

Legal Reasoning in the Enforceability of Domestic Contracts in Law: A Legal Appraisal

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Abstract

Domestic contracts are deemed generally unenforceable in law as they are often time predicated on soft promises by relations without any intention to create legal relationships leading to strict contractual obligations and no iota of intention to be legally bound by such domestic contracts. The only given exception to this general rule is where the promisor is no longer living at amity with the promisee or where they have an estranged relationship in which case any such contract entered into by them would be deemed in law to be expectedly enforceable to the very latter. This paper takes a cursory look at the shift in the mind-set of courts in handing down decisions that seek to enforce or otherwise refrain from enforcing domestic contracts and tracing how the legal reasoning of the courts behind these decisions might have been influenced by the political and moral values of the principal actors of the courts. The paper concludes that even if law can avoid being constituted or formed by political and moral values properly speaking, it cannot avoid being applied by the colouration of the political and moral values of the Judges.

1.0 INTRODUCTION

The regulation and modification of rights arising from domestic relationships is an interesting and intellectually-stimulating one. The central question of discourse is whether or not legal reasoning unavoidably involves the application of political and moral values in the enforceability of domestic contracts. This presupposes whether legal reasoning can exist strictly independent of the application or interference of political and moral values or on the content of law alone especially in the role of law in regulating contractual obligations and relationships. The question often arises whether legal reasoning queries if the Judge followed the societal and communal consensus about moral values and social principles.

Legal reasoning often entails considerable complexity, both in its interpretation and its application¹. The former being borne out of simple application of the statute books and construing them in their ordinary words unless where the application would lead to manifest absurdity, cogent inconsistency, grave inconvenience or occasion a miscarriage of justice², the latter being the propensity for legal reasoning to be marred by the compelling human activity to be guided by some form of moral values and principles obtainable in the society³. This is reinforced by the opinion that beyond the conceptualization of law as an ‘interpretive concept’, law reflects on the moral values and principles of the institutions in the societies to which it relates, in this case, contractual relationships.

In considering whether legal reasoning unavoidably involves the application of political and moral values, it must be taken into both cognisance and perspective that legal reasoning is not only society- specific, but carries an aggregate of societal happenings, the political climate or the collective communal morality – what the society holds dear as its acceptable ethos. For instance, legal reasoning unarguably carries a colouration of politics and class struggle in the defunct Soviet Union in the 20th century as a reflection of the moral value of the society in many cases presumably handed down with a consideration of obtainable societal moral values⁴.

Thus, it can be logically argued that there seems to exist a verifiable, strong connection between the discourses of law as reflected in the court decisions and both the policy decision and the most dominant acceptable societal ethos otherwise culminating in the obtainable legal reasoning⁵. This is particularly so because law does not operate in a vacuum, it functions to regulate the society and it is a veritable tool for social engineering, thus, its very sustenance and continued relevance is deemed consequent on the acceptance, respect and the capacity for relating with such laws with the spirit and people of the society⁶.

1.1 Intention to Create Legal Relations in Domestic Contracts

A contract is a legally binding agreement between two or more parties which contains elements of a valid legal

¹ John Freeman, ‘Moral Reasoning and Legal Reasoning’ FSLJ 15.

² *Weger V Commissioner Adamson*: [1874-78] All ER Rep at 12.

³ Scott Brewer, ‘Moral Theory and Legal Reasoning’ ELR Vol 3.

⁴ *Ibid* 24.

⁵ Fuller, Lon L. (1964) *The Morality of Law*. (New Haven: Yale University Press).

