

CHAPTER 5: INTENTION, CAPACITY, CONSIDERATION AND PRIVACY

QUESTION 1

In social and domestic agreements what presumption is made with regard to intention to create legal relations? How does this differ from the approach to intention in business agreements? Give examples from case law.

Answer:

- For an agreement to be legally binding the parties must intend that the agreement should impose legal rights and obligations on them.
- Sometimes the parties do not actually state whether they intend the agreement to be legally enforceable and in the event of a dispute the court has to consider whether a reasonable person, observing the words and conduct of the parties objectively and considering the nature and context of the agreement, would conclude there was an intention to create legal relations.
- If the agreement is made in a commercial setting then the courts presume the parties intend to create legal relations. *Esso Petroleum Ltd v Commissioners of Customs and Exercise* (1976).
- But this presumption can be rebutted by evidence to the contrary, *Rose and Frank v Crompton Bros Ltd.* (1925), *Jones v Vernon Pools* (1938).
- It is up to the party seeking to rebut the presumption show, on the balance of probabilities, that there was no intention to create a legal relationship. *Edwards v Skyways* (1964).
- In social, domestic and family arrangements it is presumed that there is no such intention, *Jones v Padavatton* (1969), *Balfour v Balfour* (1919), *Hadley v Kemp* (1999).
- But this presumption can be rebutted by evidence to the contrary. The court will take account of the content of the agreement and all the circumstances surrounding the case, for example where one party had sold their own home, *Parker v Clarke* (1960), where the parties had all contributed equally to a competition with the expectation that the prize would be shared, *Simpkins v Pays* (1955), *Robertson v Anderson* (2003).

QUESTION 2

Explain what is understood in contract law by the statement 'Consideration must be sufficient but need not be adequate'.

Answer:

- Consideration is what each party must give by way of benefit to the other party or detriment to themselves in return for the other party's promise or action, *Currie v Misa* (1875).
- It is an essential element of a binding contract but a court is not concerned if a party makes a bad bargain. Therefore consideration does not have to be equal in value to the consideration received or promised, *Thomas v Thomas* (1842), *Chappell v Nestle* (1959).

- But consideration must be sufficient in the sense that the law recognises it as consideration. It must have some measurable and material value. It has to be real, legal and certain, *White v Bluett* (1853).
- Performance of an existing contractual duty or statutory duty does not provide good consideration, *Collins v Godfrey* (1831), *Stilk v Myrick* (1808) but if some extra service is given that is good consideration, *Glasbrook Bros v Glamorgan CC* (1925), *Hartley v Ponsonby* (1857).
- Where there has been an agreement to pay additional sums for an originally agreed amount of work the courts may allow a practical benefit gained to be good consideration for the extra sums, *William v Roffey Bros* (1990).
- Part-payment of a debt is not sufficient consideration to discharge the full debt. However, if the creditor requests something slightly different or additional from the debtor, the debtor's agreement to do this will be good consideration. *Rule in Pinnel's case* (1602), *Foakes v Beer* (1884), *Re Selectmove Ltd.* (1995). But note that in *Rock Advertising v MWB Business Exchange Centres Ltd* (2018) the Court of Appeal stated that in some cases a promise to accept less might be enforceable. The case went on appeal to the Supreme Court but the court did not rule on the consideration point.

QUESTION 3

- a) Every week, Amy and Jim and their daughter, Sophie, enter the National Lottery, each contributing £1 for 3 lucky dip numbers. Sophie always fills in the form, pays over the money to the newsagent, and keeps the ticket. Last week five of their numbers came up and the ticket paid out £5,000. Sophie refuses to share the £5,000. Advise Amy and Jim.
- b) Discovering the kitchen on fire, Bella telephoned the fire brigade. On their arrival she told Sam, the officer in charge, that she would give each fireman £50 if they prevented the fire from damaging her living room which contained valuable antiques. The firemen extinguished the fire and confined its effects to the kitchen. Bella has refused to pay. Advise the fire brigade.
- c) Alice is travelling to Oxford when her car gets a puncture. The driver of a passing van stops and offers to change the wheel of Alice's car. When he has finished he says 'That will be £100 please. I'm part of the Blue Flag rescue service. I have a garage just down the road.' Explain to Alice if she is legally obliged to pay the £100.
- d) While Paul is away on holiday his neighbour, Jim, mends Paul's garden fence. When Paul returns he is so pleased he promises to give Jim a case of French wine. This was two weeks ago and Jim has still not received any wine. Has a contract been made between Paul and Jim?

