

THE INTENTION TO ENTER INTO LEGAL RELATIONS

Posted on [March 15, 2016](#) March 15, 2016 Written By [Olanrewaju Olamide](#) Posted in [Law Of Contract](#) Tagged [Balfour vs Balfour](#), [Merrit vs Merrit](#)

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There is a lot of academic controversy regarding whether or not the intention to create legal relations should be regarded as a necessary ingredient in the formation of a contract. This controversy, as previously stated is purely academic. Under the common law the intention must be present. In commercial transactions, the intention to create legal relations is presumed to be inherent while it is arguable under domestic and intermediate situations.

In discussing the intention to create legal relations, the following outline would be used:

- Domestic agreements
- Commercial engagements
- Intermediate situations

Domestic Agreements

It has been generally held that agreements that are made in domestic situations have no intention to create legal relations. Hence, they are not usually binding. This was the decision of the court in the case of *Balfour vs Balfour* where the court held that an agreement, where the husband promised to pay his wife a monthly allowance of £30, had no intention to create legal relations and thus couldn't be enforceable by the court.

An exception to this is a situation in which the contract is made when parties are not in good terms. In the case of *Merrit vs Merrit*, it was held that a contract, where the husband promised to pay a monthly allowance, contained an intention to create legal relations and was binding. This is due to the fact that the contract was made when both parties were separated. You can also see the provision of **S.42(1) of the Matrimonial Causes Act** which states that parties that are judicially separated can sue each other in tort and contract.

Also, in a case in which one of the parties makes a very huge sacrifice in which it would cause injustice not to enforce the agreement, intention to create legal relations may be held to be present. For example in the case of *Parker vs Clark* it was held that the plaintiff's uncle couldn't evict him from his apartment after promising to accommodate him. This was due to the fact that the plaintiff sold his own house due to the promise and he also shared the bills with the family of the defendant.

Commercial Agreements

In commercial transactions, it is automatically presumed that there is an intention to create legal relations. However, in some situations this presumption may be done away with. This applies in cases of a mere puff or when the agreement explicitly excludes the enforcement of the contract by the court.

A mere puff is a situation in which the promise made is one that cannot be reasonably fulfilled because it is ludicrous. For example, an advertisement that any one that takes a drink can outrun a cheetah cannot be enforceable if the complainant couldn't outrun a cheetah. This is due to the fact that it is not a promise that can be fulfilled for one to outrun a cheetah by just taking a mere drink.

The second scenario is in cases in which enforcement in the court of law is explicitly excluded. This is usually popular in football pool cases. For example, in the case of *Amadi vs Pool House Group & Nigerian Pools co*, it was decided that the defendant was under no legal liability towards the plaintiff. This is regardless of the fact that the plaintiff allegedly won some money. This is due to the fact that in the pool agreement, there was an honor clause that excluded litigation and legal enforceability.

Intermediate Situations

Intermediate situations are those which can neither be safely regarded as domestic nor commercial. An example is a car run agreement in which different parents would agree to take turns in carrying their children to school. They would agree to contribute funds towards the fueling of the vehicle and other expenses.

An example is the case of *Coward vs Motor Insurers Bureau* where the court held that in situations such as these, the court should be reluctant to impute the intention to create legal relations. The court would only enforce it where it is expressly stated in the agreement that there is an intention to create legal relations.