⁶ *Ibid* 25.

agreement which is enforceable at law¹. An agreement is said to be reached when an offer offered by the offeree has been accepted by the acceptor as an acceptance². These parties must have the capacity to be bound to the contract and the contract must not be insignificant, vague, non-feasible, or against the law³. In daily life, most contracts can be and are made orally, such as purchasing a can drink or stationeries. Any oral agreement between two parties can form a legal binding contract as long as the good or service provided is legal. However, some contracts require material evidence, written documents for example purchasing a house as sometimes written contracts are required by either the parties, or by statutory law within various jurisdictions. When disputes arise among parties of the contract, the Courts will have to decide the judgment based on whether to place emphasis on intention of parties to the contract by entering into a legally binding relationship or other policy of considerations.

The Law recognizes that often the parties in a domestic agreement do not intend to create a legally binding contract. The law therefore states that there must be an intention to create legal relations and make a distinction between social and domestic agreement (where the assumption is that there is no intention to create legal relations and commercial and business agreements, where the law assumes that the parties intend the agreement to be legally binding on them.

One important case law that supports this viewpoint predicated on the legal reasoning behind the enforcement of promise is the law of obligations- Law of contract. Beyond consideration, the intention to create legal relationships, intention to be bound by promised obligation, the breach of which should be attended by legal consequence is a legal requirement for the determination of what constitutes a contract⁴. This legal reasoning as arrived at in *Balfour V Balfour*, a notable legal authority in English Law of Contract was largely formulated by the moral value at that time which suggests that normal nuptial agreements of domestic character were not intended to assume a contractual nature. This is why promises not intended to create a binding legal obligation would be deemed not to qualify as a contract in law because the societal moral value does not prescribe that normal nuptial arrangements should assume the cloak of contractual character.

This argument was well stated by Lord Justice Duke who held that for an obligatory arrangement by spouses to qualify as a contract, it must go beyond the usual rhetorics of mere mutual promises of married people especially taking into consideration the domestic character and relationship of the parties in question⁵.

The fact that such legal reasoning to dismiss nuptial agreements as an enforceable contract relied heavily on the moral values of applicable social construct as can be seen in the words of Lord Atkin who invariably compared the marital agreement under review to the prevalence of regular social arrangements and normal promises made by people to those they have domestic relationships with and who they could not have intended to be legally answerable to, in case of default as incapable of qualifying as contractual obligations giving rise to legal consequences in case of default supports this position⁶.

Lord Atkin relied heavily on 'his mind', the presumption of moral obligation not to be legally bound and the societal conceptualization of the non-contractual nature of ordinary domestic promises in arriving at his decision. He likened the nuptial agreement to the offer and acceptance of hospitality that neither parties could not have assumed would attract a legal implication at the time of making, even though they might have the element of consideration, but they still do not qualify as contracts because both parties did not intend that they be attended by legal consequences⁷.

However, even though the intention to be legally bound and create legal relationships remain the fundamental of the law of contract as set out in *Balfour v Balfour*⁸, a case which refused to honour the nuptial agreement as a contract in an ancillary relief proceeding, the issue was the promise made by a husband to pay his wife allowance while he was abroad. He failed to keep up the payments when the marriage broke down. The wife sued, but it was held that arrangements between husband and wives are not contracts because the parties do not intend them to be legally binding. The court also decided that she had given no consideration for the husband's promise.⁹

¹ Beale H. G., Bishop W.D. & Furmston M.P. (1990), *Contract: Cases and Materials*, Butterworth & Co. Ltd, London.

² *Ibid*.

³ *Elements of a Valid Legal Contract which is Enforceable by Law*. Law Teacher Essays.

⁴ *Balfour V Balfour* [1919] 2K.B 571.

⁵ *Ibid*

⁶ Brewer (n 3) 12.

⁷ *Balfour* (n 7) 15.

⁸ *Balfour* (n 7) 15.

⁹ *Balfour* (n 7) 15

1.2 Other Domestic Contracts treated as Legally Binding

In the case of *Merritt V Merritt*¹, the husband had already left his wife and they met to make arrangements for the future. The husband agreed to pay 40 pounds per month maintenance, out of which the wife would pay the mortgage. When the mortgage was paid off, he agreed that he would transfer the house from joint names to the wife's name. He wrote this down and signed the paper, but later refused to transfer the house. The court held that when the agreement was made, the husband and wife were no longer living together; therefore they must have intended the agreement to be binding and their intention to base their future actions on the agreement was evidenced in a formal agreement by writing. The husband had to transfer the house to the wife.

