

Intention to Create Legal relationship

“Presumptions used in intention to create legal relations provide clarity but also lead to unfairness.” Discuss. (25 marks)

In the formation of a valid contract, the intention to create legal relations is one of the four essential elements, alongside offer, acceptance, and consideration. Without this intention, a contract will not be enforceable. In order to determine whether such an intention exists, courts rely on a system of presumptions depending on the nature of the parties’ relationship and the context in which the agreement was made. These presumptions provide some clarity in distinguishing enforceable contracts from informal or social arrangements. However, they can also produce unfair results, especially when they override the actual intentions of the parties or fail to accommodate the nuances of modern relationships. This essay explores the usefulness and limitations of these presumptions in both domestic and commercial contexts.

In domestic and social agreements, such as those between spouses, parents and children, or close friends, the courts apply a presumption that there is no intention to create legal relations. This was clearly established in the case of *Balfour v Balfour*, where a husband promised to send money to his wife while working abroad. When he stopped the payments, the court held that the agreement was not legally enforceable, as it was made within the context of a marriage and presumed to lack legal intention. The justification for this presumption lies in the idea that many informal arrangements between family members are based on trust, affection, and social expectation, not legal enforceability.

This presumption brings clarity by allowing courts to avoid being swamped with litigation over every minor family disagreement or promise. It filters out cases where parties clearly did not contemplate legal consequences. However, the fairness of the presumption is questionable in some circumstances. It assumes that family members never intend to be legally bound, which may not reflect the reality of some situations. For instance, in *Merritt v Merritt*, the court enforced an agreement between a husband and wife who were separating, because they were no longer in a harmonious domestic relationship and had set out clear financial terms. The court held that, in such circumstances, the presumption of no legal intent was rebutted. This shows that the court is willing to look beyond the family label when the facts point to a more formal, binding understanding.

The shift in *Merritt* highlights the importance of context in assessing legal intention. While the presumption provides a useful starting point, it cannot substitute for a close examination of the facts. This is especially relevant where the relationship between the parties is deteriorating, or where the subject matter of the agreement is significant — such as property or financial arrangements. Courts have recognised that in such situations, the parties may well expect their agreements to have legal consequences, and the law should honour those expectations.

On the other hand, in *Jones v Padavatton*, a mother’s promise to financially support her daughter while studying law was held not to be legally binding. Despite the daughter’s reliance and the extended duration of the arrangement, the court concluded that the agreement was made in a domestic setting and was not intended to be legally enforceable. This decision has attracted

criticism for overlooking the practical reliance and seriousness of the arrangement. It suggests that the domestic presumption can, in some instances, lead to unfairness — particularly where the promise is clear and relied upon, but is still dismissed due to the nature of the relationship.

The other main presumption in this area operates in the commercial context. When parties enter into agreements in a business setting, the law presumes that they do intend to create legal relations. This presumption was applied in *Edwards v Skyways*, where an employer's promise of an ex gratia payment to an employee was found to be enforceable because it arose in the context of a business negotiation. The court reasoned that in a commercial environment, parties generally expect their agreements to be binding. This presumption promotes certainty and predictability in commercial dealings — essential values in contract law.

However, just as in the domestic context, the commercial presumption can occasionally lead to unfair outcomes when applied rigidly. For example, in *Esso Petroleum v Commissioners of Customs and Excise*, the issue was whether a promotional giveaway of free World Cup coins with fuel purchases involved an intention to create legal relations. The majority of the judges found that there was an intention, treating the promotion as a commercial transaction. Yet critics argue that applying the presumption here extended contract law too far into marketing practices that may not have involved genuine contractual intent. This shows that even in commercial contexts, the presumption may not always align with the parties' actual expectations.

Additionally, courts must sometimes decide how to classify hybrid agreements that straddle the line between domestic and commercial. A prime example is the case of *Simpkins v Pays*, where a grandmother, granddaughter, and lodger shared competition entries and agreed to split any winnings. When the prize money was awarded and the grandmother refused to share, the court held that the agreement was legally binding. Even though it involved family members, the inclusion of the lodger and the financial element of the agreement rebutted the domestic presumption. This case illustrates how the rigid application of presumptions must give way to practical analysis where multiple factors influence the relationship.

