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'Intention to Create Legal Relations': A Contractual Necessity or An Illusory Concept

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ABSTRACT

'Intention to create legal relations' forms the basic ingredient of any valid contract in many jurisdictions around the world. The paper argues that such requirement is neither required nor is purposeful if any particular jurisdiction has 'Consideration' as the basic requirement to prove the formation of validly formed contract. The paper postulates that 'consideration' in itself is, and should ideally be, indicative of such intention. Therefore, as far as common law countries are concerned, 'consideration' in itself should be capable of dealing with the intention of the parties and there should not be any separate requirement of proving an 'intention to create legal relation'. By natural corollary, the requirement to prove such 'intention' can be justified in countries where 'consideration' is not a requirement for a forming a valid and legally enforceable contract. The paper, while dealing with the proposed postulations, also deals with the difference in presumption with regard to such intention while dealing with contractual relations that arise in domestic set-up as differing from those arising in a commercial set-up.

KEYWORDS

Contract Law, Intention to Create Legal Relations, Domestic Contracts, Contract Law Theories, Consideration

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References

- [1] Cohen, "The Basis of Contract," *Harvard Law Review*, Vol. 46, 1933, pp. 553, 575.
- [2] D. Hume, "An Inquiry Concerning the Principles of Morals," In: C. Hendel, Ed., Hackett Publishing Co., Indianapolis, 1957.
- [3] M Chen-Wishart, "Contract Law," Oxford University Press, Oxford, 2005, pp. 22.
- [4] D. Kennedy, "From the Will Theory to the Principle of Private Autonomy: Lon Fuller's 'Consideration and Form'," *Columbia Law Review*, Vol. 100, No. 1, 2000, pp. 94-175. doi: [10.2307/1123557](https://doi.org/10.2307/1123557)
- [5] *Rose and Frank Co. v J. R. Crompton and Bros Ltd.*, 2 KB 261, 1923.
- [6] *Balfour v. Balfour*, 2 KB 517, 1919.
- [7] M. Freeman, "Contracting in the Haven: Balfour v Balfour Revisited," *Exploring the Boundaries of Contract*, Dartmouth Publishing Group, Sudbury, 1996, pp. 75-77.
- [8] E. Posner, "A Theory of Contract Law under Conditions of Radical Judicial Error," *94 Northwestern University Law Review* 749, 2000.
- [9] S. Wheeler and J. Shaw, "Contract Law: Cases, Materials and Commentary," Oxford University Press, Oxford, 1994, pp. 150.

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- [10] S. Hedley, " Keeping Contract in Its Place —Balfour v Balfour and the Enforceability of Informal Agreements," *Oxford Journal of Legal Studies*, Vol. 5, No. 3, 1985, p. 396. doi:10.1093/ojls/5.3.391
- [11] M. Keyes and K. Burns, " Contract and the Family: Whither Intention," *Melbourne University Law Review*, Vol. 26, No. 3, 2002, p. 577.
- [12] *Merritt v. Merritt*, 1 WLR 1211, 1970.
- [13] *Smith. v Hughs*, LR 6 QB 597,1871.
- [14] M. Chen-Wishart, " Objectiv-ity and Mistake: The Oxy- moron of Smith v Hughes," In: J. Neyers, R. Bronough, S. G. A. Pitel, Eds., *Exploring Contract Law*, Hart Publishing, Oxford, 2009, Available at SSRN: <http://ssrn.com/abstract=1551980>
- [15] *Jones v. Padavatton*, 1 WLR 328, 1969.
- [16] *Todd v. Nicol*, SASR, 1957, pp. 72, 77.
- [17] S. Hedley, " Keeping Contract in its Place: Balfour v. Bal- four and the enforceability of Informal agreements," *Ox-ford Journal of Legal Studies*, Oxford University, Oxford, 1985, pp. 391, 408.
- [18] S. Williston, " *Williston on Contracts*," 3rd Edition, Rochester, New York, 1957.
- [19] R. E. Barnett, " *Contracts: Cases and Doctrine*," 4th Edi- tion, Aspen Publish-ers, Frederick, 2008.