The Courts have also had to consider cases that do not just involve members of the same family, and here the principle they apply is that the presumption that the arrangement is a purely social one will be rebutted if money has changed hands. For instance in the case of *Simpkins V Pays* (1955), a lodger and two members of a household entered a competition in the lodger's name and paid equal shares. It was held that the presence of the outsider rebutted the presumption that it was a family agreement and not intended to be binding. The mutual agreement was a joint enterprise, to which cash was contributed on the understanding that any prize would be shared².

According to the extant obtainable laws, if either of the parties clearly stated that the agreements not to be bonded in law, then the court will respect the wishes of both parties. In the case of *Rose and Frank Co. v J.R. Crompton & Bros Ltd*³, two business men signed an agreement regarding the production and sale of carbon paper. The agreement included the clause:

*This arrangement is not entered into, nor is this memorandum written, as a formal or legal agreement ... but it is only a definite expression and record of the purpose and intention of the ... parties concerned to which they each honorably pledge themselves with the fullest confidence, based upon past business with each other, that it will be carried through by each of the ... parties with mutual loyalty and friendly co-operation*⁴.

The relationship between the two parties broke down and one of the parties broke the agreement. Rose and Frank Co. sued on enforcement of the agreement. Both parties agree that the agreement signed will not be bounded under the law. When both parties broke up and either of the parties has broken the agreement, another party will not have the power to sue the party who broke the contract. It is because both of the parties also agree that the agreement signed will not be controlled by the law and the courts so held. This conforms to the moral value that no one should be ambushed into willfully and compulsorily performing an obligation which was not into a forceful contemplation at the time of deliberation.

In the same vein, in some of the cases, the use of words in the contract may not be considered as a term of the contract as it may depend on the intention of the parties. In *Edwards v Skyways Ltd*⁵ for instance, Skyways Ltd has used a term 'ex gratia' payment. It means that the extra payment offered by Skyways Ltd to Edwards is not legally liable as it is only a voluntary act from Skyways Ltd to Edwards. Skyways Ltd has promised Edwards to pay him 'ex gratia' payment after he resigns from the company but Skyways Ltd refused blatantly to respect the agreement after Edwards made his promise. When the case has brought to the Court's attention, the Court was seeking the intention of both parties in the contract and took consideration of the term 'ex gratia' payment.

Finally, the Court decided that the term 'ex gratia' payment used in the contract was not strong to rebut the presumption made between the parties. It was contended that it was because the additional payment offered to Edwards was the main reasons that encouraged him to resign from Skyways Ltd. If Skyways Ltd had not offered the 'ex gratia' payment, Edwards might not have been interested in resigning from the company. Therefore, Skyways Ltd was held liable to make the payment to Edwards as the 'ex gratia' payment was deemed in law as the intention of Skyways Ltd to convince Edwards to resign from the company. All these reasoning have a purely moralistic and justice-interest underpinning.

There has equally been a slight deviation in the position of Family Law to the extent of the relevance of the contractual nature of the nuptial agreement in divorce or an ancillary proceedings where the weight attached to the nuptial agreement's contractual nature was held to be of no significance in the more recent case of *Granatova V Radmacher*⁶.

The House of Lords was of the view that whether or not a nuptial agreement had a contractual character did not matter. They stated that the value of a contract is its enforcement by the courts, but the court was not duty bound to give effect to a nuptial agreement in ancillary relief proceeding, but bound to consider them

¹ (1970) EWCA Civ 6.; [1970] 1 WLR 1211.

² *Ibid.*

³ [1924] UKHL 2, AC 445.