Furthermore, modern societal developments challenge the clarity these presumptions once provided. The rise of informal business partnerships between friends or relatives, the blending of social and commercial contexts, and the increasing complexity of family structures all blur the lines that the traditional presumptions rely on. Courts now face greater difficulty in applying the domestic-commercial dichotomy without oversimplifying or misjudging the nature of the parties' intentions.

One way to address the limitations of these presumptions is through the use of objective tests. Courts consistently emphasise that intention is assessed based on how a reasonable person would view the situation, not on the parties' internal beliefs. This approach brings some fairness by allowing judges to consider surrounding circumstances and the seriousness of the agreement. However, reliance on objective indicators does not eliminate the influence of the underlying presumptions, which still shape the starting point of legal analysis and the burden of proof.

Ultimately, while the use of presumptions in determining legal intention brings a degree of clarity to contract law, it must be applied with flexibility and sensitivity to context. Courts are rightly

cautious not to turn every family disagreement or commercial promotion into a contract dispute. Yet fairness demands that genuinely intended agreements — especially those involving significant reliance or financial implications — are given legal recognition, even when they fall outside traditional categories.

In conclusion, the presumptions used in assessing intention to create legal relations serve a valuable purpose in streamlining legal reasoning and promoting predictability. However, they are blunt tools that do not always accommodate the complexity of modern relationships and arrangements. While they provide clarity in many cases, they can lead to unfairness if applied rigidly or without sufficient regard to the context. The law must continue to evolve in how it balances presumptions with the actual conduct and expectations of the parties to ensure outcomes that are both principled and just.

**“The courts’ approach to intention to create legal relations ensures certainty in contract law.”
Discuss. (25 marks)**

Intention to create legal relations is a fundamental element in the formation of a valid contract. Without it, an agreement, no matter how clearly framed or how mutually beneficial, cannot be legally enforceable. The courts approach this issue by applying presumptions based on the nature of the relationship and the setting in which the agreement was made. These presumptions serve to filter out casual or informal arrangements and identify those that genuinely aim to have legal effect. This system contributes to certainty by offering clear starting points for legal analysis. However, whether this approach fully delivers legal certainty in all cases is a matter of ongoing debate, particularly given the nuances of modern personal and commercial relationships.

In domestic or social arrangements, the general presumption is that the parties do not intend to be legally bound. This was established in *Balfour v Balfour*, where the court held that an agreement between a husband and wife for the husband to send maintenance payments was not enforceable. The ruling was based on the understanding that everyday family arrangements, particularly within a functioning relationship, are founded on mutual trust and emotional ties rather than legal obligations. This presumption offers legal certainty by allowing courts to quickly dismiss claims arising from trivial domestic promises, thus avoiding the courts being overwhelmed with litigation rooted in private life.

However, this presumption can be rebutted where the circumstances indicate a shift from informal cooperation to formal commitment. In *Merritt v Merritt*, the court found that an agreement between a separating husband and wife regarding property ownership was legally enforceable. The key distinction from *Balfour* was that the relationship had broken down, removing the element of mutual trust. This decision demonstrates how the courts adapt the presumption to preserve fairness while still providing clarity — if the parties are no longer acting as a couple in harmony and are dealing with formal matters like property and finance, legal intention is inferred.

Such a flexible approach ensures that the law remains responsive to real-world situations. It does not treat domestic relationships as a single, undifferentiated category but recognises different stages and contexts within them. This enables the courts to uphold serious agreements while continuing to filter out casual, non-binding ones. The result is a nuanced but structured framework that guides parties and legal practitioners alike in understanding when obligations may be enforceable.

Yet, while this system enhances certainty, it is not without problems. The line between social and legal intent is not always clear, particularly in long-term arrangements or those involving significant reliance. *Jones v Padavatton* illustrates this complexity. A mother’s promise to financially support her daughter while she studied law was held not to be enforceable. Despite the long duration of the arrangement and the daughter’s reliance, the court treated it as a family matter lacking legal intention. Critics argue that the decision underestimated the seriousness and implications of the arrangement, thereby creating unfairness. The presumption in domestic cases, though intended to promote certainty, can lead to rigid outcomes if applied without sufficient attention to context and reliance.

