

Landmark Case Law

Balfour Vs. Balfour



1919

Analysis by:



Professor & lawyer
Puttu Guru Prasad

BALFOUR



VS.



BALFOUR

1919

BALFOUR VS BALFOUR 1919

- ▶ In this land mark judgement **Lord Justice Atkin** defines, what is a Contractual Relation, Societal Relation and Domestic Relation (Family).
- ▶ **Contractual Relationship** exists between two persons, if they enter into a agreement which is enforceable by the land of the law, and fulfil all the **10 essential elements** of the contract act.
- ▶ **Legal obligation** arises in **Contractual Relations** only, not in Societal and Domestic relations.
- ▶ The courts will award damages in the cases related to contracts.
- ▶ No one will claim damages arises from **Societal or Domestic** relations
- ▶ From this land mark case the **difference between** contractual relation, societal and domestic relations came to existence.

Essential elements of a valid contract in business law are explained below:

According to Sec. 10, “All agreements are contract if they are made by the free consent of parties competent to contract for a lawful consideration and with a lawful object and are not expressly declared to be void.”

Thus, Sections 2(h) and 10 of the Act state that there are some essential elements of a valid contract. If any of these elements is not satisfied by an agreement, it will affect the validity and will not form a valid contract.

On analyzing the contents of Sec. 10. It is revealed that the following are the essentials of a valid contract:-

- 1. Offer and acceptance.**
- 2. Legal relationship.**
- 3. Consensus-ad-idem.**
- 4. Competency of parties.**
- 5. Free consent.**
- 6. Lawful consideration.**
- 7. Lawful object.**
- 8. Not declared to be void.**
- 9. Certainty and possibility of performance.**
- 10. Legal formalities.**



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**According to Sec 2 (h) of
Indian Contract Act , 1872,
the term Contract is defined
as
'An agreement enforceable by law'.**

TYPES OF CONTRACTS

Formation / Creation

- Expressed
- Implied
- Tacit
- Quasi
- E-Contract

Validity

- Valid
- Void
- Voidable
- Illegal
- Unenforceable

Execution / Performance

- Executed
- Executory

Liability

- Unilateral
- Bilateral

BASED ON FORMATION OF THE CONTRACT

Expressed Contracts:

The terms of the contract are expressly agreed upon (whether orally or in writing) at the time of formation.

Ex: Oral offer and acceptance



WRITTEN CONTRACT

Fence Painting Contract

Patty pays \$100 in advance, David completes project by Monday

Dave Patty



IMPLIED CONTRACT:

- ▶ An implied contract is one which is inferred from the acts or conduct of the parties or from the circumstances of the cases.
- ▶ Ex: Ordering in a restaurant
- ▶ Boarding a public bus



Responsibility of purchasing the Bus ticket from the bus conductor entirely relies on the passenger but not on the Bus Conductor, In a surprise checking by the Tickets Inspector, if you argue that the conductor was not asked for ticket and I was in deep sleep, because of the cool breeze. It is not acceptable before the law, according to Contract Act, it is called Implied duty to buy the ticket before or after entering into the bus by the passengers voluntarily.



TACIT CONTRACT: IMPLIED

Individual psychological contract
as interpreted by a third person
who is trying to understand the
terms of the exchange
relationship.

- Ex: Sale by fall of hammer of
an auction sale by a third
party



QUASI CONTRACT:

- Created by law.
- It doesn't arise by virtue of any agreement but the law infers or recognizes these contracts under special circumstances.
- No intention of parties to enter into a contract.
- It is based on the principle that a person shall not be allowed to enrich himself at the expense of another.

Examples: Quasi Contract:

1. Claims for necessaries supplied to an incapable person.
(Sec. 68)
2. Payment of Interested person. (Sec. 69)
3. Payment of non-gracious act. (Sec .70)
4. Liability of finder of goods. (Sec. 71)
5. Payment of delivery by mistake or under coercion.
(Sec. 72)

E-CONTRACT:

- E-Contract is the one which is entered between the parties via internet.
- One of the most common ways of contract in current scenario.



BASED ON VALIDITY

Valid Contract:

- An agreement enforceable by law is a valid contract.
- Contract that has all essential elements of contract.
- Both the parties to the contract can enforce the contract.

VOIDABLE CONTRACT:

Contract which is acceptable by law at the option of one party but not at other.

Ex: Entering into a contract by coercion

Ex: Minor Girl's Marriage with Major



VOID CONTRACT:

- A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.
- A valid contract becomes void under the following circumstances: Destruction of subject matter

Contract becoming unlawful

Death of parties

Parties becoming unlawful

ILLEGAL CONTRACT:

Contracts which are forbidden by law.

