

CASES ON INTENTION

SOCIAL & DOMESTIC AGREEMENTS

Lens v Devonshire Club (1914)

It was held that the winner of a competition held by a golf club could not sue for his prize where "no one concerned with that competition ever intended that there should be any legal results flowing from the conditions posted and the acceptance by the competitor of those conditions".

Balfour v Balfour (1919)

The defendant who worked in Ceylon, came to England with his wife on holiday. He later returned to Ceylon alone, the wife remaining in England for health reasons. The defendant promised to pay the plaintiff £30 per month as maintenance, but failed to keep up the payments when the marriage broke up. The wife sued. It was held that the wife could not succeed because: (1) she had provided no consideration for the promise to pay £30; and (2) agreements between husbands and wives are not contracts because the parties do not intend them to be legally binding.

Merrit v Merrit (1970)

The husband left his wife. They met to make arrangements for the future. The husband agreed to pay £40 per month maintenance, out of which the wife would pay the mortgage. When the mortgage was paid off he would transfer the house from joint names to the wife's name. He wrote this down and signed the paper, but later refused to transfer the house.

It was held that when the agreement was made, the husband and wife were no longer living together, therefore they must have intended the agreement to be binding, as they would base their future actions on it. This intention was evidenced by the writing. The husband had to transfer the house to the wife.

Parker v Clarke (1960)

Mrs Parker was the niece of Mrs Clarke. An agreement was made that the Parkers would sell their house and live with the Clarks. They would share the bills and the Clarks would then leave the house to the Parkers. Mrs Clarke wrote to the Parkers giving them the details of expenses and confirming the agreement. The Parkers sold their house and moved in. Mr Clarke changed his will leaving the house to the Parkers. Later the couples fell out and the Parkers were asked to leave. They claimed damages for breach of contract.

It was held that the exchange of letters showed the two couples were serious and the agreement was intended to be legally binding because (1) the Parkers had sold their own home, and (2) Mr Clarke changed his will. Therefore the Parkers were entitled to damages.

Tanner v Tanner (1975)

A man promised a woman that the house in which they had lived together (without being married) should be available for her and the couple's children. It was held that the promise had contractual force because, in reliance on it, the woman had moved out of her rent-controlled flat.

***Jones v Padavatton* (1969)**

In 1962, Mrs Jones offered a monthly allowance to her daughter if she would give up her job in America and come to England and study to become a barrister. Because of accommodation problems Mrs Jones bought a house in London where the daughter lived and received rents from other tenants. In 1967 they fell out and Mrs Jones claimed the house even though the daughter had not even passed half of her exams.

It was held that the first agreement to study was a family arrangement and not intended to be binding. Even if it was, it could only be deemed to be for a reasonable time, in this case five years. The second agreement was only a family agreement and there was no intention to create legal relations. Therefore, the mother was not liable on the maintenance agreement and could also claim the house.

***Simpkins v Pays* (1955)**

The defendant, her granddaughter, and the plaintiff, a paying lodger shared a house. They all contributed one-third of the stake in entering a competition in the defendant's name. One week a prize of £750 was won but on the defendant's refusal to share the prize, the plaintiff sued for a third.

It was held that the presence of the outsider rebutted the presumption that it was a family agreement and not intended to be binding. The mutual arrangement was a joint enterprise to which cash was contributed in the expectation of sharing any prize.

BUSINESS/COMMERCIAL AGREEMENTS

***Rose v Crompton Bros* (1925)**

The defendants were paper manufacturers and entered into an agreement with the plaintiffs whereby the plaintiffs were to act as sole agents for the sale of the defendant's paper in the US. The written agreement contained a clause that it was not entered into as a formal or legal agreement and would not be subject to legal jurisdiction in the courts but was a record of the purpose and intention of the parties to which they honourably pledged themselves, that it would be carried through with mutual loyalty and friendly co-operation. The plaintiffs placed orders for paper which were accepted by the defendants. Before the orders were sent, the defendants terminated the agency agreement and refused to send the paper.

It was held that the sole agency agreement was not binding owing to the inclusion of the "honourable pledge clause". Regarding the orders which had been placed and accepted, however, contracts had been created and the defendants, in failing to execute them, were in breach of contract.

***Jones v Vernon Pools* (1938)**

The plaintiff claimed to have won the football pools. The coupon stated that the transaction was "binding in honour only". It was held that the plaintiff was not entitled to recover because the agreement was based on the honour of the parties (and thus not legally binding).

