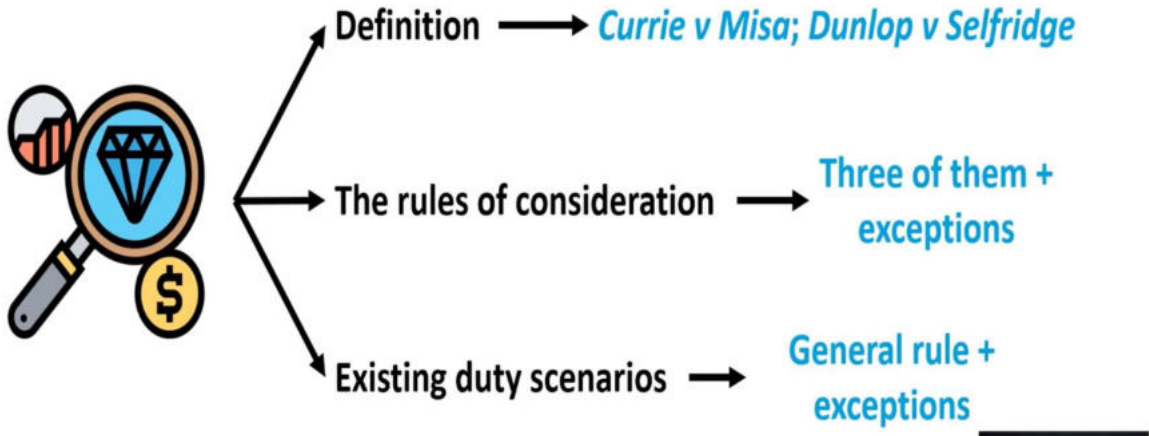


Week 4: Consideration



Consideration – Perspective



Please find the video from the following link: <https://youtu.be/MPsdiqqp7bw>

Week 4: Consideration

Consideration – What is it?

- Consideration, along with ICLR, is needed to make an agreement legally binding
- If you want to enforce someone's promise to you, you must have given something in return for it
- You must have given something “*in consideration*” of the promise made to you
- *nudum pactum*



Consideration – What is it?

- Shrouded by much academic debate
 - Many legal systems do not have a similar requirement
 - Even if present, contract can still be unenforceable
 - Sort enforceable v unenforceable via analysis of ICLR?
- Despite debate, the orthodox view is that is still an essential ingredient



Please find the video from the following link: <https://youtu.be/MPsdiqqp7bw>

Week 4: Consideration

The Definition of Consideration

- Traditional analysis looks at – benefit and/or detriment
- Key case – **Currie v Misa (1875)**

“A valuable consideration, in the sense of the law, may consist either of some right, interest, profit or benefit accruing to the one party, or some forbearance, detriment, loss or responsibility, give, suffered or undertaken by another”

Benefit

Detriment



The Definition of Consideration

- Modern analysis looks at – Pollock
- Key case – **Dunlop v Selfridge (1915)**

“An act of forbearance or the promise thereof is the price for which the promise of the other is bought, and the promise thus given is enforceable” - Pollock 1875

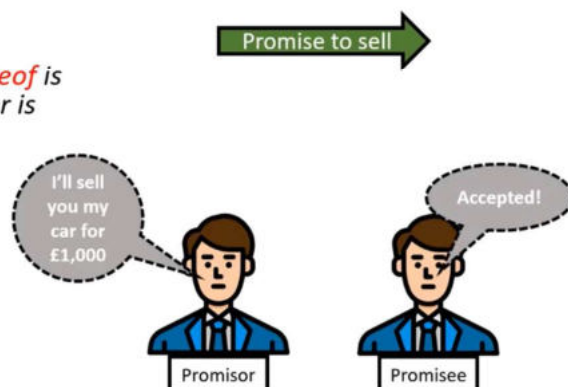
- You need to know both cases...



- Key case – **Dunlop v Selfridge (1915)**

“An act of forbearance or the promise thereof is the price for which the promise of the other is bought, and the promise thus given is enforceable” - Pollock 1875

- You need to know both cases...



