

# **A CRITICAL STUDY ON THE INTENTION TO CREATE LEGAL RELATION IN DOMESTIC AGREEMENT**

By

Muhammad Rejabhad b Kamarolzaman ( 2011310347)  
Nur Dalila Husna bt Azmi (2011246742)  
Muhammad Iqbal b Nawi ( 2011381567)  
Khairul Amir b Abdul Rashid (2011311449)

Submitted in Partial Fulfillment of the Requirements of the Bachelor in Legal Studies (Hons)

**Universiti Teknologi MARA**

**Faculty of Law**

June 2014

The students/authors confirm that the work submitted is their own and that appropriate credit has been given where references has been made to the work of other.

## ACKNOWLEDGEMENT

We would like to express the deepest appreciation to our supervisor, Madam Rahimah Bee Bt Mohd Yusof who has the attitude and the substance of a genius. She continually and convincingly conveyed a spirit of adventure in regard to teaching. Without her guidance and persistent help this dissertation would not have been possible.

We would also like to take this time to thank all the parties that involved for our findings and able to provide us informations and new knowledge in order to make this project paper possible.

Not forgetting, we would like to thank to our lecturer, Dr Hartini binti Sariipan who helped us in completing our proposal and provided us with tremendous ideas, including advices whenever it is required.

We are obliged to to staff members of Faculty of Law, UiTM Shah Alam, for the valuable information provided by them in their respective fields. We are grateful for their cooperation during the period of our project paper.

Last but not least, we thank Almighty, parents and friends for their encouragement without which this project paper would not be possible.

## ABSTRACT

Domestic agreement can be defined as an agreement reached between two people living in a family relationship, which outlines their particular rights and responsibilities. Domestic agreement can be categorized into two categories which are agreement between spouses and agreement between parent and child. Domestic agreement is not intended to have legal consequences. In domestic agreements, for example, those made between husbands and wives and parents and children, there is presumption of no intention to create legal relations and the agreement should be not be subjected to litigation. Under the cover of domestic relations, the promisor can exploit the promisee without any obligation enforceable in the court of law by the promisee against the promisor. However, there are situation where the court that the agreement is legally bound between the parties. Thus, the courts are not consistent in determine the intention to be legally bound in such promise made in the domestic agreement. In this project paper, we will discuss about the issue of domestic agreement and its legal consequences. We will also introduced a standard guidelines pertaining to the case decision in the domestic contract. We hope this research study can be used to protect the right of contractual parties and also could be used by the judges pertaining to intention to create legal relation in domestic agreement.

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# CHAPTER I

## A CRITICAL STUDY ON THE INTENTION TO CREATE LEGAL RELATIONS IN DOMESTIC AGREEMENTS

### 1.0 Introduction

A contract can only be formed when the parties to the agreement intended to enter into a legally binding agreement. The intention in making the agreement may not often be stated clearly but will usually be inferred from the circumstances. Intention can be an issue in domestic arrangements as it may be arguable that they were not intended to be a legally binding contract.<sup>1</sup> Thus, this research is focuses on the intention to create legal relation in domestic agreement.

Domestic agreement can be defined as an agreement reached between two people living in a family relationship, which outlines their particular rights and responsibilities.<sup>2</sup> Domestic agreement can be categorized into two categories which are agreement between spouses and agreement between parent and child.<sup>3</sup>

The law that govern agreement between spouses is only Common law. Meanwhile, the law that governing the agreement between parent and child is Common law and Contract Act 1950. The contract only can be valid if there is offer, acceptance, consideration, intention to create legal relation and capacity to enter the contract. In domestic agreement, the contract made has no legal effect as the presumption of no intention to be legally bound.<sup>4</sup>

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<sup>1</sup>Christian von Bar, E. C. (2010). "Principles, Definitions and Model Rules of European Private Law." 88.

<sup>2</sup>Brunswick, N. (2010). "Domestic Contract." 1.

<sup>3</sup>Andrews, N. (2011). Contract Law. United States, Cambridge University Press.

<sup>4</sup>[1969] 1 WLR 328