

READING A CONTRACT CASE

Jack and Shelley are learning about case law. Their textbook gives them an example of an important case in English contract law. It is a case on intention, one of the four elements of a contract. It is a precedent case from the year 1919, concerning whether or not a husband and wife can form an oral contract. The claimant is referred to as 'the plaintiff' because the case is an old one. The extract is an example of the ratio of a common law contract case. The ratio is the legal reasoning that forms the law for the future. The first part of the text below is explanatory notes. The case begins with the words of the judge, Lord Justice Atkin.

Exercise 1

Read this extract from the case very carefully and answer the questions that follow using a full sentence.

BALFOUR V BALFOUR

Court of Appeal (1919)

(1) *The defendant was a civil servant based in Ceylon. In November 1915 he came to England with the plaintiff, his wife. They stayed in England until August 1916, when the husband's holiday period ended and he returned to Ceylon. The plaintiff, on her doctor's advice, stayed in England. The husband, before leaving, promised to give the plaintiff £30 a month until she returned to Ceylon. Later the husband wrote saying that it would be better if they remained apart. The plaintiff sued on the promise to pay her £30 a month.*

(2) *Sarjant J gave judgment for the plaintiff, holding that the husband was under an obligation to support his wife **and the parties had legally contracted** that the extent of the obligation should be £30 a month.*

The husband appealed.

(3) ATKIN LJ it is necessary to remember that there are agreements between parties, which do not result in contracts within the meaning of that term in our law. The ordinary example is where two parties agree to take a walk together, or where there is an offer or acceptance of hospitality. Nobody would suggest in ordinary circumstances that those agreements result in what we know as a contract, and one of the most usual forms of agreement which does *not* constitute a contract appears to me to be the arrangements which are made between husband and wife.

(4) To my mind, those agreements, or many of them, do not result in contracts at all, even though they may be what as between other parties would constitute consideration for the agreement. Nevertheless, they are not contracts, and they are not contracts because the parties did not intend that they should be attended by legal consequences. To my mind it would be of the worst possible example to hold that agreements such as this resulted in legal obligations, which could be enforced in the courts.

(5) The common law does not regulate the form of agreements between spouses. Their promises are not sealed with seals and sealing wax. Their consideration is really that natural love and affection which counts for so little in these cold courts.