5. Intention to be legally bound and capacity to contract

The Casebook series provides a comprehensive selection of case law that addresses all aspects of the subject encountered on undergraduate courses. This chapter deals with intention to be legally bound and capacity to contract. In order to enforce any promise not contained in a deed, there must be an intention to create legal relations. This intention is traditionally determined using different presumptions for domestic and commercial agreements. In the case of domestic and social agreements, there is a presumption that there is no intention to create legal relations. In contrast, there is a presumption of an intention to create legal relations in commercial agreements. Both presumptions are capable of being rebutted on the facts, e.g. an honour clause in a commercial contract. The second part of this chapter examines capacity to contract and particularly the enforceability of contracts made by minors.
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