The courts have adopted a contrasting presumption in commercial agreements. In business contexts, the law assumes that the parties do intend to create legal relations. This was illustrated in *Edwards v Skyways*, where an employer's promise of an ex gratia payment to an employee was held enforceable. The court reasoned that business arrangements are presumed to be serious and are made with the expectation of legal consequences. This presumption strengthens commercial certainty, ensuring that businesses can rely on agreements and that courts do not need to investigate the subjective intent of every transaction.

This approach is reinforced by the courts' willingness to reject arguments that a commercial agreement was not meant to be binding unless there is clear evidence to the contrary. For example, in *Esso Petroleum v Commissioners of Customs and Excise*, a marketing campaign involving free coins given with petrol purchases was held to involve legal relations. Even in promotional settings, courts are prepared to enforce agreements where consideration is present and the arrangement appears structured. This reinforces predictability in commercial life and supports confidence in transactions.

However, even in commercial settings, the presumption does not always align with fairness or party intention. Not every exchange in a business context is meant to be legally binding. Courts must occasionally draw fine distinctions, such as in cases involving mere puffery, jokes, or preliminary discussions. In *Carlill v Carbolic Smoke Ball Co*, the court found a promotional advertisement to be a binding unilateral offer because the company had deposited money to show its seriousness. But had that deposit not existed, the outcome might have been different. This shows that even commercial presumptions rely heavily on factual context and can be unpredictable in borderline cases.

The courts have also struggled with mixed or ambiguous relationships. In *Simpkins v Pays*, a grandmother, granddaughter, and lodger shared competition winnings. The court held the agreement enforceable, reasoning that it was a mutual enterprise involving money, even though two of the parties were related. This case illustrates how easily social and commercial elements can overlap, making the presumptions difficult to apply with consistency. If the classification of the agreement determines its legal outcome, then the clarity that the presumptions offer is somewhat undermined by the difficulty of categorisation.

To address these challenges, courts rely on the objective test — whether a reasonable person, in the parties' position, would have thought the agreement was intended to be legally binding. This test brings some flexibility and fairness to the process and allows judges to consider factors like the seriousness of the subject matter, clarity of terms, formality, and reliance. However, it also introduces a level of judicial discretion that can reduce predictability. Different judges might reasonably differ in their interpretations of how a hypothetical person would view a situation, leading to inconsistent outcomes across similar cases.

In today's world, the increasing overlap of social and commercial activities makes the operation of presumptions more complicated. Family members often go into business together, friends share investments, and informal arrangements can involve substantial financial commitments. The binary approach of classifying agreements as either social or commercial may not reflect the

full complexity of modern relationships. Courts have made efforts to accommodate these realities, but the underlying presumptions may still oversimplify.

In conclusion, the courts' use of presumptions in determining intention to create legal relations does provide a significant degree of clarity. It gives parties and judges a structured framework to analyse agreements and helps filter out unserious claims. However, this clarity is not absolute. The need to adapt presumptions to the facts, the presence of overlapping relationship types, and reliance on judicial discretion all introduce variability. While the approach contributes to legal certainty, especially in commercial contexts, it must remain flexible enough to ensure justice in each case. True certainty in contract law is achieved not merely through rules but through their fair and context-sensitive application.

Patsy and Robert have spent their married life in a house bought in joint names with a bank loan. After deciding to divorce, they agreed that Robert would move out and Patsy would continue making the loan repayments for the remaining ten years. Robert also promised to transfer ownership of the property to Patsy once she finished paying off the loan. Three weeks after moving out, Robert changed his mind and said he would not transfer his share. Patsy has not yet made any repayments. Advise Patsy whether she can legally enforce Robert's promise. (25 marks)

To determine whether Patsy can enforce Robert's promise to transfer ownership of their jointly owned house, it is essential to assess whether a binding contract exists between them. A valid contract in English law requires four key elements: offer, acceptance, consideration, and an intention to create legal relations. The issue in this scenario centres on whether the parties intended their agreement to have legal force. In situations involving close personal relationships, such as between spouses, the law applies specific presumptions regarding intention, which must be analysed in light of the facts and relevant case law.

