



## **Miles and Dowler, *A Guide to Business Law 21st edition***

### **Study Aid – Chapter summaries**

#### **Chapter summary – ch 9 – intention to create legal relations**

1. Intention is an essential element for a contract to exist.
2. An agreement is a contract only where the parties intended it to be legally binding when they made it.
3. If the parties did not intend to be legally bound there is no contract.
4. Parties may expressly show their intention by clear and precise words in the agreement. In *Rose and Frank v Crompton Bros.*, the court found the wording of a clause in the agreement sufficiently clear evidence of a lack of intention to be legally bound.
5. Where the parties have not clearly expressed their intention, the courts must discover their intention by examining the physical evidence (ie the nature of the agreement, the writing, any conversations and all the surrounding circumstances) and decide what a reasonable person would believe to have been the parties' intention at the time.
6. Where the agreement is domestic/family/social in nature then the law presumes the parties did not intend their agreement to be a contract: see *Balfour v Balfour* [1919] 2 KB 571.
7. The presumption about domestic/family/social agreements is not very strong and it can be rebutted (overturned) by sufficient evidence of a contrary intention: see *Wakeling v Ripley* (1951) 51 SR (NSW) 183, *Todd v Nicol* [1957] SASR 72 and *Riches v Hogben* (1986) 1 Qd R 315.
8. Where the agreement is business/commercial in nature then the law presumes the parties did intend to create a legal and binding contract: see *Edwards v Skyways* [1964] 1 WLR 349 and *Air Great Lakes Pty Ltd v KS Easter (Holdings) Pty Ltd* [1989] 2 NSWLR 309.
9. The presumption about business/commercial agreements is much more difficult to overcome and the courts recognise that anyone claiming such a contract lacked intention has a heavy burden of proof.
10. Not all business/commercial agreements are contracts. In some circumstances, the evidence may be sufficient to overcome the presumption; such as a clause in a written agreement: see *Rose and Frank v Crompton Bros.*
11. The legal consequences of a lack of intention to create legal relations are that there is no contract but simply an agreement. Neither party has any legal rights or remedies and usually ownership of goods cannot pass.



12. There are other situations where there may be a lack of intention to make a contract and two such situations are:
  - (a) statements of government policy (see *Australian Woollen Mills v Commonwealth*); and
  - (b) letters of comfort: see *Kleinwort Benson Ltd v Malaysia Mining* [1988] 1 WLR 799.
  
13. There are various statutes that have affected the common law about intention, eg s 52 of the *Trade Practices Act 1974* and s 18 of the *Competition and Consumer Act 2010* (Cth) allows a party to bring legal action for misleading/deceptive conduct even where there was no contract or never an intention to enter into a contract. The new *Competition and Consumer Act 2010* (Cth) has now introduced a national Australian Consumer Law (ACL) that is applied in each State and Territory the same way as applied on a national level.