



02 Promise TO Marry - Family Law

Family Law (Universiti Malaya)

PROMISE TO MARRY

- A contract to marry or an agreement to marry refers to the contract or agreement where parties agree that they will marry some time in the future.
- In the context of a promise to marry, there are four relevant question to be asked. They ask:
 - 1) Is there a valid contract or agreement?
 - 2) If yes, has there been a breach of that contract?
 - 3) If yes, does the defendant have any defence?
 - 4) If none, what are the remedies (that can the Pf gets if df's defence failed)?
- A valid contract has basic elements of:
 - Offer
 - Acceptance
 - Consideration
 - Capacity

VALID CONTRACT

CONSIDERATION

- Consent is a sufficient consideration.
- Consideration may also be proved by doing some act requested by the other party.
 - ✓ Harvey V Johnston
Df promised to marry Pf within a reasonable time after her arrival at Ireland, if she would go to Ireland for the purpose of marrying the Df. She went to Ireland from Canada as requested but the Df did not carry out his promise. She sued for breach of promise to marry. Df argued that there wasn't sufficient consideration for his promise. Court held that there was perfectly good consideration.

CAPACITY

- The requirement of Capacity:
 - 1) The parties must be single at the time the promise is made
 - ❖ Could be a divorcee, widower,.. as long as single
 - ❖ Case
 - Spiers V Hunt
Df (male), 70 years old, promised Pf to marry her once his current wife dies. Both Df and Pf have had sex together & Pf had give birth of a few children. The Df then refused to marry the Pf. She sued for breach of promise.

Court held that the agreement is not valid because it has failed to obliged by the 1st requirement (must be single).
 - Wilson V Carnley
Judge in this case agrees with the case of Spiers. Court added their view that where one of the parties has already gotten married with someone

else, the agreement entered by them will be contradicting with the public policies as it results in the husband neglecting right etiquettes of responsibilities to his family. Hence, the agreement are unenforceable.

- There are 3 exception to this:
 - Pf doesn't know that Df has already married
- Shaw V Shaw & Anor
Mr Shaw represented himself to be a widower and went through marriage ceremony with the Pf, a widow in 1937. They lived together as man and wife. The real Mrs Shaw was alive all the while until she died in 1950. In 1952, Pf subsequently discovered that she was all along not legally married to Mr Shaw. She sued Mr Shaw's estate for damages for breach of contract to marry the deceased (Mr Shaw).

Court held that damage can be recovered. The case would be different had the Pf knew that Mr Shaw was a married man. Damage of £1000 was awarded in this case.

- Mary Joseph Arokiasamy V Sundram.
A Hindu man had promised to marry a Christian girl. The girl was informed that the man's wife has died. The man however, breached his promise. Court held that there was no religious obstruct against a Hindu man marrying a Christian woman. The promise to marry was therefore valid and enforceable.
 - One can enter into an agreement of marriage, but can only get marry after the decree had become absolute.
 - ★ Decree nisi = When a married couple file a divorce, court would grant them a Decree Nisi which gave them a duration of 3 months for them to get together as the last effort from the court.
 - ★ If in 3 months the couple get back together, then they are regarded as continuing their marriage without needing to undergo any other process.
 - ★ If they decided to go separate ways even after the end of decree nisi (3 months) court will grant them decree absolute.
- Fender V St John-Mildmay
Df's wife (Df yg dalam dikri nasai, not Pf) had already obtained a decree nisi of divorce on the ground of the defendant's adultery with the Pf. Df had promised to marry Pf upon a date after the decree had become absolute. The Df broke off the engagement. Subsequently, he married another woman, and Pf sued his for breach of promise.

The court held that status of marriage exists until the decree absolute, but the party in this case has already been living separately, no duties towards each other, the custody of the child as well as the maintenance

has already been decided. Court also held that when a petitioner has advanced so far in decree nisi, no reconciliation could take place. Hence, Court held that the promise is therefore valid and the Court awarded £2000 to Pf for the breach of promise to marry.

