

Lesson Five

Intention to Create Legal Relation

5.1 Intended Legal Consequence

In order to have a binding contract the parties must have intended legal consequence to result from their agreement. If such intention is absent then there will be no contract despite the existence of an accepted offer and consideration.

For the purposes of considering the presence or absence of the contractual intention in agreements, the latter may be classified into

- (i) social and domestic engagements,
- (ii) commercial agreements and
- (iii) intermediate situations.

5.2 Social and domestic engagements

Generally speaking **social arrangement** and **family arrangement** are prima-facie not intended to create legal relation.

In *Balfour v. Balfour* (1919) 2 K.B. 571.

The defendant was the plaintiff's husband who was then living in Ceylon. The wife went back to England and could not rejoin her husband on the ground of ill-health. The husband promised to pay N30,000 to the wife until she was able to rejoin him. The payment fell into arrears so the wife sued to recover the arrears. The court held that such an arrangement between husband and wife was not intended to create legal relation and therefore there was no contract. It therefore follows that the wife cannot recover the arrears.

As a natural consequence of their relationship, spouses make numerous agreements involving payment of money and its application to the household, themselves and their children. There is offer, acceptance and consideration; nevertheless, such agreements "are not contracts because the parties did not intend that they should be attended by legal consequences". This principle has been applied in several other cases. Thus, in:

Spellman v. Spellman [1961] 1 w.l.r. 921.,

A husband promised to buy his wife a car in order to improve their strained relations. He then entered into a hire-purchase agreement in respect of the car which was delivered to their home. When he refused to transfer the car to his wife, she sued him to enforce the agreement. It was held that this was a purely domestic arrangement not intended to create any legal relations and accordingly the wife acquired no legal rights in the car.

In *Jones v. Padavatton*, Mrs. Jones lived in Trinidad and her daughter worked at the Indian Embassy in Washington D.C. Mrs. Jones wished her daughter to become a barrister and offered to make her a monthly allowance while she read

for the Bar in London. The daughter reluctantly accepted the offer and went to London in 1962. In 1964, Mrs. Jones bought a house in London and the daughter lived in a part of it whilst the other part was let out and the rents used for her fees and maintenance. In 1967, when the daughter had only passed Part I of the Bar, the parties had a serious quarrel and Mrs. Jones brought an action claiming possession of the house. The County Court's decision dismissing Mrs. Jones' claim was reversed by the Court of Appeal. It was held that the agreements to pay the daughter a monthly allowance and to allow her possession of the house were not binding, because they were not meant to create legal relations. Family arrangements are based on good faith, not on law. There was nothing in the agreement, nor available evidence, to show that the mother had renounced her right to dispose of the house as and when she pleased.

The rule that social and domestic agreements are not legally binding is based on a presumption. Consequently, the presumption can be rebutted and when this happens, such an agreement will be held binding. For example, it has been held that when spouses are not living in amity, particularly when their relationship has degenerated to the level of mutual hostility and distrust, an agreement between them would be binding. Thus, in:

McGregor v. McGregor, where a husband and his wife had taken out cross-summonses against each other for assault, it was agreed in settlement that each should withdraw his or her action, the parties should live apart and that the husband should pay the wife a weekly sum for the maintenance of herself and the children. This agreement was held binding on the husband. The presumption of absence of the contractual intention was rebutted by the hostile relations between the parties.

In *Merritt v. Merritt*, after a husband and his wife had separated, they met and agreed that the husband should pay the wife N40,000 monthly and that out of this, the wife would pay off the mortgage on their matrimonial home, and after this the husband would transfer the house to her. After the wife had paid the mortgage, the husband refused to transfer the house to her. The wife sued for the specific performance of this agreement. It was held to be binding. According to the Court of Appeal, the presumption that agreements between husband and wife are not intended to create legal relations does not apply when they are not living in amity, but are separated or are about to separate. The court, in such circumstances, held Lord Denning, looks at the situation in which the parties are placed and asks itself: "Would reasonable people regard this agreement as intended to be binding?"

