PBL Case Study Summaries

Note there are no cases for week 1-2. There are 88 cases in total (97 situations)

Week 3: Case law

4 cases in total, all except Taylor are relevant to week 4

- **Taylor v Johnson (1983) 151 CLR 422**

Johnson offered in writing to sell 10 acres of land to Taylor for $15000, instead of at $15000 per acre. Taylor, knowing it was too good to be true, said nothing and quickly accepted the offer. Given the circumstances, the contract should be set aside. Principle of equity and upholding good conscience: If a party enters a contract under a serious mistake in relation to a fundamental term, the contract will be made void is the other party was aware of circumstances that indicate the first party is mistaken, and deliberately sets out to ensure that the first party does not discover their error until it is too late.

TLDR: If a party enters a contract under a serious mistake in relation to a fundamental term, the contract will be made void is the other party was aware of circumstances that indicate the first party is mistaken, and deliberately sets out to ensure that the first party does not discover their error until it is too late.

- **Balfour v Balfour [1919] 2 KB 571**

Ms Balfour is sick and stays in England while Mr Balfour is employed overseas. Mr Balfour promises £30/month for Ms Balfour's maintenance. The couple were living in amity when the promise was made. Ratio decidendi of the case was that: when married persons enter into domestic agreements, the reasonable assumption is that they do not intend such agreements to be legally enforceable.

This ratio decidendi is only persuasive in an Australian Court as the case was in England

TLDR; Wife (Ms Balfour) is sick and is promised allowance from husband. Sues for unpaid allowance. She did not win the case. This is as when married persons enter into domestic agreements, it is assumed that they do not intent such agreements to be legally enforceable

- **Cohen v Cohen (1929) 42 CLR 91**

Cohen v Cohen (1929) 42 CLR 91

Contract; formation; intention to be legally bound; agreements between spouses.

Facts: Ms Cohen alleged that, before she married the defendant in 1918, he had promised to pay her £100 a year as a dress allowance. The money was to be paid in quarterly instalments of £25. The money was paid until early 1920. In 1923 the parties separated. Ms Cohen then claimed that Mr Cohen owed her £278, being unpaid instalments of the promised dress allowance.

Issue: Was the promise to pay a dress allowance intended to create a legally enforceable agreement?

Decision: Dixon J concluded that in the circumstances it could not be inferred that legally enforceable relations were intended.

Reason: On an arrangement between a couple engaged to be married, Dixon J said (at 96): "But these matters only arise if the arrangement which the plaintiff made with the defendant was intended to affect or give rise to legal relations or to be attended with legal consequences (Balfour v Balfour [1919] 2 KB 571; Rose _Frank Co v J R Crompton & Bros Ltd [1923] 2 KB 261). I think it was not so intended. The parties did no more, in my view, than discuss and concur in a proposal for the regular allowance to the wife of a sum which they considered appropriate to their circumstances at the time of marriage…"

Note: In different circumstances, it may well be inferred that agreements between married persons are intended to be legally enforceable.

TLDR; Wife (Ms Cohen) sues husband (Mr Cohen) for unpaid dress allowance. She lost as it was inferred that the agreement was not intended to be legally binding.

- **Merritt v Merritt [1970] 1 WLR 1211**

Merritt v Merritt [1970] 2 All ER 760

Contract; formation; intention to be bound; agreements between spouses.

Facts: After getting married in 1941, Mr and Ms Merritt borrowed money from a bank to build a house. They lived in it over the years while jointly contributing to paying off the loan. The house was originally owned by Mr Merritt alone but in 1966 it was put into joint ownership with Ms Merritt. Some time thereafter Mr Merritt began an extramarital relationship with another woman and left his wife. Having separated, Mr and Ms Merritt met to discuss their financial position. Ms Merritt agreed to finish paying off the loan on the house and in return Mr Merritt promised that when the loan was completely repaid, he would transfer the house to Ms Merritt's sole ownership. He signed a letter to this effect but, when the time came, he refused to transfer the house to Ms Merritt. Ms Merritt brought a legal action to enforce it.