“All illegal agreements are void agreements but all void agreements are not illegal.”



This contract is **VOID AB INITIO** (invalid from the very beginning), as it is made for an illegal purpose.

UNENFORCEABLE CONTRACT:

- Contract is good in substance but because of some technical defect it cannot be enforced by law.



For example, A agrees to sell to B 100kgs of rice for 10,000/-.
But there was a huge flood in the states and all the rice crops were destroyed.

BASED ON EXECUTION / PERFORMANCE

Executed Contract:

An executed contract is one in which both the parties have performed their respective obligation.

Ex: Husain agrees to paint a painting to Arjun for Rs.5000. He paints the painting and Arjun pays Rs.5000 to him

EXECUTORY CONTRACT:

- Contract in which one or both the parties to the contract have still to perform their obligations in future.
- Partially performed or wholly unperformed is termed as executory contract.
- Ex: If Husain painted the painting, Arjun didn't pay Rs.5000 yet.

BASED ON LIABILITY

Unilateral Contract:

A unilateral contract is one in which only one party has to perform his obligation at the time of the formation of the contract, the other party having fulfilled his obligation at the time of the contract or before the contract comes into existence.

Ex: Reward of \$100 for lost dog



CARLILL £100 REWARD

WAS RECENTLY OFFERED BY THE
CARBOLIC SMOKE BALL CO.

To any person who contracted Influenza, Coughs, Colds, Catarrh, Asthma, Bronchitis, Sore Throat, Hoarseness, Loss of Voice, Throat Deafness, Croup, Whooping Cough, or any Disease caused by taking Cold, after having used the Carbolic Smoke Ball according to the printed directions.

Many thousand Carbolic Smoke Balls were sold on these advertisements, but only three persons claimed the reward of £100, thus proving conclusively that this invaluable remedy will prevent and cure the above-mentioned diseases.

THE CARBOLIC SMOKE BALL CO., Ltd.,

NOW OFFER

£200 REWARD

to the person who purchases a Carbolic Smoke Ball and afterwards contracts any of the following diseases, viz.—

INFLUENZA
COUGHS
COLD IN THE HEAD
COLD ON THE CHEST,

CATARRH
ASTHMA
BRONCHITIS
SORE THROAT
HOARSENESS

THROAT DEAFNESS
LOSS OF VOICE
LARYNGITIS
SNORING
SORE EYES

DIPHTHERIA
CROUP
WHOOPING COUGH
NEURALGIA
HEADACHE

or any disease caused by taking cold while using the Carbolic Smoke Ball. This offer is made to those who have purchased a Carbolic Smoke Ball since Jan. 1, 1893, and is subject to conditions to be obtained on application, a duplicate of which must be signed and deposited with the Company in London by the applicant before commencing the treatment specified in the conditions. This offer will remain open only till March 31, 1893.

As all the diseases mentioned above arise from one cause, they can therefore be cured by the remedy which stops the cause, viz.—

THE CARBOLIC SMOKE BALL.

One CARBOLIC SMOKE BALL will last a family for several months, making it the cheapest remedy in the world at the price—10s. post free.

The CARBOLIC SMOKE BALL will be refilled and returned, post free, the same day, on receipt of Money or Postal Order for 6s.

ADDRESS—

CARBOLIC SMOKE BALL CO., LTD.,
27, PRINCES STREET, HANOVER SQUARE, LONDON, W.

PARIS DEPOT—14, Rue de la Paix.

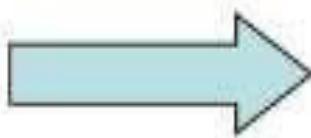
AMERICAN DEPOT—196, Broadway, New York.

CANADIAN DEPOT—71 & 72, Front Street, Toronto, Ontario.



- A one to all contract

1 Offeror



*Many
Offerees*

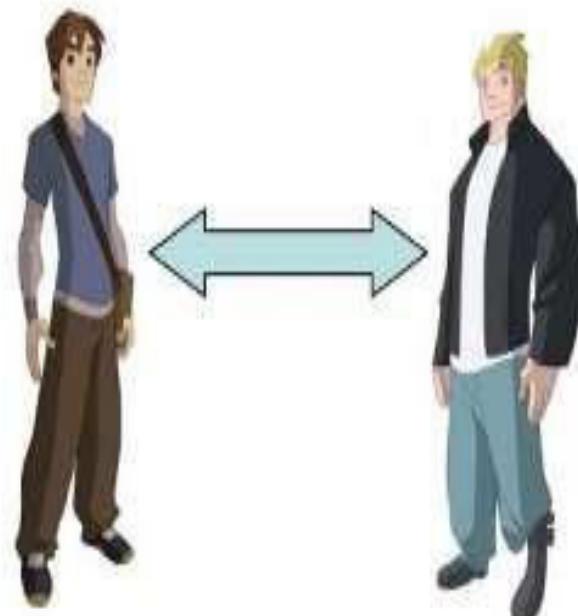
Bilateral contract:

- A bilateral contract is one in which the obligation on both the parties to the contract is outstanding at the time of the formation of the contract. Bilateral contracts are also known as contracts with executory consideration.
- Similar to executory contract.