Where the performance of a domestic or social engagement involves great sacrifices on the part of one or both parties, the presumption against the presence of contractual intention may be rebutted, particularly where the plaintiff has performed his own part of the agreement.

In *Parker v. Clark* on the invitation of the defendant, who was the plaintiff's uncle, the plaintiff and his wife sold their house and moved into the defendant's house. It was also agreed that the Parkers would share the living expenses with the Clarks and that Clark would leave the house to Parker in his will. After a quarrel between the couples, 'the Clarks attempted to evict the' Parkers on the ground that the agreement was not a binding one. It was held to be binding. The presumption 'against the existence of the contractual intention in a contract between relations did not apply in this case because of the extremely onerous nature of the steps he had taken — the drastic and irrevocable act of disposing of his own house in pursuance of the agreement. According to the court, Clark could really not have thought that the law would allow him, if he chose, to tell the Parkers when they had arrived that he had changed his mind, that they could take their furniture away and that he was indifferent as to whether they found anywhere else to live or not.

5.3 Commercial agreements

In commercial transaction the law presumes that the parties intended to create legal relation unless a contrary intention appears. Not surprisingly, there is hardly a case in which the validity of a commercial agreement has been challenged for absence of the contractual intention. Contracting parties subconsciously accept it as a matter of fact. However, there are two situations in which defendants have advanced the plea of absence of the contractual intention in order to escape liability:

1. where they assert that their promise was a mere puff, not intended to be taken seriously or literally;
2. where the agreement itself contains a clause expressly excluding the intention to enter into legal relations.

In the first case, it is the test of the reasonable man that is applied in determining whether the defendant's promise was a mere puff. It is obvious, for example, that an advertisement claiming that regular drinking of Ovaltine will make the consumer a great goal scorer in football matches, cannot be taken seriously by reasonable men. The same applies to an advertisement that men who use Maclean's toothpaste become successful and important. These product promotional exercises usually involve wild exaggerations and unfounded claims which no reasonable person takes seriously. However, this cannot be said of the advertisement which states that Lux toilet soap will give the user a clear, smooth and soft skin. This claim is sufficiently credible and is within the realm of possibilities.

It will, however, be difficult in some situations for the court to decide whether it is confronted with a mere puff or an agreement that is intended to have legal effect. The facts of the old case of *Weekes v. Tybalcf* present just such a situation.

The defendant said, in conversation with the plaintiff, that he would give N100,000 to anyone who married his daughter with his consent. The plaintiff married the defendant's daughter with his consent, and afterwards sued to claim the N100,000 when the defendant failed to pay it to him. The action failed and it was held that "it is not reasonable that the defendant should be bound by such general words spoken to excite suitors". In other words, the defendant's promise was a mere puff. But it could arguably have been regarded as a valid offer which would ripen into a binding contract on the performance of the act stipulated in the offer as in any other unilateral contract.

In

Amadi v. Pool House Group Nig Ltd & Nig. Pools Co. Ltd. (1966) 2 ALR/Comm. 178.

The plaintiff staked N1000 in a football pool, which allegedly won a dividend of N5000. The defendants refused to pay alleging that he never received the coupon from the plaintiff. The plaintiff then sued claiming damages for breach of contract. The defendant's defence partly depended on the rules of the game which were known to the plaintiff. Part of the rule stated that for any coupon and any agreement or transaction entered into payment made by or under it shall not be attended by or give rise to any legal relationship but such arrangement agreement or transaction are **binding in honour only**. It was held that the defendant was not liable. The reason being that once the parties have agreed by hand that the contract was not to be legally binding none of the parties can bring an action in court to enforce the agreement. The agreement remains binding in honour only.

Alimony

Lack of signed documents by family member

Exerts from Sagay, I. E. (1993). *The Nigerian Law of Contract*. Spectrum Books Limited, Ibadan.