Issue: Was the promise to transfer the house to Ms Merritt intended to be a legally enforceable one, despite the parties being spouses?

Decision: It could be inferred from the circumstances that the agreement was intended to be legally enforceable.

Reason: Whether or not an agreement is intended to be legally enforceable is something that is decided objectively. The court asks what intention can reasonably be inferred from the circumstances at the time of the agreement. Lord Denning MR said (at 762): "In all these cases the court does not try to discover the intention by looking into the minds of the parties. It looks at the situation in which they were placed and asks itself: would reasonable people regard the agreement as intended to be binding?" In the present case, the court decided that when the goodwill between married persons has broken down, it can be inferred that they no longer rely on honourable understandings, and that they intend their agreements to create legal obligations.

TLDR; we can state the ratio in **Merritt's** case as: "When married persons **whose relationship has already broken down** enter into agreements, even of a domestic nature, the reasonable assumption is that they **do** intend such agreements to be legally enforceable."

This ratio decidendi is only **persuasive** in an Australian Court. But it seems to be based on a valid distinction made between the different cases.

Merritt's case does not mean that **Balfour and Cohen's** cases are wrong but we need to refine the ratio laid down in those cases: e.g. "When married persons **who are living in amity** enter into domestic agreements, the reasonable assumption is that they do not intend such agreements to be legally enforceable.

Week 4: Contract formation/ making a contract

16 cases in total (3 from week 3- Belfour, Cohen, Merritt)

- Price v Easton (1833) 4 B & Ad 433 (p. 99 of textbook)

Price v Easton (1833) 110 ER 518

Contract; formation; privity; parties.

Facts: A builder owed money to Price but did not have the money to pay what he owed. Easton agreed with the builder that if the builder did some work for Easton, Easton would pay Price the money that the builder owed to Price. The builder did the work, but Easton failed to pay Price. There was no point in Price suing the builder for what the builder owed him because the builder still had no money. The builder had no reason to enforce the contract against Easton, because Easton had not promised to pay any money to the builder. Price therefore brought an action against Easton to enforce the promise that Easton had made to the builder that Easton would pay Price.

Issue: Was Price entitled to enforce Easton's promise to the builder that Easton would pay Price?

Decision: Price was not entitled to enforce the promise.

Reason: Price was not a party to the agreement between Easton and the builder and, under the doctrine of privity of contract, Price did not acquire legally enforceable rights under that contract.

TLDR; Builder owed money to Price but didn't have money to pay price back. Easton agreed with the builder that if the builder did work for him, he would pay price. Even though the builder did the worker, he didn't pay Price. Price sued Easton based on the promise that he would be paid. However it was decided Price was not entitled to enforce the promise. This is as Price was not a party to the agreement between Easton and the builder, and under the doctrine of privity of contract, Price did not acquire legally enforceable rights under that contract.

- Coulls v Bagot's Executor & Trustee Co Ltd (1967) 119 CLR 460 (p. 99)

Coulls v Bagot's Executor & Trustee Co Ltd (1967) 119 CLR 460

Contract; formation; privity; rights of third parties.

Facts: In a contract entered into between Mr Coulls and the O'Neil Construction Company, Mr Coulls gave O'Neil the right to dig up and remove stone from his property. In exchange, O'Neil promised to pay royalties for the stone. The contract authorised O'Neil to pay the royalties to Mr Coulls's wife. Some time later, Mr Coulls died. This contract for quarrying stone did not involve services of a personal nature and accordingly it was not terminated by his death. The contract remained enforceable against the estate. This meant that O'Neil could continue to quarry the stone and the royalties would continue to be payable. The executor of Mr Coulls's estate wanted to know if Mrs Coulls had a contractual right to receive these royalties.

Issue: Did Mrs Coulls herself have a legally enforceable right to the payment of the royalties?