- If the male party is allowed to get married for more than 1 wife in religion. (Polygamous).



Nafsiah V Abdul Majid

Pf sued for damages for breach of contract to marry. The parties were Muslims. Df attempted to rely on the exceptions which invalidates a promise to marry if the woman knew that the man was already married at the time of the promise.

Court declined instead rely on the exceptions of Df's personal law which allows him to marry more than one wife, hence the promise is valid. Damages of £1200 was granted to the Pf.

2) Both religions did not prohibit/obstruct the marriage

- ★ If the religion did not prevent the marriage, the contract would be valid.



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3) Age

- ★ Section 11 of Contracts Act

A person is competent to enter into a contract if he has attained the age of 18 years. The issue is whether the same principle does apply to a contract to marry?

- ★ Rajeswary V Balakrishnan

Pf (a girl) had entered into a contract to marry when she is still a minor. Df had breached the contract and she sued him for damages. Court referred to a few cases of:

- *Mohori Bibee V Dhumodas Ghose* held that a minor cannot enter into a valid contract. Court then distinguished Mohori Bibee on the fact that the contract is a business contract.
- *Fernandes V Gonsalves*, held that In India, a contract to marry was normally entered upon between minor parties, or by a minor and an adult. Therefore there is remedies for the minor if a breach happens.
- *Khimji Kuverji V Lalji Karamsi*, held that a minor may enter into a valid contract to marry.

BREACH OF PROMISE

- If elements of a valid contract to marry are proved, the next step is to ascertain if there was a breach.
- Characteristic:
 1. An action for breach may be raised by the man or the woman
 2. Where there is no specific date for the marriage, it should take place within the reasonable time.
 3. If a party demands for the marriage, the other party must have reasonable excuse for not wanting to go through the marriage.
 - 🌈 Harrison V Cage
Pf had promised to marry Df's wife, when she was still single and she had made similar promise to him. When the Pf requested that the marriage to be solemnized, the df's wife refused and subsequently, married the Def. court held that there was a breach of promise to marry.
 4. Agreement to marry can be subject to an action that can give raise to anticipatory breach [pecah kontrak yang dijangka]. (walaupun janji tu blh dijangka akan dipecahkan kontraknya, but still valid)
 - 🌈 Frost V Knight
Df had promised the Pf to marry her on the death of Df's father. Whilst the father was still alive, the Df announced that he doesn't want to fulfil his promise, and broke off the engagement. Pf, without waiting for Df father's death, sued Df for breach for promise to marry. Court held that it is possible for Pf to sue Df immediately and not wait until Df's father death to sue him. Hence, a contract to marry may be subjects of an action for its anticipatory breach.
- Doris Rodrigues V Bala Krishnan
A proviso from the Civil Law Act 1970, failed to be brought in because of the cut-off date issue. Court held that 'ganti rugi am' has been abolished with the misc 1970.

DEFENCES

1. Misrepresentation of fact
 - 🌈 Wharton V Lewis
There was allegation of misrepresentation. Before the engagement, Pf's brother informed Df that Pf's father would leave property to her upon his death. It turns out that her father, had paid off his creditors. Another problem was regarding Pf's past when she was at Oxford. Df had broken off the engagement when he received information concerning the questionable life the Pf had been leading in Oxford. Pf's father and brother however, represented the information as false, which then resumed the engagement. It was subsequently discovered that Pf had in fact been leading a questionable life.

Court left it to jury to decide whether Df had indeed continue the relationship due to the false representations. The jury decided for the plaintiff and awarded her £150 in damages.

