**Introduction**

The mere fact of agreement alone does not make a contract. Both parties to the contract must provide consideration if they wish to sue on the contract. This means that each side must promise to give or do something for the other. (Note: if a contract is made by deed, then consideration is not needed.)

For example, if one party, A (the promisor) promises to mow the lawn of another, B (the promisee), A's promise will only be enforceable by B as a contract if B has provided consideration. The consideration from B might normally take the form of a payment of money but could consist of some other service to which A might agree. Further, the promise of a money payment or service in the future is just as sufficient a consideration as payment itself or the actual rendering of the service. 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.

**DEFINITION OF CONTRACT CONSIDERATION LAW**

Lush J. in Currie v Misa (1875) LR 10 Exch 153 refered to consideration as consisting of a detriment to the promisee or a benefit to the promisor:

"... some right, interest, profit or benefit accruing to one party, or some forebearance, detriment, loss or responsibility given, suffered or undertaken by the other."

The definition given by Sir Frederick Pollock, approved by Lord Dunedin in Dunlop v Selfridge Ltd [1915] AC 847, is as follows:

"An act or forebearance 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."

**TYPES OF CONSIDERATION**

**1. EXECUTORY CONSIDERATION**

Consideration is called "executory" where there is an exchange of promises to perform acts in the future, eg a bilateral contract for the supply of goods whereby A promises to deliver goods to B at a future date and B promises to pay on delivery. If A does not deliver them, this is a breach of contract and B can sue. If A delivers the goods his consideration then becomes executed.

**2. EXECUTED CONSIDERATION**

If one party makes a promise in exchange for an act by the other party, when that act is completed, it is executed consideration, eg in a unilateral contract where A offers £50 reward for the return of her lost handbag, if B finds the bag and returns it, B's consideration is executed.

**RULES GOVERNING CONSIDERATION**

**1. CONSIDERATION MUST NOT BE PAST**

If one party voluntarily performs an act, and the other party then makes a promise, the consideration for the promise is said to be in the past. The rule is that past consideration is no consideration, so it is not valid and cannot be used to sue on a contract. For example, A gives B a lift home in his car. On arrival B promises to give A £5 towards the petrol. A cannot enforce this promise as his consideration, giving B a lift, is past.

**EXCEPTIONS TO THIS RULE:**

**(A) PREVIOUS REQUEST**

If the promisor has previously asked the other party to provide goods or services, then a promise made after they are provided will be treated as binding. See:

* Lampleigh v Braithwait (1615) Hob 105.

**(B) BUSINESS SITUATIONS**

If something is done in a business context and it is clearly understood by both sides that it will be paid for, then past consideration will be valid. See:

* Re Casey's Patents [1892] 1 Ch 104.

Note: The principles in Lampleigh v Braithwait as interpreted in Re Casey's Patents were applied by the Privy Council in:

* Pao On v Lau Yiu Long [1980] AC 614

**(C) THE BILLS OF EXCHANGE ACT 1882**

Under s27(1) it is provided that any antecedent debt or liability is valid consideration for a bill of exchange. For example, A mows B's lawn and a week later B gives A a cheque for £10. A's work is valid consideration in exchange for the cheque.

**2. CONSIDERATION MUST BE SUFFICIENT BUT NEED NOT BE ADEQUATE**

Providing consideration has some value, the courts will not investigate its adequacy. Where consideration is recognised by the law as having some value, it is described as "real" or "sufficient" consideration. The courts will not investigate contracts to see if the parties have got equal value.

**3. CONSIDERATION MUST MOVE FROM THE PROMISEE**

The person who wishes to enforce the contract must show that they provided consideration; it is not enough to show that someone else provided consideration. The promisee must show that consideration "moved from" (ie, was provided by) him. The consideration does not have to move to the promisor. If there are three parties involved, problems may arise. See:

* Price v Easton (1833) 4 B & Ad 433

**4. FOREBEARANCE TO SUE**

If one person has a valid claim against another (in contract or tort) but promises to forbear from enforcing it, that will constitute valid consideration if made in return for a promise by the other to settle the claim. See:

* Alliance Bank v Broom (1864) 2 Dr & Sm 289.