Decision: O'Neil owed no contractual obligations to Mrs Coulls because she was not herself a party to the contract.

Reason: Although Mrs Coulls was present and had put her signature on the contract when it was made, the majority of the court held that she had not signed it as a party to the agreement. In particular, she had not provided any consideration to make the agreement contractually binding between herself and O'Neill. Because she was not a party to the contract, she had no contractual right to sue on or enforce the terms of the contract. The royalties should therefore be paid to Mr Coulls's estate, to be distributed to his beneficiaries.

TLDR; Mr Coulls made a contract with O'Neil construction company to use his property to dig up and remove stone. The contract authorized O'Neil to pay the royalties to Mr Coulls wife. Mr Coulls. It was decided that Mrs

Coulls did not have the legally enforceable right to payment of royalties as she was not a party to the control. The royalties were instead made to be paid to Mr Coulls estate, to be distributed to his beneficiaries.

- Placer Development Ltd v Cth (1969) 121 CLR 353 (p. 85)

Placer Development Ltd v Commonwealth (1969) 121 CLR 353

Contract; formation; offer; illusion of promise.

Facts: The Commonwealth government said that it would pay a subsidy to companies that imported timber products into Australia. The subsidy was to be 'of an amount or at a rate to be determined by the Commonwealth from time to time'. The government made some initial payments to importers, but then stopped. Placer, who had imported timber, wanted to enforce payment of the subsidy.

Issue: Was what the government said about paying a subsidy to importers a legally enforceable promise?

Decision: In a majority decision, the court held that what the government had said was not a legally enforceable promise. What was said may have appeared to be a promise, but on proper analysis it was not actually a promise at all.

Reason: Taylor and Owen JJ said (at [7]): "A promise to pay an unspecified amount of money is not enforceable where it expressly appears that the amount to be paid is to rest in the discretion of the promisor and the deficiency is not remedied by a provision that the promisor will, in his discretion, fix the amount for payment. Promises of this character are treated not as vague and uncertain promises - for their meaning is only too clear - but as illusory promises."

TLDR; Government said it would pay a subsidy to timber importers to Australia. The subsidy was to be ‘’of an amount or at a rate to be determined by the Commonwealth from time to time’’. Placer, a timber importer, wanted to enforce payment of the subsidy. However, the court held that was the government said was not a legally enforceable payment. This is ‘’a promise to pay an unspecified amount of money is not enforceable’’, due to the fact that the amount is left to the discretion of the promisor (the governor), and deficiency (unpaid amount) is not remedied by a provision that the promiser (government) will fix the amount for the payment. Promises like this are not treated as vague or uncertain promises, but rather as illusionary promises

- Partridge v Crittenden [1968] 2 All ER 421 (p. 88)

Partridge v Crittenden [1968] 2 All ER 421

Contract; formation; offer; advertisement not an offer.

Facts: Partridge put an advertisement in a magazine saying: 'Bramblefinch cocks and hens, 25/- each.' He was prosecuted by the RSPCA for the statutory offence of unlawfully 'offering' wild birds for sale.

Issue: Was the advertisement an 'offer' in the legal sense, capable of 'acceptance' by any interested person (in which case an offence would have been committed) or was the advertisement merely an 'invitation to treat' (negotiate) which did not amount to an 'offer' within the meaning of the relevant statute?

Decision: The court decided that, in the circumstances of this case, the advertisement did not amount to an offer in the full legal sense, capable of acceptance to create a binding contract. It was only an invitation to enter into negotiations with interested buyers who might themselves offer to buy the advertised birds.

Reason: Lord Parker CJ said (at 424): "I think that when one is dealing with advertisements and circulars, unless they indeed come from manufacturers, there is business sense in their being construed as invitations to treat and not offers for sale."

Note: Compare Carlill v Carbolic Smoke Ball Co [1893] 1 QB 256 where, in different circumstances, an advertisement was held to constitute an offer capable of acceptance.