Please find the video from the following link: <https://youtu.be/MPsdiqqp7bw>

Week 4: Consideration

The Rules Governing Consideration

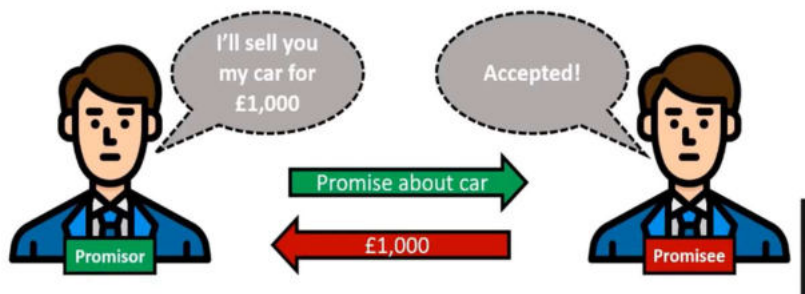
- [1] Consideration must move from the promisee
- [2] Consideration must be sufficient, but need not be adequate
- [3] Consideration must not be past
- [4] Consideration of an existing duty
 - A duty imposed by contract
 - A duty imposed by law
 - A duty owed to a third party



The Rules Governing Consideration

[1 of 4] Consideration must move from the Promisee

- A party who has not provided consideration may not bring an action to enforce contract – *Dunlop v Selfridge (1915)*; *Tweddle v Atkinson (1861)*



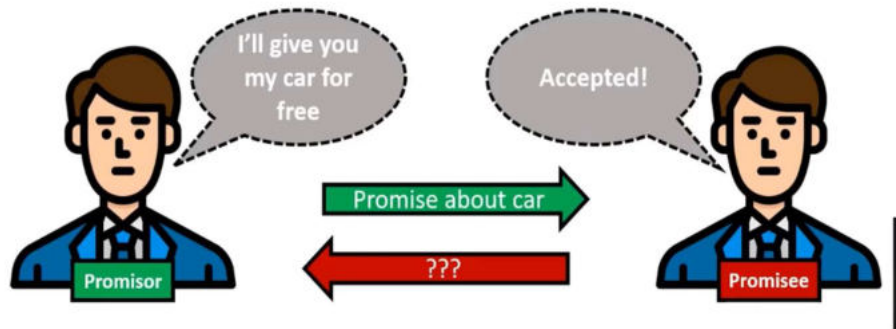
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Week 4: Consideration

The Rules Governing Consideration

[2 of 4] Consideration must be sufficient, but need not be adequate

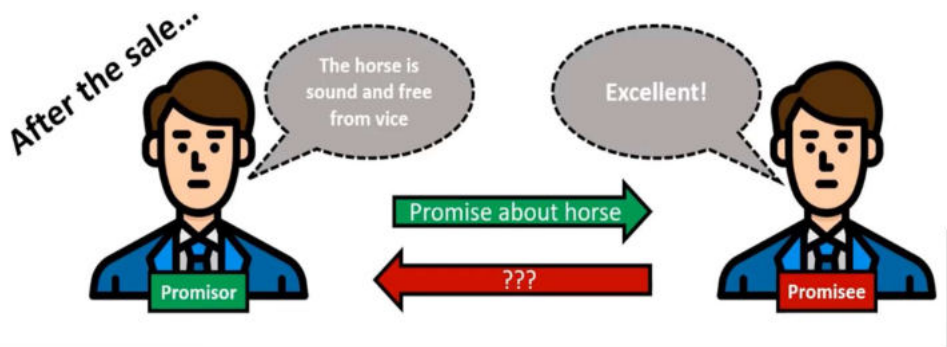
- Freedom of contract, the courts will not interfere with a bargain freely reached parties – **Chappell v Nestle (1960)**



The Rules Governing Consideration

[3 of 4] Consideration must not be past

- Consideration must be given *in return* for the promise of the other party – **East Kenyon (1840)**; **Roscorla v Thomas (1842)**



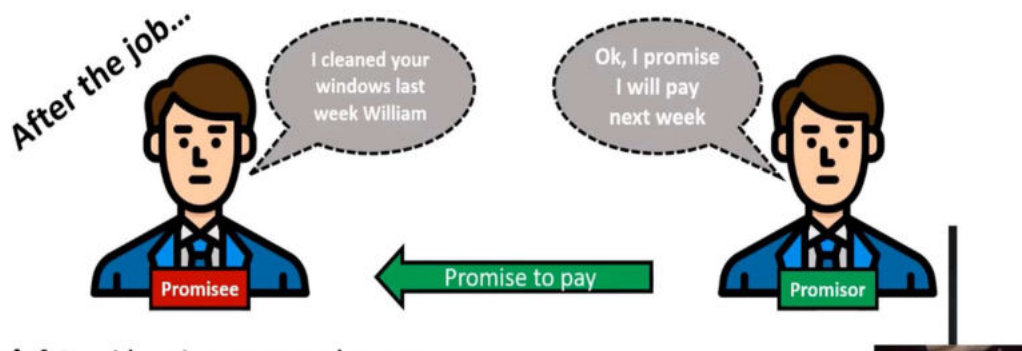
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Week 4: Consideration