***Edwards v Skyways* (1964)**

The plaintiff pilot was made redundant by the defendant. He had been informed by his pilots association that he would be given an ex gratia payment (ie, a gift). The defendant failed to pay and the pilot sued. The defendant argued that the use of the words "ex gratia" showed that there was no intention to create legal relations.

It was held that this agreement related to business matters and was presumed to be binding. The defendants had failed to rebut this presumption. The court also stated that the words "ex gratia" or "without admission of liability" are used simply to indicate that the party agreeing to pay does not admit any pre-existing liability on his part; but he is certainly not seeking to preclude the legal enforceability of the settlement itself by describing the payment as "ex gratia".

***JH Milner v Percy Bilton* (1966)**

A property developer reached an "understanding" with a firm of solicitors to employ them in connection with a proposed development, but neither side entered into a definite commitment. The use of deliberately vague language was held to negative contractual intention.

***Weeks v Tybald* (1605)**

The defendant "affirmed and published that he would give £100 to him that should marry his daughter with his consent." The court held that "It is not reasonable that the defendant should be bound by such general words spoken to excite suitors."

***Heilbut, Symons & Co v Buckleton* (1913)**

The plaintiff said to the defendants' manager that he understood the defendants to be "bringing out a rubber company." The manager replied that they were, on the strength of which statement the plaintiff applied for, and was allotted, shares in the company. It turned out not to be a rubber company and the plaintiff claimed damages, alleging that the defendants had warranted that it was a rubber company. The claim failed as nothing said by the defendants' manager was intended to have contractual effect.

***Kleinwort Benson v Malaysia Mining Corp* (1989)**

The plaintiff bank agreed with the defendants to lend money to a subsidiary of the defendants. As part of the arrangement, the defendants gave the plaintiffs a letter of comfort which stated that it was the company's policy to ensure that the business of its subsidiary is at all times in a position to meet its liabilities. The subsidiary went into liquidation and the plaintiffs claimed payment from the defendants.

It was held that the letters of comfort were statements of the company's present policy, and not contractual promises as to future conduct. They were not intended to create legal relations, and gave rise to no more than a moral responsibility on the part of the defendants to meet the subsidiary's debt.

***Esso Petroleum Ltd v Commissioners of Customs and Excise* [1976] 1 All ER 117**

In 1970 the taxpayers ('Esso') devised a petrol sales promotion scheme. The scheme involved the distribution of millions of coins to petrol stations which sold Esso petrol. Each of the coins bore the likeness of one of the members of the English soccer team which went to Mexico in 1970 to play in the World Cup competition. The object of the scheme was that petrol station proprietors should encourage motorists to buy Esso petrol by offering to give away a coin for every four gallons of Esso petrol which the motorist bought. The coins were of little intrinsic value but it was hoped that motorists would persist in buying Esso petrol in order to collect the full set of 30 coins. The scheme was extensively advertised by Esso in the press and on television with phrases such as: 'Going free, at your Esso Action Station now', and: 'We are giving you a coin with every four gallons of Esso petrol you buy.' Folders were also circulated by Esso to petrol stations which stated, inter alia: 'One coin should be given to every motorist who buys four gallons of petrol – two coins for eight

gallons and so on.' 4,900 petrol stations joined the scheme. Large posters were delivered by Esso to those stations, the most prominent lettering on the posters stating: 'The World Cup coins', 'One coin given with every four gallons of petrol'. The Customs and Excise Commissioners claimed that the coins were chargeable to purchase tax under s2(1) of the Purchase Tax Act 1963 on the ground that they had been 'produced in quantity for general sale' and therefore fell within Group 25 of Sch 1 to the 1963 Act.

Held (Lord Fraser of Tullybelton dissenting) – The coins had not been 'produced ... for ... sale', within Group 25 of Sch 1, and were not therefore chargeable for the following reasons–

(i) On the basis that the posters and other advertising material constituted an offer by the garage proprietors to enter into a contract with each customer to supply a coin with every four gallons of petrol sold, the contract envisaged was not a contract of 'sale', since the consideration for the transfer of the coins was not a money payment but the undertaking by the customer to enter into a collateral contract to purchase the appropriate quantity of Esso petrol.

(ii) (per Viscount Dilhorne and Lord Russell of Killowen, Lord Wilberforce and Lord Simon of Glaisdale dissenting) Furthermore, in the circumstances, and in particular in view of the fact that the coins were of little intrinsic value to customers, it could not be inferred that either Esso or the petrol station proprietors on the one hand, or the customers on the other, intended that there should be a legally binding contract to supply the coins to customers who bought the appropriate quantity of petrol. It followed that the coins had been produced for distribution by way of gift and not by way of sale.