Partridge put an ad in the newspaper offering to sell wild birds, and was sued by the RSPCA for doing so ''unlawfully''. The court decided that the ad did not amount to an offers in the full legal sense, capable of acceptance to create a binding contract. It was only an invitation to enter into negotiations with interested buyers who might themselves offer to buy the advertised birds. The reason was that ads, unless coming from manufacturers themselves, should be seen in a business sense as ''bring construed as invitations to treat and are not offers of sale''

Note, compare with the below case (Carlill v Carbolic Smoke Ball Co)

- Carlill v Carbolic Smoke Ball Co [1893] 1 QB 256 (p. 68, 79, 89)

Carlill v Carbolic Smoke Ball Co [1893] 1 QB 256

Contract; formation: consideration; offer and acceptance.

Facts: During an influenza epidemic in England in 1891 the Carbolic Smoke Ball Company produced patented 'smoke balls' made from certain chemicals. The company marketed these smoke balls as an effective means of preventing influenza. In particular, the company published an advertisement in a newspaper, offering to pay a reward of £100 to anyone who purchased the smoke balls, used them according to the instructions provided, but who nevertheless caught influenza. To demonstrate the seriousness of their offer, the company deposited £1000 in a bank account from which to pay the rewards. Elizabeth Carlill saw the advertisement. She bought and used a smoke ball as directed. When she nevertheless caught influenza she claimed the £100 reward promised by the company. The company refused to pay her, denying that an enforceable contract with Carlill had been created in these circumstances. The case raised various issues.

Issue 1: intention to be legally bound

Issue 1: Could it be inferred from the circumstances that the promise to pay the advertised reward was intended to be legally binding?

Decision: There were sufficient circumstances from which it could be inferred that the promise was intended to be contractually binding.

Reason: The advertisement was unlike other advertisements. The fact that it stated that £1000 had been deposited in a bank by the company expressly for the purposes of making the promised payments demonstrated that the promise was intended to be legally binding.

Issue 2: Offers made to the world at large

Issue 2: Could an offer made to everyone in the world at large be validly accepted by a specific individual who knew of the offer?

Decision: An offer made to "the world at large" is capable of acceptance by any member of the public who learns of it.

Reason: In the circumstances, the advertisement amounted to an offer that was capable of acceptance. Although offers are usually made to specified persons, or to members of a specified groups of persons, there is no reason why they should not be addressed to anyone in the whole world if that is the offeror intends. The valid acceptance of such an offer by any person will create an enforceable contract with the company.

Issue 3: Acceptance by conduct

Issue 3: Since Carlill had never communicated directly with the company before catching influenza, how had she accepted the company's offer of the reward?

Decision: Carlill had accepted the company's offer by doing the acts of buying and using the smoke ball.

Reason: The Carbolic Smoke Ball Company had, in their advertisement, made a promise to pay a £100 reward to any person who caught influenza after buying and using the smoke ball in the manner directed. Carlill had performed the required acts after reading the advertisement and in response to that promise. Her acts were therefore sufficient acceptance to bring about an enforceable agreement with the company.

Issue 4: Performance of an act of consideration

Issue 4: Had Carlill provided consideration in exchange for the company's promise, sufficient to create a legally binding agreement?

Decision: The act of buying and using the smoke ball provided the necessary consideration to make the promise to pay the reward enforceable.

Reason: An act performed in expectation of a known promise may constitute the consideration given in exchange for that promise, even though the act is necessarily performed before the said promise becomes legally binding. In this case, the company promised to pay a reward in exchange for the act of buying and using the smoke ball, provided the user then caught influenza.