The Rules Governing Consideration

[3 of 4] Consideration must not be past

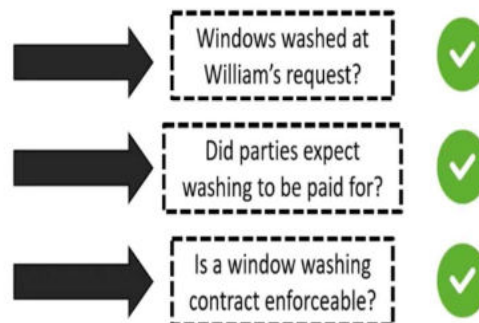
- Consideration must be given *in return* for the promise of the other party – **East Kenyon (1840)**; **Roscorla v Thomas (1842)**



[3 of 4] Consideration must not be past

- EXCEPTION to the general rule – **Pao On v Lau Yiu Long (1980)**

- The act must have been done at the promisor's request
- The parties must have understood that the act was to be rewarded
- The payment must have been legally enforceable had it been made in advance



Please find the video from the following link: <https://youtu.be/MPsdiqqp7bw>

Week 4: Consideration

The Rules Governing Consideration

[4 of 4] Performance of an Existing Duty

- [A] Existing obligations within a contract
 - Has the party seeking to enforce the promise done more than they were bound to do under their existing contract?
 - If NO, there is no consideration = promise is unenforceable – **Stilk v Myrick (1809)**
 - If YES, that is good consideration = promise is enforceable – **Hartley v Ponsonby (1857)**
- [A] Existing obligations within a contract



Stilk v Myrick (1809)	2/12 crew deserted	Captain promised extra wages	Captain refused to pay	Promise UNENFORCABLE
Hartley v Ponsonby (1857)	17/36 crew deserted	Captain promised extra wages	Captain refused to pay	Promise ENFORCABLE

The Rules Governing Consideration

[4 of 4] Performance of an Existing Duty

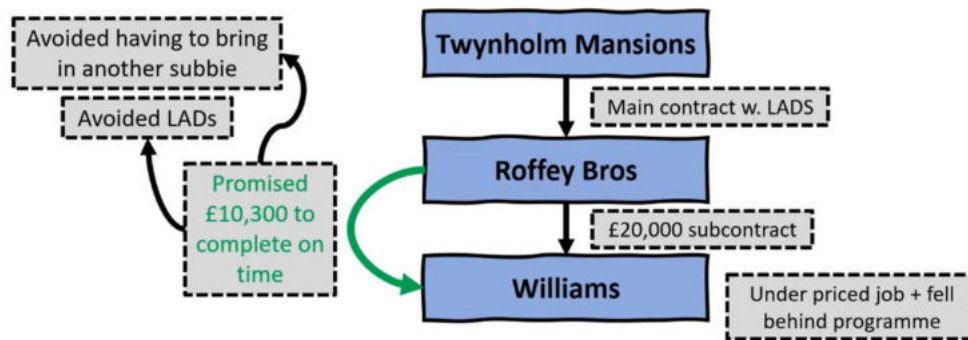
- [A] Existing obligations within a contract
 - Performance of an existing duty can also be good consideration if the promisor achieves a practical benefit (or avoids a disbenefit) by giving the promise
 - E.g. You are running late, I will pay you £10,300 if you hurry up and complete on time!
 - ... wait... what?



Please find the video from the following link: <https://youtu.be/MPsdiqqp7bw>

Week 4: Consideration

- [A] Existing obligations within a contract



- Lord Justice Glidewell limited the general rule from *Stilk v Myrick*
- An existing duty is good consideration if:
 1. A has entered into a contract with B;
 2. At some stage before completely performing its obligations, A has a reason to doubt that B will complete its side of the bargain;
 3. Due to that doubt, A **promises** B additional payment in return for B performing its original obligations;
 4. As a result of A's promise, A obtains a practical benefit (or avoids a disbenefit); **and**
 5. A's promise was not given under economic duress.