- A one to one contract

Offeror

The person who make the offer



Offeree

The person to whom the contract was made

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LAW OF CONTRACTS

LANDMARK CASE LAW OF



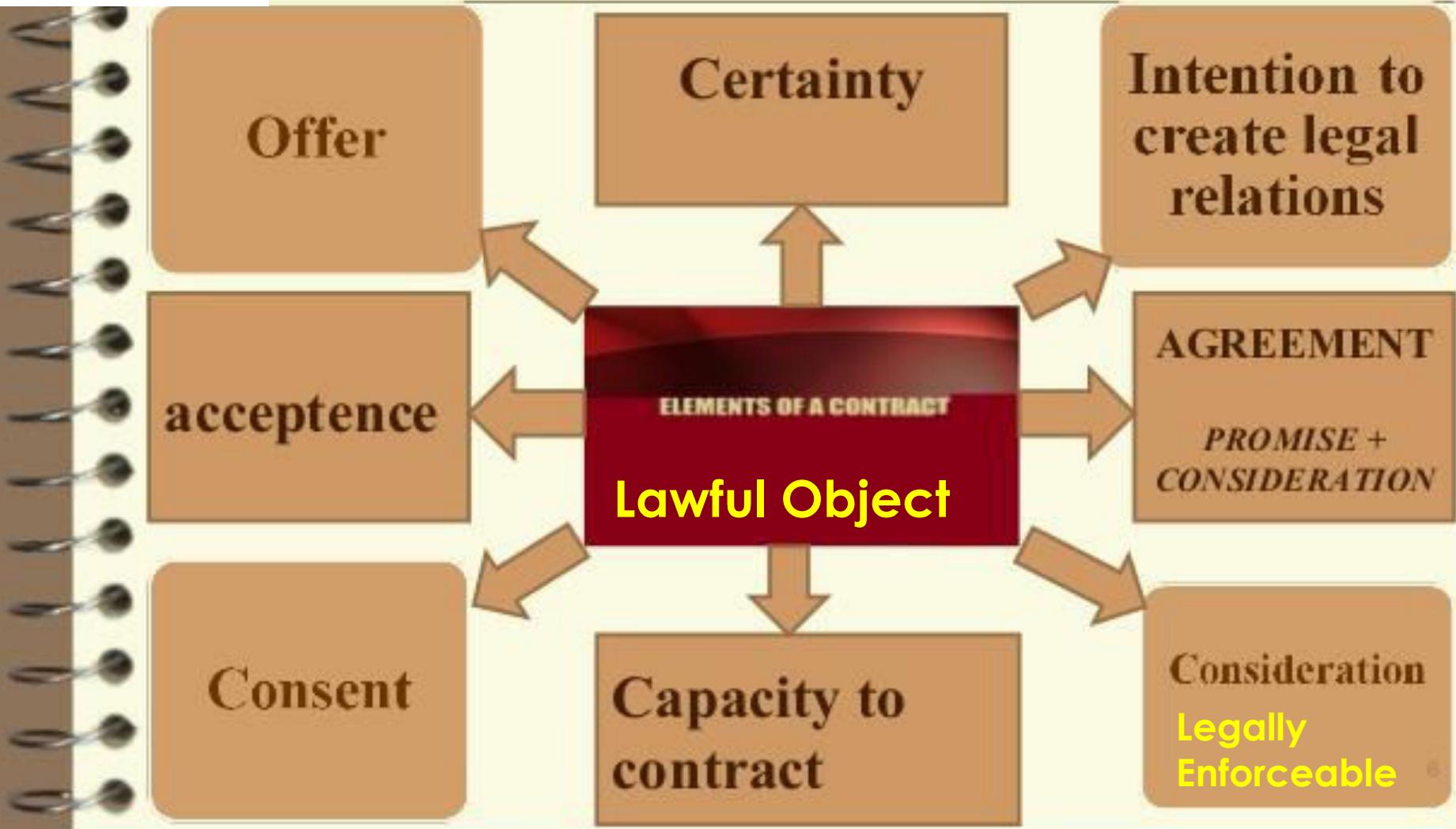
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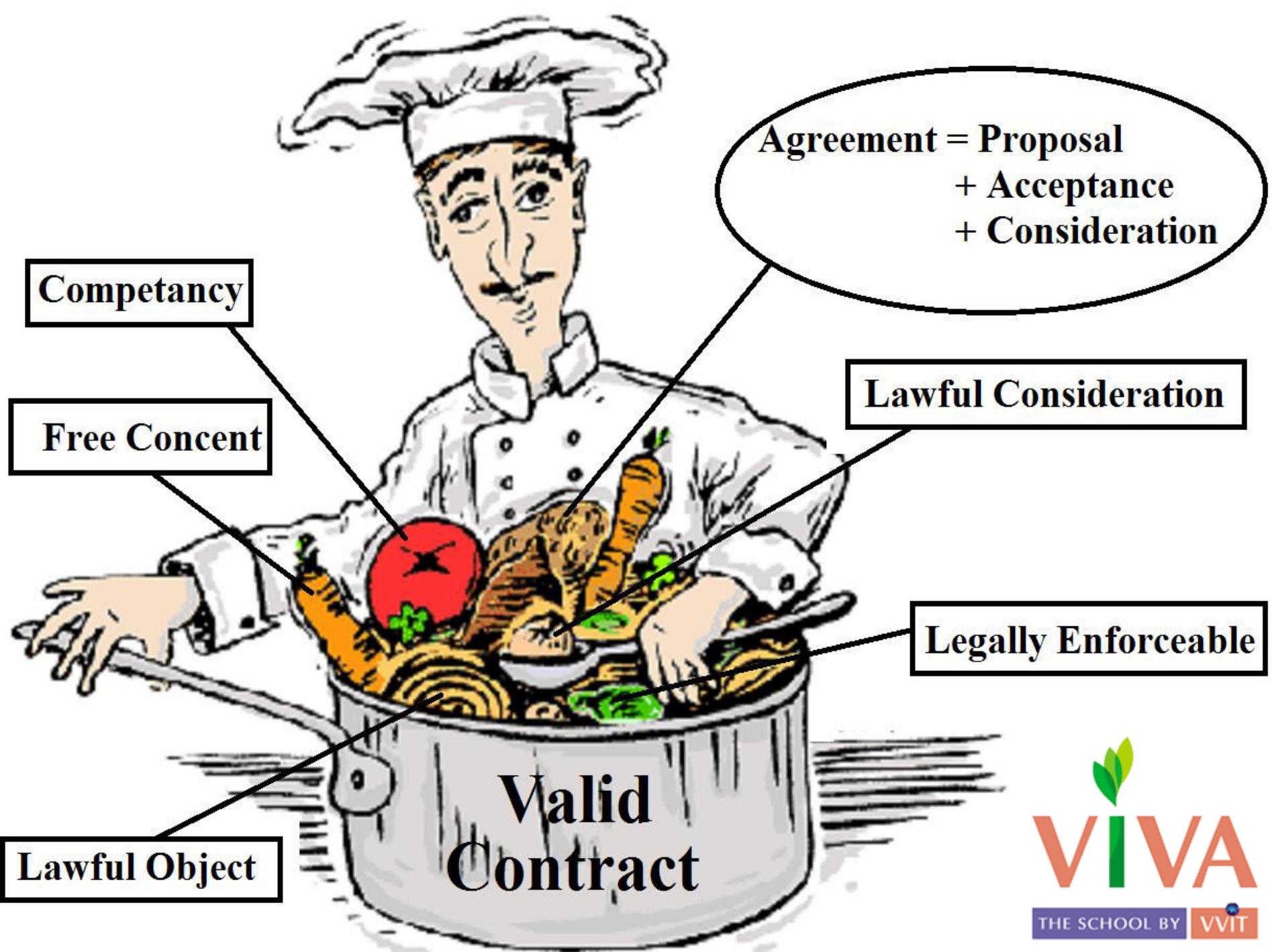
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ELEMENTS OF CONTRACT