TLDR; Carbollic Smoke Ball co offered smokeball products which were marketed as being able to prevent influenza. To display their seriousness, they offered a $100 reward for those who caught influenza while using the product. Also they deposited $1000 in a bank account to pay the rewards. Carlill used the product and nevertheless contracted influenza. She sued Carbollic and won the case as: an offer being made to the world at large is capable of being accepted by anyone, there was an intention to be legally bound ($1000 deposit), acceptance by conduct (Carlill had accepted the offer by buying and using the smoke ball), performance as an act of consideration (buying and using the smokeball provided the necessary consideration to make the promise to pay the reward enforceable)

- Masters v Cameron (1954) 91 CLR 353 (p. 73)

Masters v Cameron (1954) 91 CLR 353

Contract; formation; intention to be legally bound; conditional intention.

Facts: Cameron agreed to sell her farm to Masters for £17,500. Both parties signed a written agreement which described the property and set out other details of the agreement. One of the provisions in the document was the following: "This agreement is made subject to the preparation of a formal contract of sale which shall be acceptable to my [Cameron's] solictors on the above terms and conditions..."

Issue: Since the essential terms of a contract had been agreed by the parties when they signed their initial agreement, was a contract created even before the preparation of a formal contract by Cameron's solicitors?

Decision: In the circumstances it was clear that Cameron had not intended to be bound until a formal contract was prepared and signed.

Reason: The effect of making an agreement subject to a condition is not always the same. Depending on the circumstances, the facts may show that the parties intended one of the following: (1) to be immediately bound by the agreement and required to perform it, the written contract being only to restate the agreed terms more fully or precisely; or (2) to be immediately bound by the agreement, but to suspend any performance until formal documents are signed; or (3) not to be legally bound by the agreement at all unless and until the formal documents are prepared and signed.

In the present case the words 'subject to' the preparation of a formal contract were sufficient to indicate an intention not to be legally bound by the agreement at all until a formal contract was prepared and signed.

TLDR; Cameron agreed to sell her farm to Masters. Both parties signed a written agreement and set out details of the agreement, one of which was that the ‘’agreement is made subject to the preparation of a formal contract of

sale which shall be acceptable to my [Cameron's] solicitors on the above terms and conditions. In the circumstances of the case it is clear that Cameron had not intended to be bound until a formal contract was prepared and signed. In this case, the words ''subject to'' the preparation of a formal contract were sufficient to indicate an intention not to be legally bound by the agreement at all unless and until the formal documents are prepared and signed.

- Henthorn v Fraser [1892] 2 Ch 27 (p. 90)

Henthorn v Fraser [1892] 2 Ch 27

Contract; contract formation; offer and acceptance; acceptance by post.

Facts: Fraser offered to sell certain houses to Henthorn for a sum of £750, giving Henthorn 14 days in which to accept the offer. The day after receiving the offer, Henthorn posted a letter to Fraser, accepting it. After this letter of acceptance had been posted, but before it was received by Fraser, Fraser was offered a higher price for the houses by another buyer and he attempted to withdraw his offer to Henthorn. He relied on the principle that an offer may be withdrawn at any time before acceptance, arguing that acceptance by post had not been authorised, and that Henthorn's acceptance was therefore not effective before it was delivered.

Issue: Had Henthorn already accepted the offer made by Fraser before Fraser's attempt to withdraw it?

Decision: Acceptance of the offer was effective as soon as the letter of acceptance was posted by Henthorn, and this took place before Fraser's attempt to withdraw the offer.

Reason: Acceptance by post need not be specifically authorised for it to be effective as soon as the letter is posted. Lord Herschell said (at 33): "Where the circumstances are such that it must have been within the contemplation of the parties that, according to ordinary usage of mankind, the post might be used as a means of communicating the acceptance of an offer, the acceptance is complete as soon as it is posted." The contract was therefore completed as soon as the letter of acceptance was posted to Fraser.

TLDR; Fraser offered to sell houses to Henthorn for $750, giving him 14 days to accepted the offer. Henthorn accepted the offer by posting a letter, however before the letter was received by Fraser, he had been offered a higher price for the houses. Fraser attempted to retract his offer to Henthorn. The court held that the acceptance of the offer was effective as soon as the letter of acceptance was posted by Henthorn, which took place before Fraser's attempt to withdraw the offer.