The Rules Governing Consideration

[4 of 4] Performance of an Existing Duty

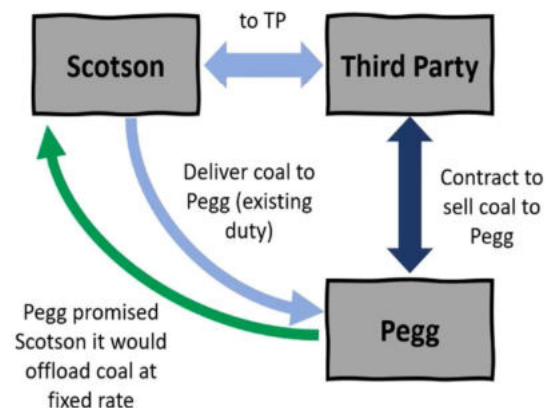
- [B] Existing public duty

- Merely carrying out a public duty imposed by law, does not amount to sufficient consideration – **Collins v Godefroy (1831)**
- What about **England v Davidson (1840)**?
- What about **Harris v Sheffield United FC (1988)**?
- What about **Ward v Byham (1956)**?



- [C] Existing duty to a third party

- The performance (or promise thereof) of an existing contractual duty to a third party can be used as good consideration – **Scotson v Pegg (1861)**
- Decision approved by privy council in Pao On case



Please find the video from the following link: <https://youtu.be/MPsdiqqp7bw>

Chapter 4

CONSIDERATION**4.1 INTRODUCTION**

It is a general principle of the English law of contract that an informal gratuitous promise made by one party (the “promisor”) is not enforceable as a contract; unless the promise is formalised by being made under seal (by deed), it must be supported by consideration.

4.2 DEFINITION

Consideration, according to Sir Frederick Pollock’s classic definition in *Principles of Contract* (13th ed., 1950), is: “... [a]n act or forbearance of the 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...”. It was approved by Lord Dunedin in *Pneumatic Tyre Co Ltd v Selfridge & Co Ltd* [1915] AC 847.

In other words, unless made by deed, a contract must be supported by consideration to be legally binding. Each party to the contract must promise to give or do something for the other. A promise by one to another is unenforceable in the absence of consideration in reliance on the promise. Consideration may take the form of payment of money, supply of goods or providing a service to the person making the promise in return for performance of that promise. Deferred consideration – the promise of a monetary payment or service in the future – is sufficient. Thus, the promisee has to give something in return for the promise of the promisor, in order to convert a bare promise made in his favour into a binding contract.

Consideration must afford either a benefit to the promisor, or a detriment to the promisee. For example, where A guarantees B’s bank overdraft, the promisee bank suffers detriment by advancing money to B, but there is no benefit to A.

4.3 TYPES OF CONSIDERATION**4.3.1 EXECUTORY CONSIDERATION**

“Executory” consideration is an exchange of *promises* for future performance of an act. In a bilateral contract for the delivery of goods, for example, a seller promises to deliver goods to a buyer at a future date and the buyer, in return, promises to pay for the goods on delivery. The parties have provided good consideration, even though neither party has actually fulfilled its promise. Failure on the part of the seller to deliver the goods may constitute a breach of contract.

4.3.2 EXECUTED CONSIDERATION

Executed consideration occurs where a party’s performance of an act provides the consideration. If one party makes a promise, in exchange for *an act* (or forbearance) by the other party, the consideration is said to be executed once the other party has carried out the act. For example, if A offers B £50 to clean his windows, once B cleans A’s windows, B’s consideration is executed. If B fails to clean A’s windows, however, A is not contractually

bound to pay anything to B. Executed consideration often forms part of a unilateral contract, because a party promises to do something in the future.

4.4 RULES GOVERNING CONSIDERATION

4.4.1 PAST CONSIDERATION IS NOT GOOD CONSIDERATION

Past consideration, i.e. an act or forbearance already carried out, is generally insufficient. In *Roscorla v Thomas* (1842) 3 QB 234, the defendant promised the claimant that a horse which had been purchased by him was sound and free of vice, when it was not. It was held that the defendant's promises had been made only *after* the sale and, therefore, no consideration for them was given.