2. A contract to marry is not a contract *uberrimae fidei*

- ★ Uberrimae Fidei contract = disclose everything about oneself
- ★ One doesn't need to disclose everything about themselves unless it touches the root/core of the contract. (I.e: Pregnant other's child during the marriage must be disclosed)

🌈 Beachey V Brown

Df raised a defence that Pf had agreed to marry another when she entered into an engagement with Df. Had he known this, he would not have agreed to marry Pf. The court reject this defence and held that while there are many things that a man wants to know about the woman he is about to marry, it should not entitle the Df to refuse to fulfil his engagement. However, where it turns out that a woman that has engaged in sexual activity which goes to the root of the contract of marriage, from the necessity of the contract, the man is released from his contract. Hence court did not accept Df's defence.

3. Moral, Physical or Mental infirmity

- ★ Df must prove that there is some actual moral, physical or mental infirmity that renders the other party to be unfit for the marriage in order to rely to this defence.
- ★ To use this defence, Df must prove that:
 - The infirmity (ketidakupayaan) happens as soon as the agreement to marry has been made.
 - The infirmity only came to Df's knowledge after an agreement was entered into. (Found out after contract)

🌈 Jefferson V Paskell

Pf contracted a disease soon after her engagement. She thought it was a mere chill but the doctor diagnosed TB, In any case, she wasn't ready and was unfit for marriage on the fixed wedding date. She underwent treatment but Df refused to marry her even though she has recovered less than 6 months after. It turns out that the Pf's illness wasn't a TB. Df was sued for breach of promise to marry, and Df argued that he has honestly and reasonably believed that Pf to be unfit for marriage.

Court held held that if a woman/man had admitted that she is unfit and wasn't ready for the fixed marriage. She would have to prove that she would be fit within reasonable time (untuk teruskan). But if She has admit that she is not fit for the fixed married, The man if relied on it, have to prove it (untuk batalkan). Hence, The defence failed, as Df failed to prove that it was TB that Pf's faced.

4. Own mental or physical infirmity

- ★ The question is whether Df can raise his or her own mental or physical infirmity as a defence to a claim for breach or promise to marry.

🌈 Hall V Wright

Df had pleaded his own ill-health, that is a serious disease concerning bleeding from the lungs which he still suffers and alleged that he had been warned that the excitement of marriage would endanger his life.

Court held that marriage is not necessarily all about the excitement, the marriage could provide happiness for both, status of husband and wife that can be obtained throughout

the marriage and the wealth that can be acquired after the death of the man/woman.
Hence, the defence failed.

REMEDIES

- Remedies can be divided into 2 categories, namely, general damages and special damages.
- General damages refers to damages for the abstract.
 - I.e: disappointment, sadness, feeling insulted,...
 - such as from negligence, defamation, and breach of promise to marry
- Special damage refers to damage for specific items, and which may be quantified in monetary terms.
 - I.e: medical expenses, wedding preparations,...



Berry V Da Costa

Pf left her mother's house after Df promised to marry her, and resided at several lodgings with the Df. She eventually accompanied Pf to Paris on that the marriage would take place there. Df, however, married another woman. Pf claimed damages for breach of promise



Dennis V Senayah

The court held that there are 4 matters that should be consider in defining remedies:

1. There was naturally mental anguish and humiliation (disappointment and hurt)
2. Negative impact on Pf's future prospects for marriage
3. The rank and conditions of the parties
4. And the Df's capacity (kemampuan) In paying remedies

- Rings or other gifts



Cohen V Sellar

Court held that:

- If the ring was given as part of the fulfilment the condition to marry:
 - ❖ If the woman accept the ring but refuse to fulfil the condition of receiving the gift, she must returns it.
 - ❖ If a man refuse to fulfil the condition of the promise to marry, he cannot demand the return of the ring.
 - ❖ If both parties agree to ends the agreement, they should return back the exchanged gift that has been accepted by each party to the other.
- If the ring was given as a gift without the needs to fulfil any condition, it can be keep by the person who receives it.

★ SIDE NOTE: DR. SAID IF DAPAT TOPIC ON REMEDIES, DON'T TOUCH THE LRA, FOCUS ON CASES.