

## INTENTION TO CONTRACT

### Introduction

An offer plus an acceptance to the offer make an agreement. But not all agreements are contracts. An agreement must be enforceable by law to make it a contract. An agreement is eligible to be enforceable by law when the following [factors](#) are satisfied:

1. Intention to create a legal relationship between the parties;
2. Lawful consideration and lawful object;
3. Capacity to contract;
4. Free consent;
5. The agreement is not declared void or illegal;
6. Certainty of meaning;
7. Possibility of performance of an agreement;
8. Other necessary legal formalities.

### Intention to create a legal relationship

When two or more parties enter into a contract, one of the essential elements is that the parties should have an intention to create a legal relationship between themselves. An agreement will never reach a stage of a contract if there is no intention to create a legal relationship between the parties. So, for an agreement to become a contract, it is imperative that the parties who are entering into the contract must have an intention to create a legal relationship with each other. The intention should be such that if any of the parties do not perform their obligations then the other party can initiate legal proceedings against the defaulting party.

The [Indian Contracts Act 1872](#) does not have any express provision to define the concept of 'intention to create legal relationships' between the parties. But over the years there have been several national and international precedents wherein it was held that to create a binding effect over a contract, parties must have an intention to create a legal relationship.

### Importance of the intention in creating a legal relationship

The material aspects that govern the concept of intention is:

1. The parties cannot sue each other in the absence of intention.
2. If the intention to create legal relations is absent then the contract is a mere promise.
3. The contract will not have a binding effect if there is no intention to create legal relations.

In [Balfour vs. Balfour \(1919\)](#), the principle of intention to create contractual relation was explained by Lord Atkin as: 'Not all agreement between the parties results in a contract because their meaning is not termed according to law. In these circumstances, nobody can suggest whether there is a binding contract or not and one of the most common forms of such agreement is the agreement between a husband and a wife or an agreement within the family. This type of agreement can never fall within the ambit of a contract even though there is a consideration as there is no intention between the parties to bear legal consequences.'

The sources of contract law have laid down [two tests](#) to determine the existence of an intention to create legal relation

1. Objective Test – In this, the court will form an opinion based on how a reasonable person would think, the type of circumstances at that time, and what was the intention of the parties.
2. Rebuttable presumption – In several cases such as family/social agreements the court has a presumption regarding the intention to create a legal relationship, but this can be rebutted on the basis of facts and circumstances.

#### Test of Objectivity

The test of contractual relations should always be objective and not subjective. In the objectivity test, it doesn't matter what parties intend but what a reasonable man at the time creating a contract will think. The court will look at the perspective of a reasonable man and not the intent of the parties.

#### Simpkins v. Pays (1955)

In [Simpkins v. Pays](#) (1955), a mother, her daughter and their paying guest decided to participate in crossword puzzles, all in the name of the mother. The expenses for the same were contributed by all the women at that time, without any obligations. They won one of the games, but the mother was reluctant to share the prize money with her daughter and the paying guest. The Court, in this case, held that any prudent man considering this situation would have thought that there must be an intention to share the prize. Therefore, the mother was bound to share the prize with the daughter and the paying guest.

#### Carlill v. Carbolic Smoke Ball Company (1893)

In [Carlill v. Carbolic Smoke Ball Company \(1893\)](#), Defendant published an advertisement stating that a 100 pounds reward will be paid by the Carbolic Smoke Ball Company to any person who contracts the increasing epidemic influenza colds or any diseases caused by catching a cold after having used the Carbolic Smoke Ball three times daily for two weeks. On seeing this advertisement, Mrs. Carlil, the Plaintiff went and bought at the chemist's one of the smoke balls. She used it three times daily for two weeks according to the prescribed direction supplied. However, she contracted influenza. Mr. Carlil filed an action to recover the 100 pounds. The trial judge passed an order in favour of Mrs. Carlil.

The Carbolic Smoke Ball Company appealed to the Court of Appeal and the appeal was dismissed on the ground that the offer in the advertisement coupled with the performance by the plaintiff of the conditions specified therein created a valid contract on the part of the defendants to pay the 100 pounds mentioned in the advertisement and the plaintiff was entitled to recover the 100 pounds.

Lord Justice Bowen was of the view that, although the offer is made to all the world, the contract is made with that limited portion of the public who come forward to accept the offer, as any prudent man who reads the advertisement would presume that there is an intention to create a contract with the company.

Let us now look into some instances wherein the intention of the parties plays a crucial role in determining the existence of a contract.

#### Family or social agreements

In cases of family or social agreements, the intention of the parties is evaluated according to the terms of the agreement and the circumstances in which the agreement was entered into. In these types of agreements, the Court has to decide whether there is an intention to create a contractual relationship

or not. Most of the time, a family agreement or a social agreement does not intend to create contractual relations except in cases of separation or splitting up.

#### Agreement between husband and wife

Agreement between a husband and wife is an example of family and social agreement. Most of the time an agreement between husband and wife does form a binding contract. Let us now discuss some landmark cases in this regard.

#### Balfour v. Balfour (1919)

##### Brief facts

The defendant and his wife were enjoying their leave in England. But due to some circumstances, the defendant had to return to Ceylon and he and his wife had to stay in England for medical reasons. The defendant agreed to pay some amount for probable expenses. With time differences arose and their relationship soured due to which the husband stopped sending expenses to his wife. The wife initiated legal proceedings against her husband to enforce the agreement.

