

## **Wakeling v Ripley (1951) 51 SR (NSW) 183**

Chapter 5 (page 214)

### *Relevant facts*

Ripley was an elderly and wealthy widower who required domestic assistance in his large home at Bowral in New South Wales. Between 1940 and 1945, he sought to persuade his sister and her husband (the Wakelings) to move from England to Australia to look after him. During those discussions, the Wakelings made it clear to Ripley that moving to Australia would require them to make significant sacrifices, including Mr Wakeling abandoning his salaried position at Cambridge University and his pension. Mr Wakeling sought assurances from Ripley as to what Ripley could offer to his family for the future. In May 1945, Ripley wrote to the Wakelings urging them to come as soon as they could and giving the Wakelings information as to the contents of the house, which he referred to as theirs. He wrote again in October 1945 attaching a copy of his will in which he bequeathed the bulk of his estate to the Wakelings. On the basis of this correspondence from Ripley, the Wakelings agreed to come to Australia. They sold their property in England and Mr Wakeling resigned from his position at Cambridge. The Wakelings arrived in Australia in early 1947 and lived with Ripley throughout that year. A number of misunderstandings arose between the Wakelings and Ripley which resulted in Ripley selling the house and altering his will.

The Wakelings commenced proceedings seeking to recover damages from Ripley for breach of the alleged contract between them. At first instance, a jury returned a verdict for the Wakelings for £12,000. Ripley appealed the decision.

### *Legal issue*

Was the agreement between Ripley and the Wakelings a mere domestic arrangement that was not legally binding, or was it a legally binding contract?

### *Decision*

On 22 March 1951, the Supreme Court of New South Wales unanimously decided that there was sufficient evidence upon which a jury could find that the parties had made a definite and binding contract. The Court considered the evidence and concluded that the correspondence between the parties regarding the arrangements as well as the seriousness of the move for the Wakelings demonstrated that the parties intended to be legally bound by the agreement.

According to Chief Justice Street (at 187):

I think that there is ample evidence that the plaintiffs were insistent on having the matter put on a clear footing and in the form of a legal bargain between them before they agreed to adopt the suggestion that they should come out to live in Australia. The consequences for the plaintiff were so serious, in taking the step that they did, that it would seem obvious that they were anxious to get a definite assurance and a definite agreement as to the provision that was to be made for them. ... I think that the parties did intend to enter into a binding and enforceable contract or, at any rate, there was ample evidence from which the jury could draw such an inference.

### *Significance*

This decision demonstrates that the courts will objectively examine all the relevant facts surrounding an agreement between family members to determine whether the parties intended to be legally bound by it. It also demonstrates how the presumption that the parties to a social or domestic agreement do not intend to be legally bound can be rebutted.