

## Intention to Create Legal Relations and the Reform of Contract Law: A Conservative Approach in the Modern Global Era

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### ABSTRACT

This paper is partially to refute the submissions by Gulati's article recently published on Beijing Law Review which proposes abandoning the requirement of proving intention to create legal relations for the formation of an enforceable contract. After a critical analysis of the abandonists' arguments, this paper argues that intention to create legal relations is the "marrow of contractual relationships" and the arguments for abandoning such a requirement because of the existence of consideration and/or offer and acceptance as test(s) of contractual enforceability is untenable and unconvincing. Consideration and/or offer and acceptance may be evidence of serious intention to be bound somehow but unnecessary intention to be bound legally. For a number of reasons, the doctrine of consideration is very unlikely to work any better than the intention to create legal relations test. If a test of contractual enforceability must be abandoned, that should be the doctrine of consideration rather than the intention to create legal relations. This paper compares the current positions of some common law jurisdictions, upholds the needs of stability, consistency, and the harmonisation of contract law in the modern global era, and proposes a conservative approach of contract law reform regarding the intention requirement and the related presumptions, that is, all common law jurisdictions should "go back" to the orthodox English position.

### KEYWORDS

Intention to Create Legal Relations; Consideration; Contract Theory; Contract Law

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