The general legal principle is that agreements made in a social or domestic context are presumed not to be legally binding. This was confirmed in the leading case of *Balfour v Balfour*, where a husband promised to pay his wife a monthly allowance while he worked abroad. When he stopped the payments, the wife sued, but the court found the agreement to be non-binding, as it was made within a domestic setting and lacked an intention to create legal relations. The court emphasised that everyday family arrangements are typically based on mutual trust and cooperation, not legal enforceability. This presumption promotes judicial economy by avoiding litigation over informal domestic understandings that the parties never intended to be binding.

At first glance, the situation between Patsy and Robert appears to fall within this category. They are spouses — albeit divorcing — and have made an agreement about the future of their jointly owned home. Robert promises to transfer full ownership to Patsy once she finishes paying off the mortgage, and she agrees to take over repayments. However, the crucial detail is that this agreement was made in the context of a relationship breakdown and involved the future division of a significant financial asset. This moves the case away from the purely domestic agreements seen in *Balfour* and into a category where the presumption against legal intention can be rebutted.

The rebuttal of the domestic presumption was recognised in *Merritt v Merritt*, a key case that is factually similar to the present scenario. In *Merritt*, a husband and wife had separated, and the husband signed a written agreement to transfer ownership of the house to his wife once she had finished paying off the mortgage. The court held that the agreement was enforceable because it was made when the relationship had already broken down, and the parties were negotiating property arrangements in a formal and deliberate manner. The existence of a written agreement further demonstrated their intention to be legally bound.

Patsy's situation mirrors *Merritt* in several respects. Robert and Patsy are in the process of divorcing, and their agreement concerns property and financial obligations. The fact that Robert promised to transfer his share of the house once Patsy finished paying off the mortgage is a clear term with a defined condition — payment of the outstanding loan. Even if the agreement was

not reduced to writing, the seriousness of the subject matter and the context of separation strongly suggest that the parties intended to create legal obligations. The court in *Merritt* placed great weight on the breakdown of mutual trust and the shift from informal cooperation to structured arrangements. Similarly, the present case does not involve an ongoing domestic harmony where promises are made casually but rather a formal reorganisation of assets between separating individuals.

Moreover, the subject matter of the agreement further supports the conclusion that it was intended to be legally binding. In *Merritt*, the property was jointly owned, and the wife undertook to pay off the mortgage as part of the deal. Likewise, here, Patsy agreed to continue paying off the mortgage herself, which would likely involve considerable financial sacrifice and personal commitment. The specificity and financial significance of the arrangement move it beyond a casual promise into the realm of contractual intent.

Robert might argue that, unlike in *Merritt*, the agreement was not written down and that Patsy had not yet begun making repayments at the time he withdrew his promise. He might suggest that, without written evidence or demonstrable reliance by Patsy, the agreement remains within the realm of informal arrangements and thus lacks legal enforceability. This line of reasoning could be compared to *Jones v Padavatton*, where a mother promised her daughter financial support to study law. The arrangement was held not to be legally binding due to its vague terms, lack of formality, and the social context of the family relationship.

However, this comparison is not compelling. *Jones* involved a parent–child relationship where the courts were reluctant to infer legal intent in ongoing support arrangements. In contrast, the breakdown of a spousal relationship is a context in which courts are far more likely to infer that parties intended to be bound. Furthermore, while the absence of written documentation is a relevant factor, it is not decisive. Courts can find binding agreements based on oral discussions and mutual understanding, provided the terms are sufficiently clear and the context supports an inference of legal intention.

Another relevant aspect is the principle that legal intention is assessed objectively. The courts do not rely on the parties' internal thoughts but consider whether a reasonable person, in the position of the parties, would regard the agreement as legally binding. In this case, a reasonable person would likely interpret the arrangement — made during a divorce and involving the transfer of a significant asset — as intended to create legal obligations. It is not a casual arrangement about daily chores or social plans, but a structured financial agreement linked to a specific condition: the full repayment of a mortgage.

Further weight can be added by considering the practical implications of Robert's promise and Patsy's reliance. Even if she had not yet begun repayments, she may have made financial plans or relied on the promise in other ways. In contract law, reliance can support the inference that an agreement was meant to be enforceable, particularly where the promise leads to significant action or detriment. Courts are generally sympathetic to parties who make decisions based on assurances during sensitive periods such as divorce proceedings. In *Merritt*, the wife's continued payment of the mortgage was a key factor in establishing reliance and enforceability. Similarly, if

Patsy made financial arrangements in anticipation of sole ownership, this reliance strengthens her claim.

