

## CHAPTER 5 INTENTION, CAPACITY, CONSIDERATION, AND PRIVITY

After studying this chapter students should be able to:

### IDENTIFY ELEMENTS OF AN INTENTION TO CREATE LEGAL RELATIONS AND EXPLAIN THE PRESUMPTIONS RELATING TO COMMERCIAL AND DOMESTIC AGREEMENTS

- In order for an agreement to be legally binding, the parties must intend that the agreement should impose legal rights and obligations on them.
- Where agreements are made within a social or domestic context, it is presumed that the parties did not intend to create legal relations.
- Where commercial or business agreements are made, it is presumed that the parties did intend to create legal relations.
- These presumptions can be rebutted by clear evidence of a contrary intention.

### OUTLINE THE LAW RELATING TO CAPACITY TO CONTRACT

- Minors, persons with mental disabilities, intoxicated persons, and corporations may lack contractual capacity to enter into certain types of contracts.
- Contracts made with minors are usually voidable by the minor, but contracts made for necessities, training, or education, are binding on the minor, provided they do not contain harsh terms which are detrimental to the minor.
- The contractual capacity of a company is stated in its constitution. Contracts made in good faith with a company are enforceable against the company even if they are outside the company's capacity.

### UNDERSTAND THE MEANING OF CONSIDERATION AND EXPLAIN WHAT CONSTITUTES CONSIDERATION

- Consideration by both parties is necessary for a legally binding contract.
- Past consideration is not accepted as consideration.
- Consideration must be something measurable and of material value.
- An existing legal duty to perform an action is not good consideration.
- An obligation owed to a party in an existing contract cannot usually be used as consideration for a new promise with the same party. However, this principle has been qualified by *Williams v Roffey Bros & Nicholls (Contractors) Ltd* (1990), where a promise to perform a duty already imposed in a contract can be good consideration if there have been renegotiations, provided there has been no fraud or duress and practical benefits have been gained by the promisor.
- The law on whether a promise by a creditor to accept less than the sum owed is in development. Usually this does not discharge the debtor from the whole debt but in some circumstances the promise may be enforceable depending on the facts of the case.

### OUTLINE THE DOCTRINE OF PRIVITY OF CONTRACT AND BE FAMILIAR WITH THE EXCEPTIONS TO THE DOCTRINE

- Privity of contract means that persons who are not party to an agreement cannot be bound by its contractual terms. This rule has been changed by the Contracts (Rights of Third Parties) Act 1999 which enables third parties, who have given no consideration in a contract, to enforce the terms of the contract, where the contract expressly permits enforcement by third parties, or where the purpose of the contract is to benefit the third party.