- Brinkibon Ltd v Sthalwharenhandelsgesellschaft [1983] 2 AC 34 (p. 91)

Brinkibon Ltd v Stahag Stahl und Stahlwarenhandelsgesellschaft mbH [1983] 2 AC 34

Contract; formation; agreement; acceptance by telex.

Facts: Brinkibon, a company based in London, England wished to purchase steel from Stahag, a company based in Vienna, Austria. In the course of negotiating their contract, a number of telexes were exchanged by the parties. One of these telexes, sent by Brinkibon to Stalag, constituted the acceptance of an offer from Stalag. Some time thereafter a dispute between the parties arose and, for procedural reasons, it became important to determine whether the contract for the purchase of the steel had been made in England or in Austria.

Issue: In the case of an acceptance sent by telex from London and received in Vienna, where was the contract made?

Decision: The acceptance took effect when the telex was received by Stalag in Vienna. The contract was therefore made in Vienna.

Reason: Lord Wilberforce said (at 296): "Since 1955 the use of telex communications has been greatly expanded... The senders and recipients may not be the principals to the contemplated contract... The message may not reach, or be intended to reach, the designated recipient immediately: messages may be sent out of office hours, or at night, with the intention, or on the assumption, that they will be read at a later time... There may be some error or default at the recipient's end which prevents receipt at the time contemplated or believed in by the sender... No universal rule can cover all such cases... The present case is...the simple case of instantaneous communication between principals, and, in accordance with the general rule, involves that the contract (if any) was made when and where the acceptance was received..."

TLDR; Brinkiford, a company in London, England, wished to purchase Steel from Stahag, a company based in Vienna. Through their negotiation, a number of telexes (two way typewriter service, like faxes) were sent. A dispute arose, and for procedural reasons, it was important to determine whether the contract for the purchase of the steel had been made in England or Australia. The court held that the acceptance took effect when the telex was received by Stalag in Vieenna. The contract was therefore made in Vienna.

- Esso Petroleum Co Ltd v Commissioners of Customs and Excise [1976] 1 All ER 117
- (p. 72)

Esso Petroleum Co Ltd v Commissioners of Customs and Excise [1976] 1 All ER 117

Contract; formation; intention to be legally bound; commercial agreements.

Facts: Esso Petroleum produced a set of commemorative coins. The coins were collectors' items - they had no value as money. To promote sales of its petrol, Esso promised to give motorists a 'free' coin with every four gallons of Esso petrol purchased. The Commissioner of Customs and Excise argued that the 'free' coins were 'produced in quantity for general sale' and were therefore subject to a purchase tax.

Issue: Did Esso have the intention to be legally bound by the offer to give the coins to motorists who purchased its petrol?

Decision: In a majority decision, the House of Lords held that the terms of the promotion were intended to be a legally binding promise. The coins were therefore subject to the purchase tax.

Reason: The offer of commemorative coins was a commercial promotion from which Esso and its station operators stood to gain, and the coins were only offered to its customers. Thus, although the offer of the coins was described as a 'gift', it could be inferred from the commercial circumstances that it was a promise made with an intention to be legally bound.

TLDR; Esso petroleum produced a set of commemorative coins that were collector items (they had no value as money). To promote the sale of its petrol, Esso promised to give motorists a ‘free’ coin every 4 gallons of Esso petrol purchased. The Commissioner of Customs and Excise argued that the ‘free’ coins were ‘produced in quantity for general sale’ and were therefore subject to a purchase tax. In a majority decision, the House of Lords held that the terms of the promotion were intended to be a legally binding promise. The coins were therefore subject to the purchase tax. This is as the offer of commemorative coins were a commercial promotion from which Esso and its station operators stood to gain, and the coins were only offered to its customers.

- Ermogenous v Greek Orthodox Community of SA Inc (2002) 209 CLR 95 (p. 72)

Ermogenous v Greek Orthodox Community of SA Inc (2002) 209 CLR 95

Contract; formation; intention to be legally bound; relevant factors.