Answer:

- a) To create an enforceable contract there must be an intention to create legal relations. In social, domestic and family arrangements it is presumed that there is no such intention, *Jones v Padavattan* (1969), *Balfour v Balfour* (1919), *Hadley v Kemp* (1999). However this

- presumption can be rebutted. Here, Amy, Jim and Sophie are family and therefore Amy and Jim would have to show that the parties intended the agreement to be legally binding.
- b) Performance of an existing contractual duty or statutory duty does not provide good consideration, *Collins v Godfrey*, but if some extra service is given that is good consideration, *Glasbrook Bros v Glamorgan CC* (1925). In this scenario the firemen are carrying out their public duty and therefore have not provided any additional consideration. Bella's promise is not legally enforceable.
- c) Consideration must not be past, *Re McArdle* (1951), which means it must not precede the other party's act or promise. However, where a request is made for a service and the request implied a promise to pay for it then completing the service is consideration, *Stewart v Casey (Re Casey's Patents)* (1892). Whether Alice is bound to pay the £100 depends upon whether there was a request for a service with an implied promise to pay. Consider the facts - did Alice ask the driver to change the wheel? Before the wheel was changed was it clear that the driver was part of a garage service which clearly would be charging for changing the wheel and therefore the parties would contemplate that payment was to be made?
- d) Consideration must not be past, *Re McArdle* (1951), which means it must not precede the other party's act or promise. Here Jim's work was done before Paul made any promise to give him wine in return. Thus his consideration is past and there is no valid contract under which Paul must give Jim wine in return for the work already done.

QUESTION 4

Anthony entered into a contract with Bruce to refurbish a block of 100 flats; the work was to be completed in three months. The contract stated that late completion would be charged at £5,000 per day. Anthony sub-contracted with Clive to install the fitted kitchens and bathrooms in each of the flats for a fixed price of £100,000. After a month it became obvious to both Anthony and Clive that Clive had grossly under-priced the cost of the materials and he would be in financial difficulties if he completed the job. Consequently, Anthony offered to pay Clive an additional £300 per flat provided they were finished before the completion date. Clive carried on with the contract and completed the work in time. Anthony is now refusing to pay him the additional money. Advise Clive.

Answer:

- The principle set out in *Stilk v Myrick* is that that an obligation owed to a party in an existing contract cannot be used as consideration for a new promise with same party. However this has been modified by *Williams v Roffey Bros & Nicholls (Contractors) Ltd* (1990).
- In *Williams v Roffey Bros* the court did enforce a promise, made by Roffey Bros, to pay Williams, an extra sum of money for work which Williams was already under a contractual duty to perform for them.
- The courts' reasoning for enforcing the promise was that Roffey Bros gained a practical benefit because they were able to avoid a penalty in another contract, and they did not have to meet the expense of engaging other contractors to finish Williams' work, and the payment scheme agreed with Williams was changed so that Williams was paid per complete flat. There had been no economic duress or fraud by Williams.

- The facts of the scenario are similar to those in *Williams v Roffey Bros.* and using the principles set down in that case, provided the parties intended the new agreement to be legally binding, Clive is likely to be successful in this claim.
- Although Clive originally agreed to carry out the work for £100,000, Anthony has gained a benefit from the new agreement as the work was completed in time and he did not have to pay the penalty of £5,000 per day for late completion.
- There is no evidence of any duress or fraud by Clive, *D & C Builders v Rees* (1965)