

1. Consideration

- Consideration is some forbearance undertaken/suffered by one of the contracting parties that constitutes the 'price paid for the promise': *Dunlop Pneumatic Tyre Company Ltd v Selfridge & Company Ltd*
- There is a bargain requirement (quid pro quo – this for that); consideration must be given because of the promise made by the promisor: *Australian Woollen Mills Pty Ltd v The Commonwealth*

Rules of consideration

1. Consideration must move from the 'promisee' but need not flow to the promisor
2. Consideration must be sufficient (legally effective) but need not be adequate
3. Consideration cannot be illusory (discretionary)
4. Consideration must be definite
5. Past consideration is not good consideration
 - Exceptions
6. Existing obligation is not good consideration
 - Exceptions
7. Part payment of a debt is not good consideration
 - Exceptions

1. Consideration must move from the 'promisee' but need not flow to the promisor

- Consideration must move from the promisee (*Coulls v Bagot's Executor & Trustee*) but need not flow to the promisor (*Bolton v Madden*) as the terms of the promise may stipulate that the consideration pass to a third party, rather than to the promisor.

2. Consideration must be sufficient but need not be adequate

- Consideration must be 'of some value in the eyes of the law': *Thomas v Thomas*
- Consideration does not have to be money.
- Consideration may be valid although it cannot be given a monetary equivalent: *Chappell and Co v Nestle and Co Ltd*

3. Consideration cannot be illusory or discretionary

- 'A promise cannot constitute consideration if it is too uncertain to be enforced, or if the promisor has reserved an absolute discretion on whether or not to perform that promise': *Placer Development Ltd v The Commonwealth*:
 - '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'.

4. Consideration must be definite

- Consideration must not be vague: *Shiels v Drysdale*

5. Past consideration is not good consideration

- Past consideration is not good consideration: *Roscorla v Thomas*
- Past consideration occurs when the act of forbearance predates the promise
 - i.e. Party A did the forbearing act before the contract was even entered into

Exceptions

- An act done before a promise can be good consideration (*Lampleigh v Brathwaite*) if:
 - The act was done at the promisor's request
 - The parties understood that the act was to be remunerated by the conferring of a benefit such as a payment

6. Existing obligation is not good consideration

- Merely performing an existing duty will not be good consideration: *Stilk v Myrick*

Exceptions

- Where there is a bona fide grievance and compromise: *Wigan v Edwards*
- Where additional risks are undertaken or where the promise provides some additional act or forbearance: *Hartley v Ponsonby*:
 - **Facts:** D promised sailors extra money if they helped sail ship back to port; 36 sailors had deserted the ship on route to port. D reneged on his promise.
 - **Held:** D had to pay because the sailors had taken on far greater risk that was not part of the pre-existing obligation.
- Where the promise confers a practical benefit on the promisee, including avoiding a detriment: *Williams v Roffey*:
 - **Facts:** carpenter was contracted to complete work for builder. Carpenter realised and told builder he was not going to make any money on the job. Builder said he would pay extra if carpenter agreed to stay on the job. Carpenter stayed on, did the work, claimed payment. Builder refused to pay because said carpenter gave no consideration, was doing what he was originally obliged to do.
 - **Held:** courts said that by offering him more money, the builder was benefitting. This benefit was considered good consideration.
 - **NOTE:** the rule in *Williams* was modified in *Musumeci v Winadell Pty Ltd*: the rule can operate if a party suffered a practical detriment as well as as a practical benefit; the rule cannot operate if there has been unfair pressure to induce the promise; the rule can only operate if the benefit received outweighs the benefit of another remedy e.g. suing for breach.

7. Part payment of a debt is not good consideration

- Payment of a lesser sum than the amount due, cannot normally be treated as a satisfaction for an existing debt: *Foakes v Beer*

Exceptions

- Settlement of a dispute: *HBF Dalgety Ltd v Moreton*
- 'Composition' agreements: when the debtors come to an agreement about what they will accept: *Bankruptcy Act 1966*
- Payment by a third party: *Hirachand Punamchand v Temple*
 - How? Because third party gives money in exchange for promise that the party that is owed money will not go and sue the party in debt; this is good consideration.
- Something other than money: *Pinnel's case*
 - 'the gift of a horse, hawk or robe... might be more beneficial to the creditor': *Pinnel's case*
 - If the parties agree on a substitute to what was originally owed, this is sufficient