

Lecture 4: Consideration - the law will only enforce promises and agreements supported by consideration. This is the difference between agreements which the law is able to enforce, and agreements which cannot be (however unfair or disappointing that outcome may be).

Consideration - definition	
<i>Currie v Misa</i> (1875) LR 10 Ex 153, Lush J	<p>"A valuable consideration, in the sense of the law, may consist either in some right, interest, profit, or benefit accruing to the one party, or some forbearance, detriment, loss or responsibility, given, suffered, or undertaken by the other"</p> <ul style="list-style-type: none"> • "Executory" - an exchange of promises to perform acts in the future • "Executed" - when an act is completed in exchange for a promise
<i>Australian Woollen Mills v Commonwealth</i> (1954) 92 CLR 424	<p>If X made an express or implied request to Y in order to induce Y to do something (e.g. "If you come to Sydney, I'll take you to dinner at Quay") and Y was so induced, Y has provided consideration</p> <ul style="list-style-type: none"> • If Y was not induced by X (e.g. Y was going to Sydney anyway), consideration has not been given by Y • Hence, there must be a "quid pro quo"; exchange must be bargained for <p>Y's reliance on X's promise (e.g. buying a dress) is not consideration, as:</p> <ul style="list-style-type: none"> • X did not make a promise <i>to induce</i> Y to buy the dress, and • the bargain was for Y coming to Sydney, not for the dress
<i>Coulls v Bagot's Executor & Trustee</i> (1967) 119 CLR 460	<p>Consideration must move from (i.e. be provided by) the promisee but can move to a third party for their benefit. However, only the promisee, not the third party, can bring a claim with respect to the contract</p> <ul style="list-style-type: none"> • When there are joint promisees, it is sufficient if consideration moves from one of the promisees
Consideration - sufficiency and adequacy	
<i>Chappell & Co Ltd v Nestle & Co Ltd</i> [1960] AC 87	<p>Consideration must be sufficient - something which has value according to law</p> <ul style="list-style-type: none"> • A promisor can stipulate the consideration, as long as it is sufficient, not illusory and not illegal <p>(In this case, the chocolate wrappers were a key part of consideration; although they are economically and practically worthless, they were part of the inducement to obtain the records)</p>
<i>Woolworths Ltd v Kelly</i> (1991) 22 NSWLR 189	<p>Courts will not look into the adequacy of consideration (whether considerations are equal or have intrinsic economic value), because what is adequate is too subjective for a court to determine</p>
<i>Roscorla v Thomas</i> (1982) 3 QB 234	<p>Promises in return for acts or events which are past is not sufficient. If X performs an act for Y, and Y later makes a promise to X regarding that act, Y's promise is not enforceable</p>
<i>Stilk v Myrick</i> (1809) 170 ER 1168	<p>A promise to perform an existing contractual or legal duty is not sufficient</p>
<i>Williams v Roffey Bros & Nicholls (Contractors) Ltd</i> [1991] 1 QB 1	<p>A contract to perform an (existing) obligation may be enforced if:</p> <ol style="list-style-type: none"> 1. Y has contract with X 2. Before it is done, Y has reason to doubt whether X will complete its side of the bargain 3. Y promises to pay X more in return for X's promise to perform

	<p>4. As a result, Y obtains in practice a benefit or obviates a disbenefit (provided the value of doing so is worth more than the remedy from suing X for a breach of contract: <i>Musumeci v Winadell</i>)</p> <p>5. There is no economic duress or fraud (i.e. consent freely given)</p> <p>6. (Practical) benefit to Y is capable of being consideration for X's promise (e.g. contractor X working on a new payment schedule so that developer Y can have a finished apartment complex)</p>
<i>Musumeci v Winadell Pty Ltd</i> (1994) 34 NSWLR 723	<p>A contract to perform an (existing) obligation may be enforced if, by X's performance of the obligation, Y avoids a practical detriment or X suffers a practical detriment - this practical detriment passes consideration - (e.g. shopkeeper X paying reduced rent so that mall owner Y isn't left with an incomplete mall, and that X is prevented from seeking better rates elsewhere)</p> <ul style="list-style-type: none"> • X must forego the opportunity of not performing the original contract, even if non-performance may lead to a better outcome for X
<i>Pinnel's case</i>	A promise to pay part of a debt will not constitute consideration for a promise to settle the full debt
<i>MWB Business Exchange Centres Ltd v Rock Advertising</i> [2017] QB 604	If a party proposes to partly pay a debt, and there is a practical benefit conferred upon the debt owner in doing so, that can be good consideration
<i>Pao On v Lau Yiu Long</i> [1980] AC 614	A promise to a third party to perform a pre-existing contractual obligation can be good consideration (i.e. X promises to Y to perform a duty which X is already contractually obliged to perform for Z)
<i>Wigan v Edwards</i> (1973) 47 ALJR 586	A "promise to do precisely what the promisor is already bound to do is sufficient consideration, when it is given by way of a bona fide compromise of a disputed claim". In other words, if the promisor honestly believes he is not bound to do something, but he does it as a compromise, that is sufficient consideration, as long as the belief is not frivolous