court to find an intention to create legal relation is also through that if the agreement had a firm offer that was accepted by both parties. Moreover, if there is any consideration in the contract or agreement made by the two parties. Both parties need to offer a valuable as an exchange for the other's promise. It cannot be a one-sided offer because then there will be no consideration in the contract. Only then the court could determine whether the agreement had an intention to create a legal binding. In most cases, if there was no consideration shown by both parties, the court will not recognise a contract or find the intention to create a legal relation between both parties, hence, there are no intention to create any legal relation in those cases. Moving on, there is also the presumptions that are relevant and that it could be rebutted if there are enough evidence one party could proof otherwise on their contract or agreement. There are two rebuttable presumptions that was developed by the courts which are family and social agreements and business agreements. Looking at the two agreements, usually between family and social with business context, the family and social is leaning more towards a social or domestic context rather than having intention to make it legally binding. As an illustration, Emma had promised Peter to meet him at the cinema at 5pm in the evening to watch the latest Marvel movie together. However, when it was already 5pm, Emma did not show up. Peter cannot sue or take any legal action towards Emma because the promise or agreement had no legal intention by any the two of them. Therefore, even though there was an offer, it does not necessarily mean there is a contract between two parties unless there was an acceptance, consideration and intention to create a legal relation. This report will cover various cases to

determine the objectives to create legal relations and whether there are any presumptions that could result in the case being rebutted.

The first context that will be addressed is the social and domestic context of how a court can evaluate if the two parties intended to be legally committed to each other in a contract. In the case of *Balfour v. Balfour* [1919], the wife's attempt in suing the husband for not fulfilling his promise of monthly allowance of £30 but was denied by the court due to the fact that there is presumption that agreements between husbands and wives are not considered to be enforceable because neither of the two parties had intention to create a legal relation (McKendrick, 2014, p. 272) (Garg, n.d.). Duke LJ observed in his decision that the assumption could have been reversed if Mrs. Balfour had not stated that the arrangement was formed before they separated (McKendrick, 2014, p. 272). Similarly in the case of *Jones v. Padavatton* [1969], there is a presumption here that an agreement in a domestic environment, in this example between a mother and daughter, has no aim of establishing a legal connection (McKendrick, 2014, p. 272). There are several reasons why this presumption cannot be rebutted, including the fact that it is more of a family arrangement between a mother and daughter who trusted each other enough to make such commitments (Elliott & Quinn, 2009, p. 60). To clarify, the daughter had enough faith in her mother to quit her well-paying career and study for the bar test as her mother had requested. The essential idea in this case is remarkably similar to the *Balfour v. Balfour* [1919] case, with the only distinction being that it involved a husband-and-wife agreement (McKendrick, 2014, p. 272). As a result, even according to the majority of the Court of Appeal, there was no intention to make the agreement legally binding unless there are evidence proving that it could be rebutted (Elliott & Quinn, 2009, p. 60). Additionally, there are also cases in which its presumptions have actually been rebutted in the same context of domestic such as the case of *Merritt v. Merritt* [1970]. According to this case, the court decided that the agreement was made after the couple had separated, indicating that they both intended for the arrangement to be legally binding (Merkin and Saintier, 2021, p. 147). The presumption of intention to create a legal relation in a marriage context here had been rebutted which could be clearly executed through the writing in which both parties had signed demonstrated an intention to create legal relation and that the husband needs to transfer the house to her sole ownership (Merkin and Saintier, 2021, p. 147). Moreover, Lord Denning MR observed that when a married couple is separated or about to split, they bargain strongly and do not rely on honourable understandings since they primarily seek to break all relations (Merkin and Saintier, 2021, p. 147). For that reason, the case of *Merritt v. Merritt* [1970] could be rebutted by the presumption that there

was intention to create legal relation since the arrangement was made after their separation (Merkin and Saintier, 2021, p. 147). Subsequently, in *Simpkins v. Pays* [1955], the claimant sued for his portion of the winnings and was sustained by the court. The three parties had entered an agreement when they all agreed to share the cost of entry of a newspaper competition through the defendant's name which she had also promised to share the winnings (Stone and Devenney, 2015, p. 146). However, when the defendant won £750, she refused to share the winning prize (Stone and Devenney, 2015, p. 146). The presumption against familial context could be overcome here because mutuality exists between the parties during the arrangement, and the claimant's action of filling out the entry was indeed proof that she had agreed to the terms where each party will have a share in the outcome, thereby creating an intention to create a legal relation (Stone and Devenney, 2015, p. 146). Both of these cases, *Merritt v. Merritt* (1970) and *Simpkins v. Pays* [1955], were successfully rebutted because the court was able to discover the intention to create a legal relationship and there was evidence that led to the cases being rebutted.