Moreover, public policy considerations support enforceability. Divorce agreements often involve property and financial terms, and courts encourage certainty in such arrangements. If parties cannot rely on promises made during the dissolution of a marriage, this would lead to confusion and potential injustice. Upholding such agreements aligns with broader legal principles of fairness and good faith in family law.

There is also no indication that the agreement was made in jest or without the intention of forming a legal commitment. The terms are specific, conditional, and concern valuable property rights. In such cases, the courts are likely to favour an interpretation that promotes certainty and fairness, especially when the arrangement was the product of mutual consent during a separation process. Unlike in *Balfour*, where the allowance was made during a period of marital harmony and involved day-to-day maintenance, the agreement here concerns the transfer of title to jointly owned property — a matter with clear legal implications.

In addition, the fact that Robert has already moved out supports the view that the agreement was part of a broader settlement or mutual understanding on how to handle their separation. The physical separation of the couple is not just a social fact but a contextual marker that the relationship has reached a stage where enforceable agreements become necessary. The law recognises that, as emotional bonds deteriorate, parties shift from relying on informal trust to seeking certainty through enforceable commitments. The judicial reasoning in *Merritt* explicitly supports this transition.

Even though Patsy had not yet begun repayments, courts may view the contract as being conditional on future performance rather than contingent upon immediate action. In contract law, agreements often include conditional terms where obligations are triggered at a later date. The absence of immediate performance does not negate the existence of a contract — it simply defines when obligations crystallise. Patsy's duty to repay and Robert's duty to transfer title would activate in the future, but the agreement itself is presently enforceable as a promise for future conduct.

In conclusion, Patsy has a strong legal basis for enforcing Robert's promise to transfer ownership of the house once the mortgage is fully repaid. The agreement was made in the context of a marital breakdown, concerned a significant financial matter, and had clear, specific terms. These factors rebut the presumption against legal enforceability that normally applies in domestic situations. Drawing from *Merritt v Merritt*, the courts are likely to view the arrangement as legally binding. Robert's attempt to renege on the promise, without any evidence of misunderstanding or lack of seriousness, will probably be rejected. Patsy should be able to seek an order for specific performance or an assurance that her interest in the property will be protected upon completion of her payments. The legal system prioritises fairness, certainty, and reasonable expectations, all of which support her claim.

Tariq and his sister Nadia often invest in small businesses together. Over dinner one night, Tariq says, “I’ll put £10,000 into the vegan bakery if you match it. Let’s get it moving.” Nadia replies, “It’s a deal.” A week later, she learns that Tariq has changed his mind and no longer wants to invest. She had already arranged a loan to fund her share. Advise Nadia whether she can legally enforce Tariq’s promise. (25 marks)

To determine whether Nadia can enforce Tariq’s promise, it is essential to evaluate whether a valid and binding contract was formed. The core elements of contract formation include offer, acceptance, consideration, and an intention to create legal relations. This scenario focuses particularly on whether there was an intention to be legally bound — an essential requirement that distinguishes enforceable contracts from informal or social arrangements. In English contract law, intention to create legal relations is assessed objectively, and courts rely on presumptions based on the nature of the relationship between the parties and the context in which the agreement was made.

The key issue here is that Tariq and Nadia are siblings. In cases involving family or close personal relationships, the law begins with a presumption that the parties did not intend their agreements to be legally binding. This principle was firmly established in *Balfour v Balfour*, where a husband promised to pay his wife a monthly allowance. When he stopped the payments, the court held that there was no contract because the agreement was made in a domestic context and lacked legal intent. The court reasoned that many family arrangements are not intended to be legally enforceable, and it would be unreasonable to burden the courts with disputes over informal promises made in personal relationships.

Applying that presumption to Tariq and Nadia, the initial reaction might be that no contract exists. They are siblings, the promise was made during a social occasion (a family dinner), and there is no written agreement. All of these factors resemble the kind of domestic or social context that typically negates legal enforceability. However, as case law demonstrates, this presumption is not absolute. It can be rebutted if the circumstances show that the parties did intend to enter into a legally binding arrangement, especially where financial matters and commercial dealings are involved.

