

4. Conditional promises: contracts “subject to” a condition.

- a) What class does the “subject to” clause belong to? (*Masters v Cameron*)
- Class 1: bound immediately, but restate terms in a more precise form.
 - Class 2: bound immediately, but performance will not occur until the execution of a formal document.
 - Class 3: not bound unless and until the execution of a formal document.
- b) Is the contract “subject to finance”? (*Meehan v Jones*)
- Subjective test: the purchaser has the discretion to decide whether he honestly thinks he can finance the purchase.
 - Objective test: if the finance is available which the purchaser ought to find sufficient, whether the purchaser acted honestly and reasonably.
 - Obligation to do all that was reasonable on his part to obtain finance.

5. Consideration

- a) What type of consideration is it?
- Executory: a promise is exchanged for a promise.
 - Executed: a promise is exchanged for an act – unilateral contracts.
- b) Did consideration move from the promisee?
- Yes – consideration can be given on behalf of both promisees jointly (*Coulls v Bagots*) and it does not matter who the consideration moves to (*Shadwell v Shadwell*).
- c) Was consideration referable to the promise?
- Yes - act needs to be referable to the promise (*Australian Woollen Mills*).
- d) Was the promise a gratuitous promise?
- Yes – *I will give \$20 to the first member to raise their hand*.
 - No – consideration has been provided (*Carlill v Carbolic Smoke Ball*).
- e) Does consideration meet the sufficiency rule?
- Yes – consideration must be sufficient (legal), but need not be adequate (in value) (*Chappel v Nestle*).
 - No – economic duress, undue influence or unconscionability.
- f) When was consideration provided?