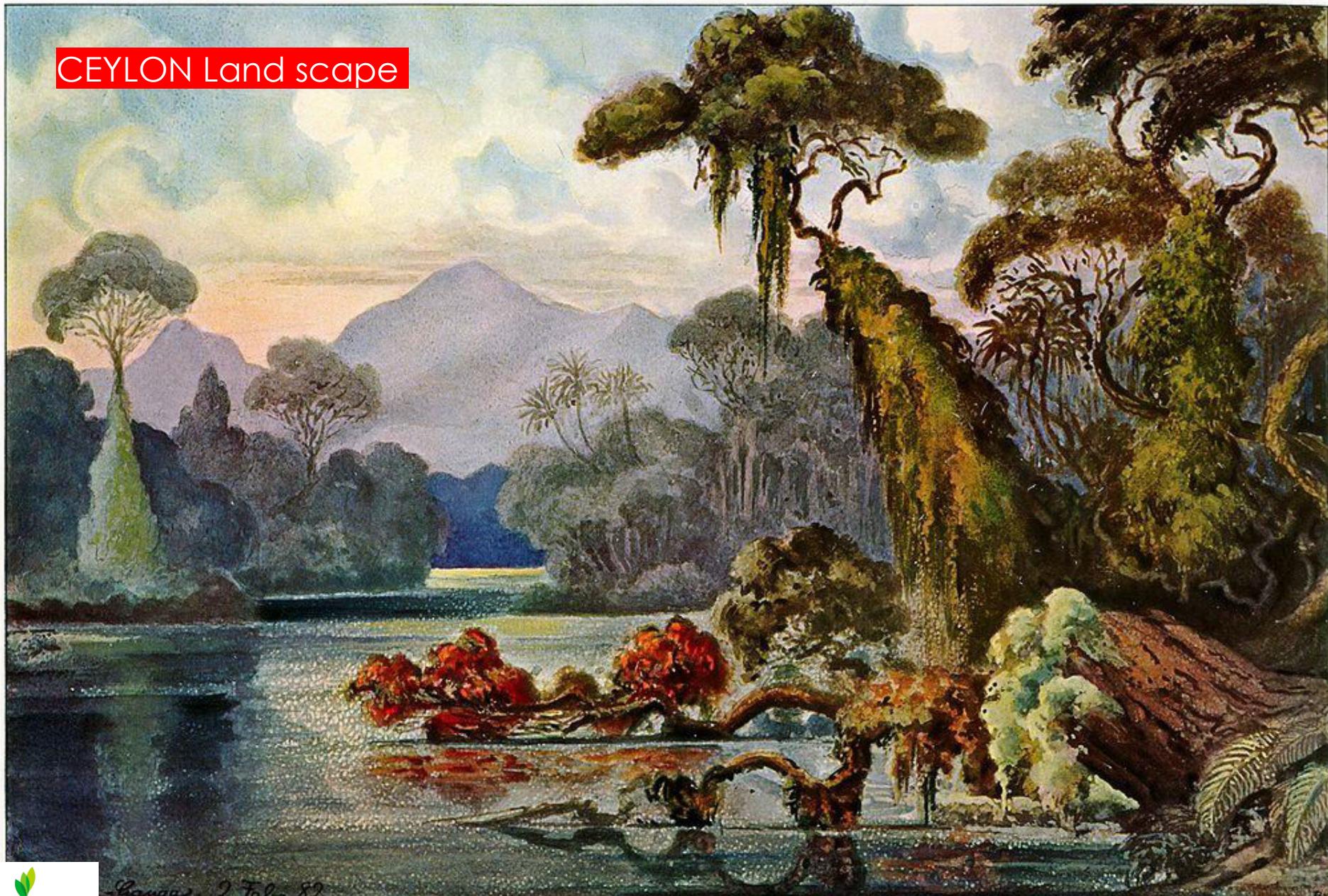
Brief Facts about the Case

- **BALFOUR v BALFOUR**
- A husband, who was a civil servant based in Sri Lanka, brought his wife to England.
- Eventually he had to return but his wife had to stay in England for medical reasons.
- He agreed to pay her £30 per month maintenance during his absence.
- When he failed to pay the allowance she sued.
- Her action failed on 2 grounds; (1) she had not provided any considerations for the £30 per month, and (2) the parties had no intention of creating a legally binding agreement.

A cartoon-style illustration of a courtroom. In the center, two judges wearing white wigs and red robes sit behind a wooden bench. On either side of the bench stand two men in dark suits. To the right of the bench stands a woman in a blue blazer and skirt. The background features a large, ornate building with multiple spires, suggesting a cathedral or church.

▶ Then Duke LJ gave his. He placed weight on the promise had been made still whilst as husband and wife.

CEYLON Land scape



Ganga. 2 Febr. 82.

S. by Dr. W. Kochler, Gera-Untermhaus.

„Alle Rechte vorbehalten“.

pinx. Ernst Haeckel.

Urwald am blauen Flusse. (Kelany-Ganga, Ceylon).