##### Order of the Court

The Court [held](#) that this agreement was purely domestic and social and neither of the parties was legally bound as there were no express terms to create a legal relationship between the parties.

But the agreement between husband and wife does always depend upon the presumption; sometimes it is rebutted depending on each case's facts.

##### Exceptions

#### Mcgregor v. McGregor (1888)

In [Mcgregor v. McGregor 1888](#), a husband and wife withdrew their complaints under an agreement by which the husband promised to pay her an allowance and she was to refrain from pledging his credit. This agreement was held to be a binding contract

#### Agreement between parent and child

Agreement between parent and child is also an example of family and social contract which is presumed to be an example of social agreement and does not have the effect of a binding contract. Let us now discuss some landmark cases in this regard.

#### Jones v. Padavatton 1969

##### Brief Facts

In [Jones v. Padavatton 1969](#), Padavatton, a divorced woman, was living in Washington, USA, with her son. She had a good job as an accountant in the Indian Embassy. Jones was Padavatton's mother who was living in Trinidad and she wanted her daughter to leave the USA and be a barrister in England and then return to Trinidad. Jones promised to pay \$200 per month to her if she comes to Trinidad after becoming a barrister from England. Padavatton agreed to do this and Jones paid her bar tuition fees @ £42 per month. Later, Jones proposed to purchase a house where Padavatton and her son could live and also let out leftover rooms to derive income from tenants. But the differences grew between Jones and Padavatton when she was not able to complete her legal education within 5 years and she also remarried during her education. Jones cut down the allowances and also initiated legal

proceedings against Padavatton to evict her from the house. The issue before the Court was whether there was a contract between Jones and Padavatton allowing possession of the house.

Order of the Court

The Court, in this case, held that this is a family arrangement that draws its essence from good faith of the promise which is not made to form a binding agreement. In the light of the same, it was held that there was no intention to create a contractual relationship between the parties

Exception

Although the agreement between the relatives is an example of the social agreement in certain cases it is rebutted on the basis of facts and circumstances.

Parker v. Clark 1969

Brief Facts

In [Parker v. Clark 1969](#) The Clarks were an elderly married couple. Mrs. Parker was Mr. Clark's niece. Mr. Clark suggested that she and her husband move in together with them. Mr. Parker supported the idea but expressed concern that if they move in, they need to sell their house. Mr. Clark wrote to Mr. Parker stating that the Clarks will bequeath their home to Mrs. Parker, that her daughter, the Parkers, and in furtherance of the same, they sold the house and moved in with Clarks. But, after some time this started falling apart and the Parkers were denied their share of the house. The Parkers initiated legal proceedings for breach of contract.

Order of the Court

It was held that since the action of the niece and her husband were very serious and there was an intention to create a legal relationship between the parties. Hence, the Clarks cannot deny the share to the Parkers.

Commercial agreement

The other presumption is that commercial agreements are intended to create a legal relationship between the parties. It is generally presumed that whenever a business transaction is involved there is an intention to create legal relations between the parties.

Esso Petroleum v. Commissioners of Customs and Excise 1976

Brief Facts

In [Esso Petroleum v. Commissioners of Customs and Excise \(1976\)](#), A promotion campaign was advertised by Esso Petroleum that a free coin from the world cup collection coin will be given on the purchase of four gallons of petrol by any person. The issue that arose was whether there was enough quantity of coins produced to be given in resale and if so whether it will attract tax liability.

Order of the Court

The Court held that the coins were offered in a commercial context and thus there was an intention to create a contractual relationship. In this case, it was observed that coins were not given in exchange for money therefore there was an intention to create contractual relations but there was no consideration involved.

Exception : Comfort letter

## Kleinwort Benson Ltd. versus Malaysia Mining Corporation 1989 case

### Brief Facts

In this [case](#), Malaysia Mining Corporation Metal Limited, which was a fully owned subsidiary of Malaysia Mining Corporation approached the claimant bank Kleinwort Benson for a loan. Since Malaysia Mining Corporation Metal Limited was a new company, the bank approached Malaysia Mining Corporation (Parent Company) to act as a guarantor. MMC Bhd refused to be a guarantor but instead handed a letter of comfort to the bank in view that MMC Bhd ensures that their subsidiaries are always in a good position. Subsequently, MMC metal ran into bankruptcy and the Bank initiated proceedings against MMC Bhd to recover the loan based on a comfort letter.

### Order of the Court

The Court held that there is no legal effect of a comfort letter. It was clear when the MMC Bhd refused to be a guarantor that they did not intend to be legally bound.

### Conclusion

In various judicial pronouncements, the court was of the view that there should be an intention to create a legal relationship between the parties. This intention can either be presumed or need to be proven with the help of facts and circumstances. The position of intention is different in common law and Indian law. In common law intended to create a contract is an essential part to form a binding contract and consideration in a contract only has an evidentiary factor. In Indian law, the scenario is different, in India consideration is considered an essential part of a contract, and the existence of consideration proves intention to create legal relations.

There is a thin line of difference between commercial contracts and family/social agreements. Therefore, due to this thin line of difference, it will be difficult for Indian courts to determine the existence of an intention to create legal relations as even in family contracts there will be an essence of consideration that will overlook the existence of intention.