⁴ *Ibid.*

⁵ [1964] 1 All ER 494.

⁶ *Granatova V Radmacher* [2010] UKSC 42.

irrespective of their contractual nature or otherwise¹.

The fact that the courts found that the contractual nature of an ante-nuptial agreement not to affect the weight to be attached to such agreements in *Granativa* unlike in *Balfour* shows a shift in the moral values of the Judges who handed down the decision. The moral value and socio-political climate that allowed the disallowance of nuptial agreement as having a contractual nature in ancillary relief proceedings in *Balfour* seems to have shifted in *Granativa* which considered the contractual nature irrelevant in determining the weight of the nuptial agreements. Even though the decision was considered in light of well-formulated and established statutory rules and common law, its application appears to be affected by the political and moral values obtainable at the time of the decision by the Judges.

This paradigm shift in moral values was re-echoed by the court in *Maclead V Maclead*² when the court stated in part that ‘...There is nothing to prevent a couple from entering into contractual financial arrangements governing their life together’.

2.0 Is the intention to create legal relations fool-proof?

The fact that some bargains are deemed not legally enforceable for policy reasons reinforces the argument that the requirement of intention to create legal relations has no justifiable basis³. This argument which focuses on collective agreements has however been rendered ineffective with the enactment of the Trade Union and Labour Relations (Consolidation Act, 1992) which section 79 provides for the enforceability of collective Agreements. The conceptualization of the ‘intention to create legal relations’ as a moral value driving the legal reasoning for the non-enforcement of domestic agreement is however not fool-proof. It has been widely criticized as a misleading concept capable of hiding the real reasons behind the decisions reached by the courts⁴. Hedley was of the opinion that the moral objective of the decision was to ensure that commercial obligations become fulfilled at all times, whereas, in purely domestic arrangements like nuptial agreements, liabilities of contractual nature can only be enforceable if the aggrieved party seeking the enforcement has performed his side of the bargain and merely imploring the defaulting party to perform hers. What he however failed to consider was that the issue of reciprocity is only often possible when there is consideration-exchange of mutual promise. This might be absolutely non-existent in contractual obligations of informal domestic arrangement due to the relationship of parties, and where this is absent, it suggests that the parties being in closely-knit relationships might not envisage any legal consequence regarding the performance or otherwise of their obligation.

The shift in the decision from *Balfour* which hitherto renders unenforceable nuptial agreements of domestic relations for not being contractual has been argued to be unreflective of sound policy and bereft of modern socio-political realities⁵ which have reshaped legal thinking in the more recent case of *Granativa*⁶.

3.0 Does a Mere Promise Constitute a Valid Contract Between Relations?

However, the intention to create legal relations was still equally upheld as a fundamental requirement for determining the contractual nature of domestic obligations in the case of *Jones V Padavatton*⁷ where Mrs Jones had promised her daughter who was a secretary in Washington DC a provision of monthly maintenance and accommodation in England as consideration for the daughter resigning from her job in the US and reading for the Bar in England, but cancelled the arrangement midway by seeking repossession of the house.

This case seems to suggest that agreements within families will generally be treated as not legally binding. This is largely because in this case, Mrs. Jones offered a monthly allowance to her daughter if she would give up her job in the USA and come to England and study to become a Barrister at Law. Because of accommodation problems, Mrs. Jones bought a house in London, where the daughter lived and received rents from other tenants. They later quarreled and the mother sought repossession of the house. The Courts decided that there was no intention to create legal relations and that all the arrangements were just part of ordinary family life. Therefore, the mother was not liable on the maintenance agreement and could also claim the house.

In a unanimous decision, the court held the mother entitled to possession on the basis that there was no valid contract between the parties especially because there was no intention to create legal relations. This decision like many others were reached applying moral values. The Courts based this decision on the moral

¹ *Granativa* (n 12) 1388.

² *Maclead V Maclead* [2008] UKPC 64.