Facts: The Greek Orthodox Community of SA, an incorporated association which organised the cultural, social, sporting and religious activities for its members, invited Ermogenous, then in America, to become the head of the Greek Orthodox Church in Australia. He accepted the offer and came to Australia where he served as archbishop for 23 years. During this time he was paid a salary by the Community. At the end of his appointment the Community refused to pay him for the accumulated leave that Ermogenous would have been entitled to under a legally binding contract of employment. The Community argued that their agreement with Ermogenous was not intended to be legally binding.

Issue: Could it be inferred from the circumstances that the appointment of the archbishop was intended to be a legally binding contract of employment?

Decision: The agreement was intended to be legally binding and Ermogenous was entitled to payment for accumulated leave.

Reason: The existence of an intention to be legally bound is judged on the basis of all the relevant available facts. The notion of 'presumptions' operating against such an intention in particular types of case can easily distract from the true task of properly evaluating the particular circumstances. An agreement with a minister of religion does not in itself mean the agreement is not intended to be legally binding if other circumstances indicate otherwise, such as when an incorporated non-religious body makes the agreement and it provides monetary and economic benefits to the minister. Compare Teen Ranch Pty Ltd v Brown (1995) 87 IR 308.

TLDR; The Greek Orthodox Community of SA invited Ermogenous, then in America, to become the head of the Greek Orthodox Church in Australia. He accepted the offer, came to Australia, and served as an archbishop for 23 years. He was paid a salary by the Community. At the end of his appointment, the Community refused to pay

him for accumulated leave that Ermogenous would have been entitled to under a legally binding contract of employment, arguing that the agreement with Ermogenous was not intended to be legally binding. The court held that the agreement was intended to be legally binding and Ermogenous was entitled to payment for accumulated leave. This is as Ermogenous received monetary and economic benefits, furthermore an incorporated non-religious body made the agreement. The existence of an intention to be legally bound is judged on the basis of all the relevant available facts.

- Thomas v Thomas (1842) QB 851 (p. 77)

Thomas v Thomas (1842) 114 ER 330

Contract; formation; token consideration sufficient.

Facts: Before he died, Mr Thomas expressed the desire that, if his wife survived him, she should be allowed to live in his house until her death. After his death, Mr Thomas's executors took account of this wish and entered into an agreement with Ms Thomas, allowing her to occupy the house in return for her promising to pay £1 a year (which would go towards the ground rent) and a promise to keep the house in good repair.

Issue: Had sufficient consideration been provided by Ms Thomas to make the agreement with the executors legally enforceable?

Decision: Ms Thomas was entitled to enforce the agreement.

Reason: The promise to pay £1 each year and keep the house in good condition was not in any sense equivalent in value to the benefit that Ms Thomas received under the agreement with the executors. However, there is no requirement that consideration be of equivalent value: it is enough that it be of some value, even if relatively small. Ms Thomas's promises were therefore sufficient consideration for the promise to let her occupy the house for life.

TLDR; Mr Thomas died, however expressed the desire that should his wife outlive him, she would be able to live in his house until she died. After she died, Mr Thomas's executors entered into an agreement with Ms Thomas, charging her $1 a year. The court found that Ms Thomas was entitled to enforce the agreement of being able to live in the house for life.

- Stylk v Myrick (1809) 170 ER 1168 (p. 78)

Stilk v Myrick (1809) 170 ER 1168

Contract; formation; insufficiency of past consideration.

Facts: While on a voyage in the Baltic, two seamen deserted from their ship. The captain made a promise to the remaining crew that they would share the deserters' pay if they worked extra hard to get the ship safely back home. When the ship got back to England, the ship-owner refused to honour the captain's promise. The crew wished to enforce the promise, saying there was an enforceable contract for the extra pay.

Issue: Had the crew given consideration for the captain's promise, so as to create a binding contract?