By contrast, where the act was performed at the promisor's request and with the reasonable expectation of payment, it will amount to good consideration. So, in the case of *Re Casey's Patents* [1892] 1 Ch 104, where A and B, joint owners of certain patent rights, asked their employee, C, to act as their practical manager in finding licensees to work the patents, and C did so, *following which* they agreed to reward C for his past services, with one-third of the patent rights, C was deemed to have given consideration for the agreement, since it merely fixed the "reasonable remuneration" which A and B, by implication, promised to pay *before* the service was given.

The rule of past consideration is not an absolute. Where a promise is made following the performance of an act, it may nevertheless be enforceable as a common law exception, if: (1) the act was requested by the promisor; (2) both parties contemplated that payment would be made; and (3) the features of a valid contract existed. In the case of *Lampleigh v Braithwait* (1615) Hob 105; 80 ER 255, Braithwait had unlawfully killed another man. He asked Lampleigh to help him secure a pardon. Lampleigh successfully petitioned the King. After he was released, Braithwait promised to pay Lampleigh £100. When he failed to pay, Lampleigh was allowed to recover the £100, because the court reasoned that, since it must have been within the contemplation of both parties that payment for the service would be made, the work was done in reliance on a promise or expectation of payment.

4.4.2 CONSIDERATION MUST BE SUFFICIENT BUT NEED NOT BE ADEQUATE

Consideration need not be adequate but must have some 'value in the eye of the law', however small. The exchange does not have to equate to market value. In this regard, adequate consideration is said to be "sufficient" consideration. "Sufficiency" of consideration refers to what is given or promised as being capable of sustaining a contract, while "adequacy" of consideration refers to the value of what is being given in exchange.

Chappell v Nestlé [1960] AC 87; [1959] 2 All ER 701 illustrates that the giving away of discounted goods, in exchange for "worthless" chocolate wrappers, can still form the basis of sufficient consideration. Nestlé ran a promotion for its chocolate bars, and offered a free pop single, in exchange for three wrappers and 1s 6d (about 8 pence) for postage. Chappell (the song's publisher), however, was entitled to 6.25% of the sale price of each record, and claimed this royalty from Nestlé. The House of Lords held that the 'sale' price, by which any royalty was engaged, did not just apply to the 1s 6d; it also included the value represented by the three wrapping papers. It was irrelevant that the chocolate wrapper held no intrinsic value; Nestlé threw them away when they got them back from customers, as the wrappers constituted the value asked for by Nestlé.

Neither moral obligation nor natural love and affection are, generally, treated as sufficient: *Thomas v Thomas* (1842) 2 QB 851. While in *Thomas v Thomas*, deference to the wishes of a testator formed no part of the consideration, consideration was nevertheless sufficient, despite it being nominal. Mr Thomas expressed a wish that his wife should be able to live in the matrimonial home after his death. His executors drafted an agreement with Mrs Thomas to this effect, which was expressed to be “in consideration” of Mr Thomas’s wishes. She was also obliged to pay £1 per year, and to keep the house in good repair. The court disagreed with the assertion that Mrs Thomas had not provided sufficient consideration. It noted that, while the express use of the term “in consideration” of the testator’s wishes was the motive for making the agreement, it was not the “consideration” in its technical, contractual sense. There was a valid agreement, however, given the payment of £1 and the agreement to keep the house in good repair. While this arrangement might have been commercially inadequate, it was sufficient consideration in its technical sense.

4.4.3 DUTIES OWED BY LAW

4.4.3.1 Existing Public Duty

If someone is already under a public duty to carry out a particular task, then agreeing to do that task is not sufficient consideration for a contract. Therefore, where a defendant had a witness subpoenaed to give evidence and failed to pay the witness’s expenses, it was held that the witness was obliged by law to answer to the subpoena, so that giving evidence could not constitute consideration for the promise to pay the witness’s expenses (*Collins v Godefroy* (1831) 1B & AD 950).

If a party *exceeds* its public duty, however, this may be valid consideration. Accordingly, it was held in *Glasbrook Bros v Glamorgan County Council* [1925] AC 270 that, although the police were under a duty to protect a coal mine during a strike after they were requested by the manager of the coal mine to provide a stronger guard than they would otherwise have done, such extra protection was held to be good consideration for the promise by the coal mine manager to pay for it. Similarly, in *Harris v Sheffield Utd FC* [1987] 2 All ER 838, Boreham J concluded that, whilst the courts must be judicious to censure unlawful police actions:

“...[i]n deciding how to exercise his public duty of enforcing the law, and of keeping the peace, a chief constable has a discretion, which he must exercise, even-handedly. Provided he acts within his discretion, the courts will not interfere... In exercising that discretion a chief constable must clearly have regard to the resources available to him”.