³ Brian Hepple, ‘Intention to Create Legal relations’ [1976] CLJ122.

⁴ Steve Hadley, ‘Keeping Contracts in Its Place- *Balfour V Balfour* and the Enforceability of Informal Agreements’ (1985) 50 JLS 391.

⁵ M. Freeman, ‘Contracting in the Family: *Balfour V Balfour*’. Hilson (1996) 68. *Revisited in Exploring the Boundaries of Contract*.

⁶ *Granativa* (n 12).

⁷ *Jones V Padavatton* [1969] 1 WLR 328, CA 111.

presumption that the obligation of granting the house to Mrs Jones' daughter by her was a purely family arrangement which depends largely on the exchange of soft promises made which are often not naturally intended to be inflexible, binding agreements between couples as obtainable in *Balfour* or between parents and their children. They based this decision however on the fact that the arrangement was predicated on the financial assistance of a mother to her daughter in good faith and not as a strict contractual obligation not contemplated beyond the original intention not to be bound¹.

Analysing the daughter's testimony where she agreed not to have opened the door because she felt a normal mother could not have sued her daughter in court² which confirms the Court's contention that neither of the parties intended to create legal relations but a domestic arrangement purely on moral grounds confirms the argument that legal reasoning is often predicated on the application of moral values.

Thus, if she had not contemplated for a day that the promise to assist and stay in her house by her mother could lead to adjudication and she had not spelt out the terms of the agreement in concrete terms with a reclaimable consideration and intention to enforce a contract, then, it was only morally expedient and legally right that her mother could not have contemplated an intention to be legally bound in the relationship in the case of default.

Since both the judgement in *Balfour V Balfour* and *Jones V Padavatton*³ confirms that the intention to create legal relationships remains the fundamental core of entering valid contracts, that a party which did not intend that his or her actions should be attended by legal consequence in a domestic arrangement with people they have consanguineous relationships with- (father, mother, daughter, wife) would not be held liable if they did not intend to create a legal relationship as at the time of making the promissory arrangement where there is insufficient evidence to rebut the presumption against domestic arrangement and that a party to which the promise relates cannot benefit from such forced enforcement to which no intention to create a legal relationship existed. The legal reasoning in these two cases relied heavily on the question of moral values which would not punish a party for contractual infraction on the basis of normal promise not contemplated within legal boundaries.

4.0 Conclusion

In conclusion, since legal reasoning inevitably involves the application of political and moral values. One can then safely submit that even though legal reasoning should be purely legal thoughts based on strictly the law, it cannot always be free from the application of political and moral values because even though law should be an interpretive concept of the set rules, those rules have always been formed from the experience and contact with political and moral values especially on laws governing the contractual relationships of relatives. Also, whether or the law would enforce domestic contracts would depend on a number of factors beyond the political and moral values of the court handlers, the circumstances of each case leading to treating each case on its own merits, the intention of the parties at the outset of the contract to be legally bound or not, the nature of the contract, the presence or absence of consideration irrespective of its adequateness, the availability of sanctions in case of breach and the interest of justice. Thus, even if law can avoid being constituted or formed by political and moral values, it cannot avoid being applied by the colouration of the political and moral values of the Judges.

5.0 Recommendations

Relations (husbands, wives, children and brothers) should spell out their contracts in written form if they intend to enforce their domestic contracts or otherwise refrain altogether from entering into contracts with their relatives as such domestic contracts might be deprived of enforcement and legal protection on the ground that there is a presumption of intention not to be legally bound.

A multi-disciplinary approach to researching into the psychological and socio-political influence of political and moral values on the interpretive paradigm shifts of law is hereby advocated to determine the extent of influence of moral and political values on law.

Irrespective of the domestic colouration of contracts entered into by relations and the absence of cogent quantitative consideration, parties must learn to obey their contractual obligations to one another notwithstanding their relationship and not hide behind domestic relationships to evade their contractual responsibilities.

