

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

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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.

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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.¹ 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.² Domestic agreement can be categorized into two categories which are agreement between spouses and agreement between parent and child.³

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.⁴

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

²Brunswick, N. (2010). "Domestic Contract." 1.

³Andrews, N. (2011). Contract Law. United States, Cambridge University Press.

⁴[1969] 1 WLR 328