4.4.3.2 Existing Contractual Duty

If someone promises to do something that they are already bound to do under a contract, that is, similarly, not valid consideration. Thus, in *Stilk v Myrick* [1809] 2 Camp 317, some sailors had deserted a ship and the captain of the ship promised to divide their wages among the remaining sailors if they would work the ship home short-handed. It was held that there was insufficient consideration, because the sailors were already bound to work the ship home. Consideration will not be sufficient consideration, therefore, to support a promise made by a defendant if the claimant simply performs or promises to perform an obligation already owed to the defendant under an existing previous contract between them.

A different conclusion was reached in *Hartley v Ponsonby* (1857) 119 ER 1471, where the ship became so short-handed as a result of desertion, that it was dangerous to sail the ship home with only the remaining crew. The court held that the promise to pay the crew increased wages if they sailed the ship home was supported by good consideration. The danger to the sailors

discharged them from their original contract, as a result of which they were free to enter into the new contract.

The principle set out in *Stilk v Myrick* was amended by the case of *Williams v Roffey Bros & Nicholls (Contractors) Ltd.* [1990] 1 All ER 512. In that case, it was held by the Court of Appeal that, when a party to an existing contract later agrees – otherwise than under duress – to pay an extra “bonus”, in order to ensure that the other party performs his obligations under the original contract, and thus derives a real commercial benefit from the performance, the agreement is binding (i.e. the bonus constitutes valid consideration), if the party agreeing to pay the bonus has thereby obtained some new practical advantage, or avoided a disadvantage.

Roffey were a firm of builders contracted to renovate a block of flats. Their own contract contained a penalty clause for late completion, so it was in their best interests to finish the work on time. Roffey sub-contracted part of this work to Williams. As work progressed, Williams fell behind schedule because, they claimed, they had not set an adequate price for the work. They negotiated a new deal with Roffey that an additional sum was to be paid on the completion of each building. When the next building was complete, Roffey refused to pay.

Roffey's defence was that the new agreement with Williams was void, as there was not sufficient consideration from Williams. The court considered the case of Stilk v Myrick and decided that it was robust and should stand: an agreement cannot be enforced without consideration. However, the court held that, in this case, there was consideration: the new agreement conferred additional “practical benefit” on the promisor (Roffey), in particular, as an early completion would allow them to avoid the exercise of the penalty clause.

Although this case could be seen as overturning the traditional narrow view of consideration, in practice, it has not been widely followed in subsequent cases, as will be seen in the next paragraph.

4.4.3.3 Contractual Duty Owed to a Third Party

The performance of an existing contractual duty owed to a third party may be sufficient consideration. In *Shadwell v Shadwell* 9 CB (NS) 159; (1860) 142 ER 62, an uncle promised to pay his nephew £150 annually during his life until the nephew's annual income reached 600 guineas. The promise was in recognition of his nephew's intended marriage. The uncle honoured the promise until his death, at which point the uncle's executors refused to continue paying the annuity. The nephew challenged this decision and the court held that there was consideration for the promise to pay, since the uncle's promise was basically an inducement to the nephew to commit to the marriage.

It should be noted that a promise to marry is no longer an enforceable contract after the introduction of the Law Reform (Miscellaneous Provisions) Act 1970, s. 1.

The decision in *Shadwell v Shadwell* was subsequently supported in a commercial context in *Scotson v Pegg* (1861) 6 H and N 295, where it was held that delivery of a cargo of coal to the defendant constituted sufficient consideration, despite the claimant already being contractually bound to a third party to make such delivery. *New Zealand Shipping Company Ltd v Satterthwaite (The Eurymedon)* [1975] AC 154; [1974] 1 All ER 1015 confirmed that sufficiency of consideration performance by A and B can support a promise made to C and D.