Floodgate tool should be used by the court to prevent the burden of liability to the court and the defendant from becoming too cumbersome. This is by controlling the amount of cases rise before the court. Cases that arise in many of our courts are usually either from social and domestic agreements or agreements made in a commercial context. The floodgate is brought in by the court to bottleneck the number of cases coming from social and domestic agreements and as such, arbitrary and frivolous matters can be swiftly dispensed with through this initial check application mechanism.

¹ *Ibid* 123.

² *Ibid* 123.

³ [1969] 2 KB at Page 578; [1969] 1 WLR 328, CA.

If the Courts allow opening of the floodgates, allowing social and domestic agreements to be a valid intention to create a legal relationship, the Court's administration will be unable to cope with the excessive number of cases in its contention, thus resulting in an economic loss in terms of time wasted to address these cases and in inefficient spending of tax payer's funds on frivolous litigation. This will further strengthen the society, entrench public peace and encourage the people to honour simple agreements irrespective of their nature and relationship.

BIBLIOGRAPHY

Table of Cases

Balfour V Balfour [1919] 2K.B 571
Edwards V Skyways Ltd [1964] 1 All ER 494
Granativa V Radmacher [2010] UKSC 42
Jones V Padavatton [1969] LWLR 328 CA
Maclead V Maclead [2008] UKPC 64
Merritt V Merritt [1970] 1 WLR 1211
Simpkins V Pays [1955] 1 WLR 975
Weger V Commissioner Adamson [1874-78] All ER 1, 12

Statutes

Trade Union and Labour Relations (Consolidation Act) 1992

Secondary Sources

Beale H. G., Bishop W.D. & Furmston M.P. (1990), Contract: Cases and Materials, Butterworth & Co. Ltd, London.
Brewer S. 'Moral Theory and Legal Reasoning' ELR Vol. 3
Butler, Desmond A. (2002) An assessment of competing policy consideration in cases of psychiatric injury resulting from negligence, Available at <http://eprints.qut.edu.au/18404/1/18404.pdf> [Accessed 5 June 2017].
Chen-Wishart, M. 2007, Contract Law, Oxford University Press, United States of America, Available at http://books.google.com.my/books?id=CHYo04GovjcC&pg=PA112&lpg=PA112&dq=floodgates+for+intention+to+create+legal+relation&source=bl&ots=_IWWKeZXm5&sig=7nlZKiEfYUihPY1AQii9qkJGFmU&hl=en&ei=UsjOTJmYOIbQcY2kIIC&sa=X&oi=book_sult&ct=result&resnum=1&ved=0CBQQ6AEwADgU#v=onepage&q&f=false [Accessed on 5 June 2017].
Downes, T.A. 1993, A Textbook on Contract, Blackstone Press Limited, London.
Freeman J. 'Moral Reasoning and Legal Reasoning' FSLJ 15
Freeman M. 'Contracting in the Family: Balfour V Balfour Revisited' In *Exploring the Boundaries of Contract*, R Hilson 1996) 68
Fuller L.L 'The Morality of Law'. New Haven. (Yale University Press)
Hedley S. 'Keeping Contracts in its Place: Balfour V Balfour and the Enforceability of Informal Agreements'. (1985) 50JLS
Hepple B. 'Intention to Create Legal Relations' [1976] CLJ 122
Hujo P. (2005), The Doctrine of 'Intention to Create Legal Relations', Available at <http://www.grin.com/e-book/109929/the-doctrine-of-intention-to-create-legal-relations>. [Accessed on 3rd May 2017]
The Need for Intention to Create Legal Relations in Contract Law, Article base 2005-2010, Available at: <http://www.articlesbase.com/law-articles/the-need-for-intention-to-create-legal-relations-in-contract-law-381745.html> [Accessed on 10th July 2017].
UK.
Yule I & Darvent P 2008, Law, Phillip Allan Updates, Market Place, Deddington,

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