

The following is a sample answer to the 'case note practice' on page 53. Lecturers are free to distribute this to students.

Lottie v Lottie

Citation

Lottie v Lottie (unreported, HCA, 10 March 2006, Kirby J)

Court

High Court of Australia
Single Judge: Kirby J

Procedural history

First instance: District Court at Parramatta – Plaintiff successful
Appeal to Supreme Court: allowed
Appeal to High Court: the present matter

Facts

The parties are married. The husband went to the pub when the wife was sick with food poisoning.

Issues

- 1 Did the parties intend the agreement entered into on 2 March 1998 ('the marriage agreement') to legally bind them?
- 2 What were the terms of the marriage agreement?
- 3 Was there a breach of that agreement?
- 4 If so, what damages flow from the breach?

Analysis/Decision

- 1 The marriage agreement was intended to be legally binding. This is on the basis that each party used the words 'to be my lawfully wedded [husband/wife]'.
- 2A The agreement entered on 2 March 1998 comprised the marriage certificate and the orally declared vows. This is on the basis that the agreement was in simple form and the terms had to be implied from the circumstances taken as a whole.
- 2B It was a term of the agreement that the parties would love and cherish one another in sickness and in health.
- 3 Yes, there was a breach. This is because the Respondent chose to avoid a 'remote potential loss' over a 'proximate real loss'.
- 4 Damages for direct losses incurred in the sum of \$37,000, based on spending by the Appellant to relieve symptoms of her ANGRY disorder. Consequential losses in the sum of \$3,000, being expenditure necessary to restore the Appellant's physical self to its former condition.

Ratio

A marriage agreement is legally binding, and comprises the marriage certificate and oral vows. Breach of a marriage agreement can result in an entitlement to claim damages.

Obiter

If the employment contract had specifically stated that 'work' included helping family members, and any such 'work' had to be declared to the employer and would result in immediate dismissal, it is unlikely a breach would have been found.

Order

The appeal was allowed. The Respondent was ordered to pay \$40,000 in damages plus costs.

Note: this sample answer should not be treated as the only one correct answer. It is inherent in the common law that two people reading the same case may consider that it stands for different things, and that is how arguing precedents becomes so interesting.