4.4.4 VARIATION & DISCHARGE OF PROMISEE'S OBLIGATIONS

The general rule is that, if one party promises to perform his contractual obligations in a different way, or agrees to allow the promisor to do so, the promisee can only enforce this variation if he has provided consideration. Where, however, one party has waived his rights to consideration, the other party may enforce such waiver, even in the absence of any consideration (see *Hartley v Hymans* [1920] 3 KB 475, where a buyer of cotton agreed to allow the seller to make late delivery, and it was held that he was liable in damages for refusing to take delivery after the contract period had expired). Nonetheless, the buyer can still revoke his promise by giving reasonable notice, since the buyer's original waiver may not be permanent in its effect. *Charles Rickards Ltd v Oppenheim* [1950] 1 KB 616; [1950] 1 All ER 420 stands for the principle that a waiver of rights may be withdrawn, where reasonable notice has been given. Therefore, if delivery is outside the terms of the contract, a promise to accept late delivery may be unsupported by consideration. It is important to note that waiver is not necessarily permanent in its effect. The party waiving its rights may do so for an agreed period of time, or may revive the original right, by giving notice.

The same applies where one party promises to *release* the other party from his contractual obligations – the discharge will only be valid if the promisee has provided consideration.

4.4.5 PART PERFORMANCE OF AN AGREEMENT

Where a debtor agrees to pay part of the debt owed to a creditor in full settlement of the outstanding amount, the common law holds that partial payment of a debt is not good consideration for a promise to forego the balance. This is the rule in *Pinnel's Case* (1602) 5 Co Rep 117. The rule holds that a promise to accept partial payment of a debt in discharge of the whole debt is unenforceable for lack of consideration. The creditor is perfectly entitled to claim the balance at a later date, because there is no consideration from which the debtor can enforce the promise. This is because the debtor is already bound to pay the full amount, in keeping with the principle in *Stilk v Myrick* [1809] 2 Camp 317.

The rule in *Pinnel's Case* was strictly *obiter*, but was approved by the House of Lords in *Foakes v Beer* (1884) 9 App Cas 605. Beer agreed to forego suing Foakes if he kept up instalment payments on a judgment debt. Foakes paid off the amount he owed in full but Beer subsequently sued him for the accumulated interest resulting from the delayed repayment. The House of Lords affirmed the award of interest in favour of Beer since Foakes had provided no consideration for Beer's promise. In *Re Selectmove Ltd* [1995] 1 WLR 474, the Court of Appeal applied the ruling in *Foakes v Beer* when rejecting a debtor's argument that by avoiding liquidation it had provided its creditor with a practical benefit, since it could for that reason continue to pay off its debts. The debtor had provided no consideration since it merely promised to honour an existing obligation. However, it was held in *Pinnel's Case* that where the debtor provides fresh consideration in respect of partial payment, then the whole debt will be extinguished. In view of this holding, an exception to the rule in *Pinnel's Case* may apply where:

- the creditor agrees to accept a lower amount at an earlier date than the due date, or on the day, but at a different location, or in a different currency;
- the creditor agrees to accept goods or services rather than money because "...payment of a lesser sum on the day in satisfaction of a greater, cannot be any satisfaction for the whole... but the gift of a horse, hawk, or robe etc... in satisfaction is good. For it shall be intended that a horse, hawk, or robe etc.... might be more beneficial... than the money..." ((1602) 5 Co Rep 117a; 77 ER 237);
- a third party makes partial payment, which the creditor accepts as full satisfaction of the debtor's obligation. In such a case, the creditor is not entitled to then sue the debtor

for the balance because: (a) to do so would be a fraud upon the third party; and (b) the court will not help the creditor to break his contract with the third party (not to sue the debtor), by allowing him to recover from the debtor;

- a composition among creditors allows a debtor to pay a percentage of his debts, such as 30 pence in the £1, in full settlement. The creditors and the debtor provide consideration by reaching agreement among each other to forego all of their rights;
- the doctrine of promissory estoppel applies (see below).

4.4.5.1 The Doctrine of Promissory Estoppel

The equitable remedy of promissory estoppel (or equitable estoppel as it is sometimes referred to) provides a means of enforcing a gratuitous promise even though the promisee has provided no consideration. In other words, promissory estoppel prevents a person reneging on a promise of future action. It is described by some commentators as a mechanism for enforcing consistency.

The modern doctrine arose in *Central London Property Trust Ltd. v High Trees House Ltd.* [1947] KB 130 (“*High Trees Case*”). In 1937, the defendant entered into a long-term lease for a block of flats. Many of the flats remained unoccupied, however, due to the outbreak of World War II and the claimant agreed to reduce the rent by half. By 1945, the block was fully occupied and the High Court held that the claimant was entitled to the full rent from the time the block was fully occupied. Denning J stated *obiter* that any attempt to claim the balance of the rent between the years 1940 to 1945 would be prevented by the doctrine of promissory estoppel because the defendant had relied on the claimant’s promise.

