

Topic 3: Consideration

Key points
<ul style="list-style-type: none"> • Contractual promises must be supported by consideration • Consideration must be legally sufficient • However, courts do not assess the adequacy of consideration • Exception to consideration requirement: deeds

Consideration: meaning

- The law distinguishes a promise supported by consideration versus a “naked promise”
 1. **Benefit or detriment**
Currie v Mia (1875)
 - “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 ...”
 2. **Bargain theory of consideration**
Dunlop Pneumatic Tyre Co Ltd v Selfridge and Co Ltd [1915]
 - “An act or forbearance of one party, or the promise thereof, is the price for which the promise of the other is bought, and the promise thus given for value is enforceable.”

Bargained for exchange

Australian Wollen Mills Pty Ltd v The Commonwealth (1954) 92 CLR 424	
Issue	Whether the Commonwealth Government’s announcements of a wool subsidy scheme constitute a contractual offer that could be accepted by purchasing wool, thereby creating an intention to be legally bound.
Rule	<p>For a unilateral contract to be formed, it must be shown that the statement or announcement relied on as a promise was offered as consideration for the act, and the act was done in consideration of that promise.</p> <ul style="list-style-type: none"> • A key test is whether there was a request, express or implied, from the promisor for the promise to perform the act. • The relationship of <i>quid pro quo</i> (this for that) must exist between the promise and the act.
Application	<p>The High Court found that the Commonwealth’s subsidy scheme was not an offer to enter into a contract with manufacturers.</p> <ul style="list-style-type: none"> • The scheme was a government policy initiative designed to control prices, not a commercial arrangement to induce manufacturers to purchase wool. • There was no request from the Commonwealth for manufacturers to buy wool. • The government’s statements were merely announcements of policy. • The government retained a wide discretion to vary or withhold subsidy payments, which was inconsistent with the existence of a binding contractual obligation. • The entire arrangement lacked the characteristics of a commercial bargain and was more akin to an administrative scheme.
Conclusion	<p>The High Court held that there was no contract.</p> <ul style="list-style-type: none"> • The government’s announcements were statements of policy and did not demonstrate an intention to create legal relations. • The relationship between the subsidy payment and the purchase of wool did not establish the necessary <i>quid pro quo</i> for a binding unilateral contract.

To understand bargained for exchange requirement, distinguish consideration from a conditional gift:

- A colleague is planning a trip to Sydney. I tell her: “Great that you are coming! – I will take you to dinner at the Bennelong when you arrive.”
- I want a colleague to come to Sydney to visit, because I want to have discussions with her. I tell her: “If you come up to Sydney, I will take you to dinner at Bennelong.”

Sufficient consideration

Chappell & Co Ltd v Nestle & Co Ltd [1969] AC 87	
Issue	<p>Whether the requirement for customers to send chocolate wrappers, along with payment, as part of a promotional scheme constituted part of the “consideration” for the purchase of gramophone records under contract law.</p> <p>Whether such transactions met the requirements of a “sale by retail” and whether the ordinary retail selling price for copyright royalty calculation should include the value of these wrappers.</p>
Rule	<p>The legal rule applied was that consideration in English contract law includes any benefit or detriment to the parties that has some value in the eyes of the law, no matter how trivial.</p> <ul style="list-style-type: none"> • Under the Copyright Act 1956 s.8, the royalty payable to the copyright owner on the sale of a record is based on a percentage of the ordinary retail selling price, which must reflect the total consideration.
Application	<ul style="list-style-type: none"> • Nestle offered to sell records to customers who sent in three chocolate wrappers and payment of 1s. 6d. • The House of Lords held that the wrappers, though of negligible monetary value after receipt, formed part of the consideration for the contract as stipulated by the offer. • The fact that the wrappers helped promote Nestle’s chocolate made them of value to Nestle, and thus they should be included when determining the consideration for the record. • The requirement to send the wrappers was not a mere qualification for purchase but a contractual obligation conferring a commercial benefit.
Conclusion	<p>The chocolate wrappers were indeed part of the contractual consideration, regardless of their intrinsic value.</p> <ul style="list-style-type: none"> • Consideration may consist of anything which is stipulated by the promisor, even if it appears to be of trivial value, such as used packaging. • The appeal was allowed, clarifying that for the purposes of contract law and statutory royalty calculation, all elements forming that agreed consideration must be included.

Peppercorn Principle

- “A contracting party can stipulate for what consideration he chooses. A peppercorn does not cease to be good consideration if it established the promise does not like pepper and will throw away the corn” (Lord Somervell of Harrow)
- A very small amount of consideration can satisfy the legal requirement for consideration.
- The key is that there must be some value exchanged, not necessarily equal value.

Adequate consideration

- **Consideration need not be “adequate”:** *Woolworths v Kelly*
 - Once consideration is sufficient, courts do not have the capability or expertise to inquire into its adequacy.