Essential elements of a valid contract: (Sec. 10)

- ★ Agreement - Offer & acceptance
- ★ Legal consequences - rights & obligations
- ★ Capacity of the contracting parties
- ★ Consideration
- ★ Legal object
- ★ Free consent
- ★ Certainty
- ★ Possibility of performance
- ★ Writing & registration
- ★ Not expressly declared to be void.

Landmark Case Law of Balfour Vs. Balfour 1919

- **Parties involved**
- Petitioner – **Mrs. Balfour**

Vs.

- Respondent – **Mr. Balfour**

- **Date of judgement**

- 25 June 1919

- **Bench**

- 1. **L.J. Atkin,**

- 2. **L.J. Warrington**

- 3. **L.J. Duke**



• L.J. Atkin,



L.J. Warrington



alamy stock photo

AH907K
www.alamy.com



L.J. Duke



Mr. Balfour and Mrs. Balfour



INTRODUCTION

- Balfour vs. Balfour is a leading English contract case dealing with intention to create legal relationships, maintenance and marriage.
- Here the court distinguished the case from Balfour v Balfour on the fact that Mr and Mrs Merritt, although still married, were estranged at the time the agreement was made and therefore any agreement between them was made with the intention to create legal relations.
- The ratio in this case was that Arrangements made between husbands and wives are not generally contracts as the parties do not intend to be legally bound by the agreements.

Legal intention to form the contract and consideration

► Legal intention to form the contract and consideration were two important concepts which were used to know before starting this case.

► It is very important to discuss this case whose principles are propounded till now.

BRIEF HISTORY OF THE CASE

- Mr. Balfour and his wife went to England for a vacation, and his wife became ill and needed medical attention. They made an agreement that Mrs. Balfour was to remain behind in England when the husband returned to Ceylon (Sri Lanka) and that Mr. Balfour would pay her £30 a month until he returned.
- This understanding was made while their relationship was fine; however, the relationship later soured. The lower court found that there was sufficient consideration in the consent of Mrs. Balfour and thus found the contract binding, which Mr. Balfour appealed.

ISSUES

1. Was Mr. Balfour's offer intended to be legally binding?

2. Does the fact that they were husband and wife matter?

► Legal pronouncement & Precedents

- Diwell vs. Farnes
- Gould vs. Gould
- Hoddinot vs. Hodinott
- Spellman vs. Spellman



JUDGEMENT

- The court said that it is essential that both the parties should intend that an agreement be legally binding so as to become enforceable.
- The courts will not interfere between the spouses in their day to day affairs. The agreement was a purely social and domestic agreement and therefore it was presumed that the parties did not intend to be legally bound.
- In his 80 pages judgement, Lord Justice Atkin held that the law of contracts is not made for personal family relationships. As there was no intent to be legally bound when the agreement was agreed upon, there can be no legally binding contract.

