

Consideration

- **Consideration:** 'An act or forbearance of one party or the promise thereof, as the price for which the promise of other is brought' and 'some right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other' (Lush J in **Currie v Misa (1875)**)
- **Carlill v Carbolic Smoke Ball:**
Any act of the plaintiff from which the defendant derives a benefit or advantage or any labour, detriment or inconvenience sustained by the plaintiff, provided such an act is performed or such inconvenience suffered by the plaintiff, with the consent, either express or implied, of the defendant
- Types of consideration: a promise for a promise, a promise for an act, an act for a promise, a promise not to do something (forbear)

Rules related to consideration

- Consideration may be 'executed', 'executory', but not 'past'
- Consideration must be sufficient (something of value)
- Forbearance must constitute good consideration
- Existing obligation is not good consideration
- Performance of a public duty owed by law is not good consideration

'Executed', 'executory' and 'past' consideration

- **Executory:** an act yet to occur (i.e. a promise to do something)
- **Executed:** the act which constitutes the consideration has been performed (i.e. **Carlill v Carbolic Smoke Ball**)
- **Past:** act which is said to constitute the consideration has pre-dated the promise (i.e. **Roscorla v Thomas (1842)**)
- Past consideration is not considered sufficient consideration – courts refuse to recognise as consideration acts or promises which predate the promise that is sought to be enforced

Roscorla v Thomas (1842)

The defendant sold the plaintiff a horse. Later, at the plaintiff's request, the defendant promised that the horse was 'sound and free from vice.' The plaintiff sought damages for breach of contract when the horse turned out to be 'very vicious'. It was held that the promise was not enforceable because the plaintiff had given no new consideration. Payment of the purchase price was a past consideration which did not support the later promise

Consideration must be sufficient

- Consideration must be sufficient, but need not be adequate
- Consideration must be something the law regards as valuable, but need not be 'equal in value or substantial'
- Courts interpret this requirement very broadly as: they have no way of assessing the value a person places on the consideration they have contracted to receive. Any requirement of adequacy of consideration would render the enforceability of contracts uncertain. The courts' stance protects economic freedom
- **Thomas v Thomas (1842):**

Thomas v Thomas (1842)

A woman's promise to pay £1 towards the ground rent and to keep the house in repair held to be good consideration for a promise by her husband's executors to give her the right to occupy the house for life