The following limitations apply to the doctrine:

(i) *There must be an existing legal relationship*

In *Durham Fancy Goods v Michael Jackson (Fancy Goods)* [1968] 2 QB 839; [1968] 2 All ER 987, Donaldson J observed that an existing *contractual* relationship was not necessary for the doctrine to apply, provided that there was “...a pre-existing *legal* relationship which could, in certain circumstances, give rise to liabilities and penalties...” [emphasis added]. In that case, the claimants erroneously made out a bill of exchange to “M Jackson (Fancy Goods) Ltd.” instead of “Michael Jackson (Fancy Goods) Ltd.”. The bill was signed by Mr Jackson, the director of the company, who returned it to the claimants without flagging up the error. The bill was subsequently dishonoured. The claimant was prevented from enforcing the bill against the director personally because the claimant’s written words amounted to a promise that, “...acceptance in that form would be, or would be accepted by [‘Michael Jackson’] as a regular acceptance of the bill...”. This resulted in a promissory estoppel, because it would be inequitable for the claimants to renege on their own words.

(ii) *There must be a clear and unequivocal promise*

There must be a clear and unequivocal promise, either by words or by conduct, that the promisor will not fully enforce its legal rights against the promisee.

(iii) *Reliance: change of position*

The promisee must have relied on the promise or representation. Generally, there must be some form of detriment to the promisee; meaning that the promisee is placed in a worse position than before the promise was made. However, a detriment may arise simply where the promisee has been led to act differently from what he otherwise would have done, or merely acted on the belief induced by the other party (*WJ Alan Co. Ltd. v El Nasr Export & Import Co.* [1972] 2 All ER 127).

(iv) *Inequitable to break the promise*

It must be inequitable for the promisor to go back on his promise. In other words, a promise will not be enforced where it would be inequitable to do so. For example, it would not be inequitable to allow a promisor to renege on its promise to accept a lesser sum of payment for services where this agreement was extracted by unfair means (*D & C Builders v Rees* [1966] 2 WLR 28).

In *Collier v P & MJ Wright (Holdings) Ltd* [2007] EWCA Civ 1329, [2008] 1 WLR 643, [2007] All ER (D) 233 (Dec) (Collier), the Court of Appeal examined the rule in *Pinnel's Case* in the context of contemporary commercial considerations. Collier was jointly liable with two former partners to pay off a debt. Collier kept up his instalments, while the ex-partners defaulted. Collier and the creditor agreed that the debt would be extinguished after he paid off one-third of it. However, once Collier had settled the agreed sum, the creditor issued a statutory demand for the outstanding balance. The Court of Appeal found that there was a triable issue, based on promissory estoppel, since it would be inequitable for the creditor to go back on its promise. Giving the lead judgment, Lady Justice Arden endorsed Mr Justice Denning's *obiter dictum* in the *High Trees Case* (*supra*) and confirmed that promissory estoppel would apply if: "...(1) a debtor offers to pay part only of the amount he owes; (2) the creditor voluntarily accepts that offer, and (3) in reliance on the creditor's acceptance the debtor pays that part of the amount he owes in full, the creditor will, by virtue of the doctrine of promissory estoppel, be bound to accept that sum in full and final satisfaction of the whole debt. For him to resile will of itself be inequitable. In addition, in these circumstances, the promissory estoppel has the effect of extinguishing the creditor's right to the balance of the debt...".

Arden LJ's judgment is significant, as it appears to endorse the position the court adopted in *D & C Builders Ltd v Rees*, and arguably weakens the *Foakes v Beer* precedent in a similar manner that *Williams v Roffey Brothers* weakened *Stilk v Myrick*. This suggests that a debt will be discharged where partial payment is made in accordance with a creditor's agreement.

(v) *Suspensory or extinctive*

According to the general rule, promissory estoppel suspends legal rights rather than extinguishing them. This allows the promisor to assert his original rights after giving sufficient notice (*Tool Metal Manufacturing Co. Ltd v Tungsten Electric Co. Ltd* [1955] 2 All ER 657). Subject to the intention of the promise, the doctrine will suspend a promisor's legal rights in relation to that promise until circumstances change (*High Trees Case* (*supra*)). Where the promisee is unable to return to his original position, however, the doctrine can extinguish the promisor's existing rights either partially or completely.