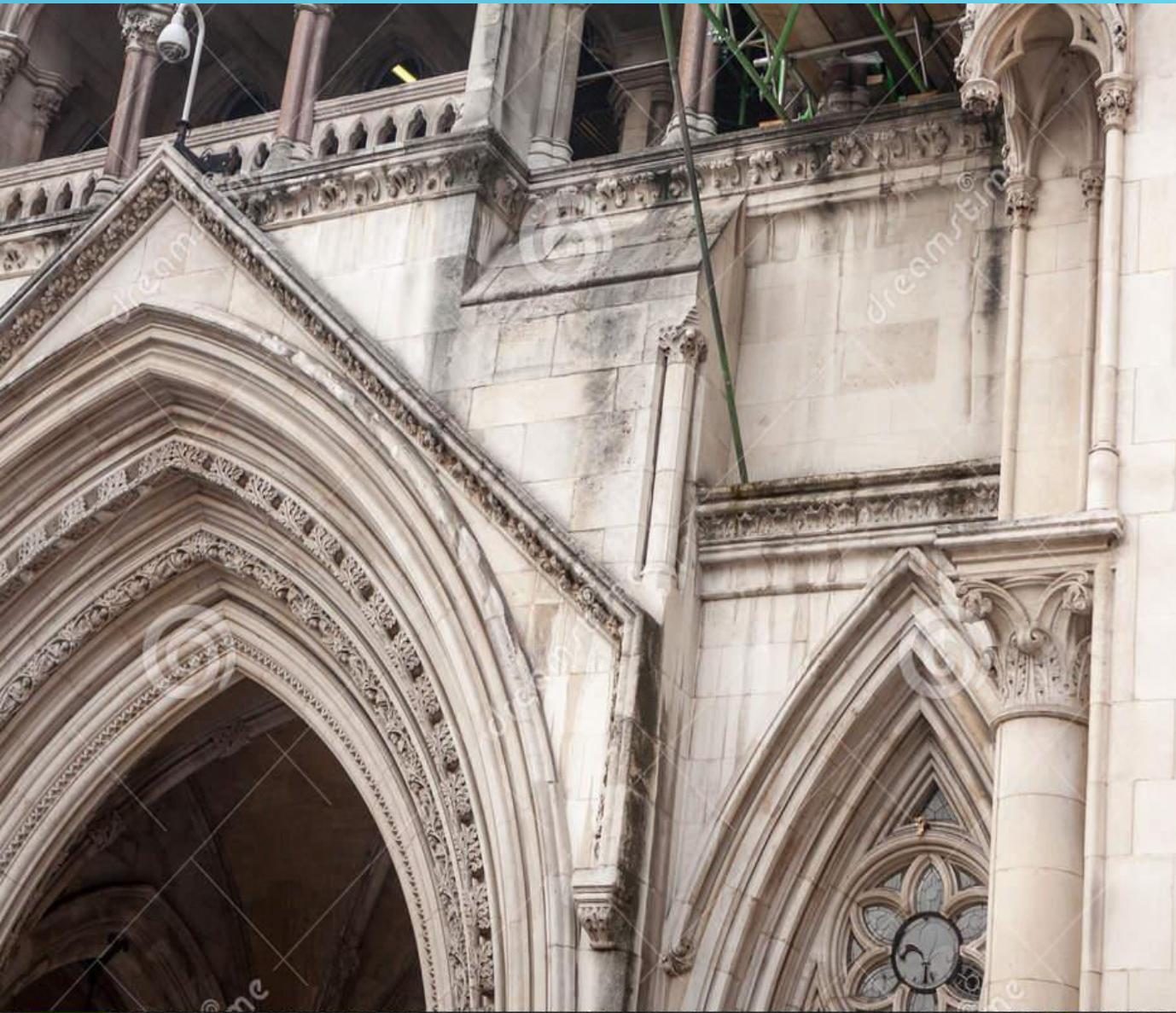
Judgement

- Atkin holds that if the courts were to allow all wives to come to court when agreements had been broken with their husbands then the courts would be overrun with frivolous cases and we have to establish courts in every nook and corner of all streets in England.
- Practically it is not possible to operate the courts only for pacifying the household problems.



Judgement

- Because every Husband promises to his wife in the dawn of the day, that in the dusk he will bring whatever she wants, but due to his busy schedule of the work it is not possible to the husband to fulfil her wishes on that day.
- If we allow the appeal of Mrs. Balfour, then all the house wives will appeal to the court of justice about the breach of the promise by her husband and demands for damages.
- From this case L.J Atkin given the elaborate clarification regarding the various relationships between the persons. They are called as Contractual relations, Societal Relations and Domestic relations.