In business agreements, there is a high presumption that the parties intend to be legally bound, and this assumption will not be rebutted unless there is extremely convincing contrary evidence. For instance, the leading case in this context, *Esso Petroleum v. Commissioners of Customs and Excise* [1976]. This case arose when the defendant attempted to claim purchase tax on every World Cup coin distributed to customers who purchased four gallons of Esso's petrol during that season (Turner, 2013). The House of Lords made a few different findings in this case, with the majority holding that there was an intention to form a legal relationship in this case because it was evident that Esso was using the marketing as a pretext to obtain more business out of it (Turner, 2013). Meanwhile, those who disagreed argued that there was little contractual basis because the transaction was too little (Turner, 2013). There is also the case of *Edward v. Skyways Ltd.* (1969), which involves an agreement between an employer and an employee. There was a redundancy situation that resulted in the employee, Mr. Edward, being sacked with the promise of an "ex gratia" pay-out from the company, Skyways Ltd (Garg, n.d.). There is a presumption in this case that both parties intended for the agreement to be legally binding in the commercial setting. As a result, Mr. Edward sued Skyways for breach of contract, and the court ruled that the arrangement was enforceable through a valid offer and acceptance (Garg, n.d.). The presumption may be rebutted if the agreement has had an absence of a particular stipulation to the contrary (Kumar, 2010). Section 179(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 states that unless the agreement includes a

provision stating that the parties intended for the agreement to be legally binding or that the agreement was in writing, there will be a presumption that there was no intention to create a legal relationship (Kumar, 2010). Nonetheless, if the agreement met the standards outlined in Section 179(1), the inference that there was an intent to form a legal relationship might be rebutted (2) (Kumar, 2010). In the case of *Rose and Frank Co v JR Crompton and Bros Ltd* [1925], the two entered into an agreement after a few years of dealing with each other's businesses where the claimant resells the defendant's paper to New York while the defendant produce paper mainly in England (Merkin and Saintier, 2021, p. 152-153). In the agreement, it had already been stated that it was an honourable pledge clause between partners, not a formal or legal agreement between the two. *J. R. Crompton & Bros. Ltd.* contended that they had no intention of making the arrangement legally binding, and the court agreed (Merkin and Saintier, 2021, p. 152-153). There is a presumption that intention to create legal relation did exists in this agreement but however the presumption was able to be successfully rebutted because of the honourable clause stated in the writings of the agreement stating that "this agreement is not a formal or legal agreement." (Kumar, 2010). As a result, the court granted the defendant's appeal and determined that there was no intent to make the agreement legally binding. Similarly, in *Kleinwort Benson Ltd v. Malaysia Mining Corporation Bhd* [1989], the letter of comfort rebutted the presumption that there was an intention to create a legal relation (Chandler and Brown, 2007). However, the presumption was not rebutted in *ERDC Group Ltd v. Brunel University* [2006] according to a document by i-law.com. (n.d.), through the letters of intent because there was an intention to create a legal relation.

Lastly, the final context that will be discussed is the agreements made with public bodies or those which affect public interest. In the case of *Willmore v. South Eastern Electricity Board* [1957], the two had entered into an agreement when the board promised the Willmore a continuous and sufficient supply of electricity for their business (Chappell, 2002, p. 133) (Academike, 2015). Unfortunately, the Willmore's business failed because the board failed to keep its promise (Chappell, 2002, p. 133) (Academike, 2015). The court held that there was no intention to create legal relation. Therefore, there was a presumption of that there was no intention to create legal relation due to the fact that the offer of supplying the electricity was not made with contractual intent (Chappell, 2002, p. 133) (Academike, 2015). Another case example is *Triefus v. Post Office* [1957], in which there are presumptions that the purpose to bind does not exist in this scenario. Triefus sought that the Post Office pay him for the loss of two postal packages (Swarb.co.uk, 2022). The court determined that there is a purpose to

establish a legal relation, rebutting the earlier presumption based on mail delivery legislation (Swarb.co.uk, 2022). Last but not least, in the case of *Robinson v. HM Customs and Excise* [2000], the Customs and Excise and an informant, Mr. Robinson, reached an agreement. Mr. Robinson then attempted to claim the payment he should have received in exchange for the information, but Customs & Excise refused (Turner, 2010, p. 75). Based on public policy reasons, the court ruled on the presumption that there was no desire to create a legal relationship (Turner, 2010, p. 75).