The facts here suggest that Tariq and Nadia have a history of investing together in small businesses. This is highly significant. Where family members engage in financial or commercial relationships, the courts are more willing to infer legal intention. In *Merritt v Merritt*, the court enforced a written agreement between separating spouses about property transfer because they were no longer acting in the context of mutual trust. The breakdown of the marital relationship turned the transaction from a domestic arrangement into a contractual one. Similarly, in *Jones v Padavatton*, a mother and daughter’s agreement over law school expenses was held unenforceable because it lacked clear terms and was set in a personal, not commercial, context.

In this scenario, however, Tariq and Nadia are not simply sharing personal support — they are effectively acting as business partners. Their regular pattern of co-investment moves the arrangement out of the purely social sphere. The fact that Tariq made a clear offer (“I’ll put

£10,000 in if you match it”) and Nadia gave an unambiguous response (“It’s a deal”) shows mutual agreement. This exchange closely resembles the typical offer-and-acceptance pattern that underpins binding contracts. The financial scale of the commitment also supports a commercial interpretation. Investing £10,000 is not a trivial gesture; it suggests a considered, deliberate undertaking that is unlikely to be made casually.

Furthermore, the courts assess intention to create legal relations objectively. This means they look at whether a reasonable person, in the position of the parties, would have understood the arrangement to have legal consequences. In *Edwards v Skyways*, an employer’s promise of an ex gratia payment to an employee was held enforceable because it was made in a business setting, and a reasonable person would have seen it as binding. In our case, a reasonable person would likely conclude that Tariq’s conditional promise was made seriously, particularly in light of their investment history and the financial planning involved.

Nadia’s actions following the agreement further reinforce this conclusion. She went so far as to arrange a loan in anticipation of funding her share of the investment. Although reliance is not a strict requirement to establish legal intention, it is strong supporting evidence. When a party takes significant steps in reliance on a promise — especially where money is involved — courts are more inclined to enforce the promise to prevent injustice. This is particularly true where the promise induces the other party to enter into obligations they would not otherwise have assumed. Nadia’s reliance is clear and economically significant; taking out a loan is a serious financial commitment that would not be made lightly.

Tariq might argue that the conversation was casual and occurred in a relaxed setting. He might contend that there was no formality, no paperwork, and no fixed date for the investment, and that such informality undermines any claim of legal intention. However, contract law does not require agreements to be written or formal to be valid. As long as the agreement has definite terms, mutual consent, and consideration, it may be legally binding. The context — a shared history of joint business ventures — outweighs the casual setting of the dinner.

It is also relevant to consider the specificity of the language used. Tariq’s phrase, “Let’s get it moving,” along with a clear conditional statement of £10,000 upon Nadia matching it, is indicative of intention rather than vague aspiration. In contrast to *Blue v Ashley*, where casual remarks in a pub were found not to be legally binding due to hyperbolic and informal context, here the parties have a business track record and are making precise financial commitments. The courts are more likely to view their exchange as serious and enforceable.

Another potential argument is that the family relationship itself should preclude enforceability, as in *Jones v Padavatton*. However, that case turned on the educational and domestic context, not a commercial one. The agreement was vague, long-term, and made in a spirit of maternal support. Here, by contrast, the focus is a business investment. Courts are increasingly willing to acknowledge that family members can enter into contracts, especially when they operate together in commercial ventures. In such cases, the presumption against legal intention weakens significantly.

Moreover, public policy considerations support the enforcement of such agreements. Where family members work together in business, it is important that the law offers predictable and fair outcomes. Refusing to enforce business-related agreements merely because the parties are related would create injustice and hinder family-run enterprises. The law must balance the need to protect informal personal promises with the need to uphold commercial reliability. Enforcing Tariq's promise would align with this balance.

In conclusion, while the agreement was made in a setting that might initially suggest a domestic or social arrangement, the wider context clearly indicates that the parties intended to create legal relations. Their shared history of investment, the financial seriousness of the promise, the clarity of the terms, and Nadia's reliance all point toward an enforceable contract. Courts are increasingly pragmatic in recognising that even family members can enter into binding agreements when acting in a commercial capacity. Therefore, Nadia has strong grounds to hold Tariq to his promise and should be able to pursue legal remedies for breach of contract.