The
Royal
Courts
of
Justice



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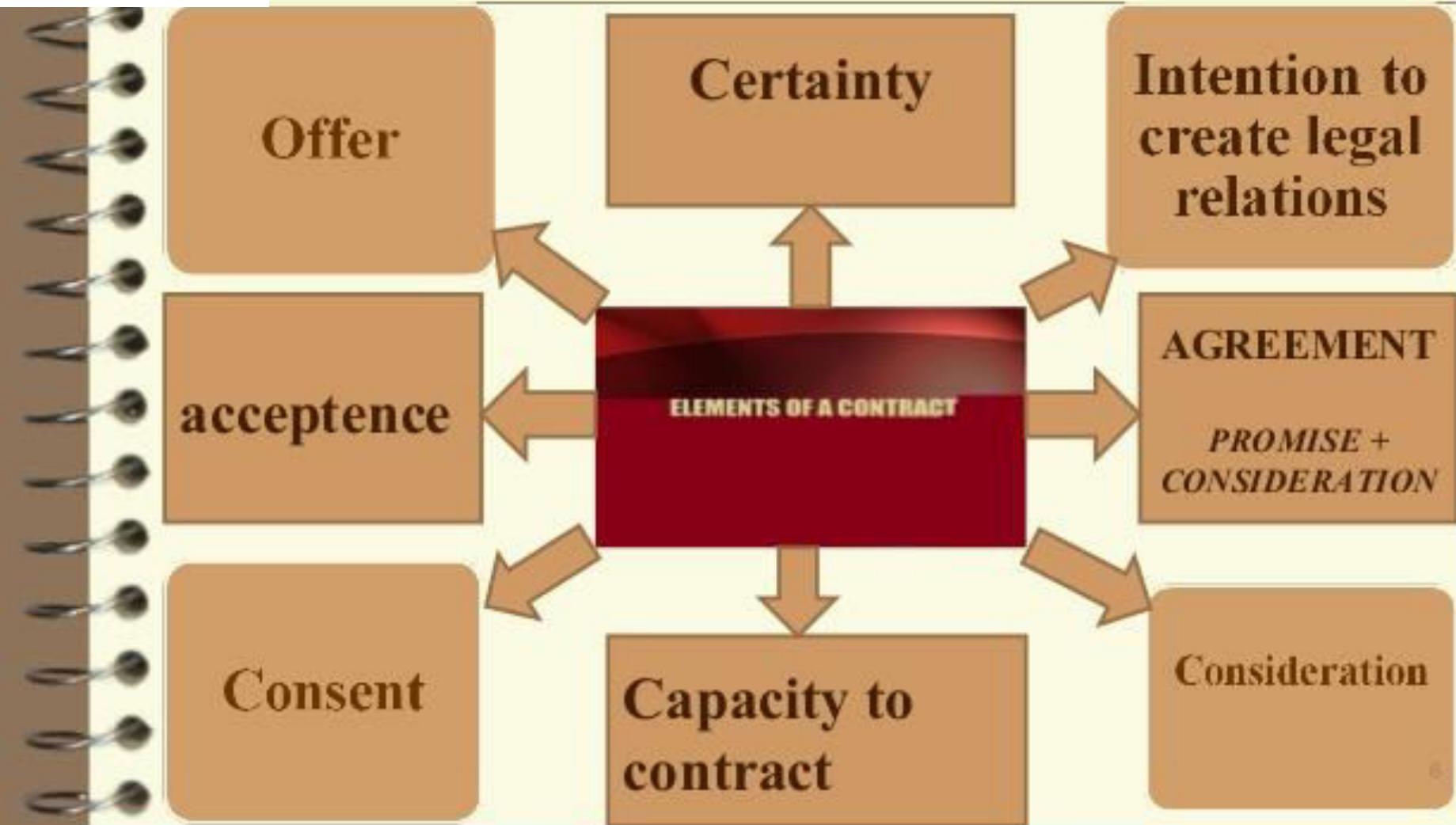
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Judgement

- Only the contractual relations can be taken up by the courts and given the judgements, because contractual relations only enforced by the essential elements of the Contract act.
- All other relations are not enforceable by the essential elements of law and cannot be awarded damages to the parties.

ELEMENTS OF CONTRACT





Judgement

- L.J. Warrington, concurring in the result, agreed substantially with Atkin, but added that there was no bargain of any kind made by Mrs. Balfour sufficient for a binding contract.



WHAT WAS HELD IN BALFOUR VS BALFOUR 1919

- The agreement was purely social and domestic in nature and characteristic and therefore it was presumed that the parties did not intend to be legally bound.



PRINCELET STREET E1

CONCLUSION

- ▶ At common law, a contract is not enforceable unless the parties intended the contract to create legal relations.
- ▶ Whether or not the parties intended to create legal relations is determined accurately by examining the circumstances existing at the time of execution of the contract.
- ▶ Whether promise made or not, it is between the parties to uphold it to their fullest potential. The parties cannot enforce and the judges who had made the decision concluded that the court cannot come into marital affairs and it is up to their full knowledge for solving their own problems.
- ▶ So the Balfour law gave a new perspective to the contract validation.

Domestic agreements

- Courts will presume that agreements between friends and/or family members *are not* intended to be legally enforceable.
 - CASE: *Balfour v Balfour* (1919)
- The presumption can be rebutted.
 - CASE: *Todd v Nicol* [1957]
 - CASE: *Roufos v Brewster* (1971)

**"All contracts are
agreement but all
agreements are not
contract."**



What Is A Tort???



A tort is a private wrong committed by one person against another.

TORTS CAN BE
INTENTIONAL OR
UNINTENTIONAL
AGAINST PERSONS AND
PROPERTY



Caveat emptor is Latin for "Let the buyer beware". It has become a proverb in English.

caveat venditor is a Latin term which means let the seller beware.

The person selling goods is accountable for providing information about the goods to the Buyer.

ANOTHER TERM FOR AN UNINTENTIONAL TORT IS

► **NEGLIGENCE**

DONOGHUE

Vs

STEVENSON, 1932

Land mark case law in Negligence

Law of Torts



The Most Common Intentional Torts Against People Are:

- 
- Assault
 - Battery
 - False Imprisonment
 - Defamation
 - Invasion of Privacy
 - Infliction of Emotional Distress



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