Decision: The crew had given nothing of value in exchange for the captain's promise. Accordingly, no binding contract for extra pay was created.

Reason: When they had originally signed on for the voyage, the crew had made a promise to do whatever was necessary in case of any emergencies to bring the ship home safely. The desertion of two crew members was an emergency and the crew was therefore already bound to do the extra work that was needed. When the captain promised extra pay, the crew promised nothing in return beyond what they were already legally bound to do.

Note: The result in this case may seem unfair to the sailors but the decision is clearly based on the established requirements of consideration.

TLDR; Two seaman deserted their ship. The captain made a promise to the remaining crew that they would share the deserters pay if they worked extra hard to get the ship safely back home. However, when the ship got back to England, the ship-owner refused to honor the captain's promise. The crew wished to enforce the promise, saying that there was an enforceable contract for the extra pay. However, the court held that the crew had given nothing of value in exchange for the captain's promise. Accordingly, no binding contract for extra pay was created. The

reason being, when they had originally signed on for the voyage, the crew made a promise to do whatever was necessary in the case of any emergencies to bring the ship home safely. When the captain promised extra pay, the crew had promised nothing in return beyond what they were already legally bound to do.

- Musumeci v Winadell Pty Ltd (1994) 34 NSWLR 723 (p. 82)

Musumeci v Winadell Pty Ltd (1994) 34 NSWLR 723

Contract; formation; consideration; practical benefit or detriment as consideration.

Facts: Musumeci leased a shop in a mall from Winnadell. Musumeci sold fruit and vegetables in his shop. Some time later, Winnadell leased another shop in the mall to a competing fruit and vegetable retailer and Musumeci's business declined. Musumeci told Winnadell that his shop was no longer viable and asked Winnadell to reduce the rent. Rather than lose Musumeci as a tenant, Winadell agreed to a 30% reduction of rent. However other issues between Musumeci and Winadell were not resolved and in the end Winadell decided that he would rather not have Musumeci as a tenant. In an effort to evict Musumeci from the mall, Winadell argued that the new lease at a reduced rental was not legally binding.

Issue: Had Musumeci given sufficient consideration in exchange for Winadell's promise to reduce the rental, so as to create a binding agreement?

Decision: The promise to reduce the rent was properly supported by consideration and therefore legally binding. The consideration obtained by Winadell was the practical benefit of keeping Musumeci as a tenant and the mall full of operating shops.

Reason: Noting that there has been a continuing trend to side-step the artificial results of a strict doctrine of consideration, Santow J explained the present state of Australian law (at 747). He said suppose that A enters into a contract with B, to supply work, goods and services to B, in return for payment. However, before A completes the contract, B begins to doubt that A will in fact do what he has promised. To ensure performance by A of his original undertaking, B promises A some additional payment, or makes some concession to A, by means of which B obtains the benefit of being in a better practical position than if he were to bring an action against A for breach of contract. Or it may be that, by promising actual performance in exchange for B's additional promise, A puts himself in a worse practical position than if he were to breach the contract by non-performance. Either way, the practical benefit to B, or the detriment to A, is sufficient consideration to make B's promise of additional payment legally binding, as long as B's promise was not the result of any economic duress, fraud, undue influence, unconscionable conduct or unfair pressure on A's part.

TLDR; Mucumeci who sold fruit and vegetables, leased his shop in a mall from Winadell. Later, Winadell leased another shop in a mall to a competing fruit and vegetables retailer and Mucumeci's business declined. Mucumeci told Winnadell that his shop was no longer viable and asked to reduce the rent. Winadell accommodated to Mucumeci, reducing the rent price by 30%. However, issues arose and Winadell wanted to evict Mucumeci from the mall. Winadell argued that the new lease at a reduce rental was not legally binding. However, the court held that the promise to reduce the rent was properly supported by consideration and therefore was legally binding. The consideration obtained by Winadell was the practical benefit of keeping Musumeci as a tenant and the mall full of operating shops