In conclusion, to make a valid contract or agreement, intention to create legal relation plays a huge part after offer, acceptance, agreement and consideration. In order to have an enforceable and legally binding agreement, there has to be an intention to create legal relations. As for the rebuttable presumptions, some of them could be overturned in some of the cases discussed, assuming that there are valid reason and evidence to rebut the presumptions.

(2188 words)

REFERENCES

1. Balfour v. Balfour [1919] 2 KB 571
 2. Jones v. Padavatton [1969] 1 WLR 286
 3. Merritt v. Merritt [1970] 2 All ER 760, [1970] 1 WLR 1211
 4. Simpkins v. Pays [1955] 1 WLR 975
 5. Esso v Commissioners of Customs and Excise [1976] 1 WLR 1
 6. Edwards v Skyways [1964] 1 WLR 349
 7. Rose & Frank v Crompton Bros [1925] AC 445
 8. Kleinwort Benson v Malaysian Mining Corp [1989] 1 WLR 379
 9. ERDC Group Ltd v Brunel University [2006] EWHC 687 (TTC)
 10. Willmore v South Eastern Electricity Board [1957] 2 WLR 375
 11. Triefus v Post Office [1957] 2 QB 352, [1957] 2 All ER 387
 12. Robinson v HM Customs & Excise [2000] QBD 99
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1. Merkin, R. and Saintier, S. (2021), *Poole's Textbook on Contract Law*, 15th Ed. S.L.: Oxford, University Press.
 2. Poole, J. (2016). *Textbook on contract law*. Oxford: Oxford University Press.
 3. Elliott, C. and Quinn, F. (2013). *Contract law*. 7th Ed. Harlow, England: Pearson.
 4. Ewan McKendrick (2014). *CONTRACT LAW: text, cases, and materials*. S.L.: Oxford University Press. p. 272.
 5. Smits, J.M. (2017). *Contract law: a comparative introduction*. Cheltenham, UK: Edward Elgar.
 6. George, U. (2021). 'INTENTION TO CREATE LEGAL RELATIONS: A COMPARATIVE ANALYSIS BETWEEN INDIA AND UK', *Indian Journal of Law and Legal Research*. 3(2), pp. 7-8.
(Accessed 5th March 2023) Available at: https://3fdef50c-add3-4615-a675-a91741bcb5c0.usrfiles.com/ugd/3fdef5_98885a3121bf4d6088220905fea0a92b.pdf
 7. Kumar, A. (2010). Intention to Create Legal Relations in (1.) Domestic and Social Agreements (2.) Commercial Agreements – *Legal India* [online]. Available at: <https://www.legalindia.com/intention-to-create-legal-relations-in-1-domestic-and-social-agreements-2-commercial-agreements/>

8. Garg, A. (n.d.). Intention to Create Legal Relationship. *Legal Service India E-Journal*. Available at: <https://www.legalserviceindia.com/legal/article-5903-intention-to-create-legal-relationship.html>
9. Chappell, D. (2002). *Parris's Standard Form of Building Contract*. 3rd Ed. Blackwell Science Ltd.
10. Turner, C. (2010). *Unlocking contract law*. 3rd Ed. London: Routledge.
11. Turner, C. (2013). *Unlocking contract law*. 4th Ed. London: Routledge.
12. Swarb.co.uk. (2022). *Triefus and Co Ltd v Post Office: CA 1957*. [online] swarb.co.uk. Available at: <https://swarb.co.uk/triefus-and-co-ltd-v-post-office-ca-1957/>.
13. Academike. (2015). *Statutory Transactions: A Comparative Analysis of the Indian and English Scenario - Academike*. [online] Available at: <https://www.lawctopus.com/academike/statutory-transactions/>.
14. www.i-law.com. (n.d.). *THE STATUS OF LETTERS OF INTENT*. [online] Available at: <https://www.i-law.com/ilaw/doc/view.htm?id=75543> [Accessed 10 Mar. 2023].
15. Chandler, A. and Brown, I. (2007). *Law of contract: 2007 and 2008*. Oxford; New York: Oxford University Press.
16. Stone, R. and Devenney, J. (2015). *The modern law of contract*. London: Routledge.