**5. EXISTING PUBLIC DUTY**

If someone is under a public duty to do a particular task, then agreeing to do that task is not sufficient consideration for a contract. See:

* Collins v Godefroy (1831) 1 B & Ad 950.

If someone exceeds their public duty, then this may be valid consideration. See:

* Glassbrooke Bros v Glamorgan County Council [1925] AC 270.

**6. EXISTING CONTRACTUAL DUTY**

If someone promises to do something they are already bound to do under a contract, that is not valid consideration. Contrast:

* Stilk v Myrick (1809) 2 Camp 317.
* Hartley v Ponsonby (1857) 7 E & B 872.

The principle set out in Stilk v Myrick was amended by the following case. Now, if the performance of an existing contractual duty confers a practical benefit on the other party this can constitute valid consideration.

**7. EXISTING CONTRACTUAL DUTY OWED TO A THIRD PARTY**

If a party promises to do something for a second party, but is already bound by a contract to do this for a third party, this is good consideration. See:

* Scotson v Pegg (1861) 6 H & N 295.

**8. PART PAYMENT OF A DEBT**

### THE GENERAL RULE

If one person owes a sum of money to another and agrees to pay part of this in full settlement, the rule at common law (the rule in Pinnel's Case (1602) 5 CoRep 117a) is that part-payment of a debt is not good consideration for a promise to forgo the balance. Thus, if A owes B £50 and B accepts £25 in full satisfaction on the due date, there is nothing to prevent B from claiming the balance at a later date, since there is no consideration proceeding from A to enforce the promise of B to accept part-payment. This is because he is already bound to pay the full amount, an agreement based on the same principle as Stilk v Myrick (1809). It also protects a creditor from the economic duress of his debtor.

In Pinnel's Case (1602), Cole owed Pinnel £8-10s-0d (£8.50) which was due on 11 November. At Pinnel's request, Cole payed £5-2s-2d (£5.11) on 1 October, which Pinnel accepted in full settlement of the debt. Pinnel sued Cole for the amount owed. It was held that part-payment in itself was not consideration. However, it was held that the agreement to accept part-payment would be binding if the debtor, at the creditor's request, provided some fresh consideration. Consideration might be provided if the creditor agrees to accept:

* part-payment on an earlier date than the due date (ie, as in Pinnel's Case itself); or
* chattel instead of money (a "horse, hawk or robe" may be more beneficial than money); or
* part-payment in a different place to that originally specified.

Despite its harshness the rule in Pinnel's Case was affirmed by the House of Lords and still represents the law:

In Foakes v Beer (1884) 9 App Cas 605, Mrs Beer had obtained judgment for a debt against Dr Foakes, who subsequently asked for time to pay. She agreed that she would take no further action in the matter provided that Foakes paid £500 immediately and the rest by half-yearly instalments of £150. Foakes duly kept to his side of the agreement. Judgment debts, however, carry interest. The House of Lords held that Mrs Beer was entitled to the £360 interest which had accrued. Foakes had not "bought" her promise to take no further action on the judgment. He had not provided any consideration.

**More recent cases include:**

* Ferguson v Davies (1996) The Independent December 12th 1996
* Re C (a Debtor) [1996] BPLR 535



### EXCEPTIONS TO THE RULE

Apart from the exceptions to the rule mentioned in Pinnel's Case itself, there are two others at common law and one exception in equity.

#### A) PART-PAYMENT OF THE DEBT BY A THIRD PARTY

A promise to accept a smaller sum in full satisfaction will be binding on a creditor where the part-payment is made by a third party on condition that the debtor is released from the obligation to pay the full amount. See:

Hirachand Punamchand v Temple [1911] 2 KB 330 - A father paid a smaller sum to a money lender to pay his son's debts, which the money lender accepted in full settlement. Later the money lender sued for the balance. It was held that the part-payment was valid consideration, and that to allow the moneylender's claim would be a fraud on the father.

#### B) COMPOSITION AGREEMENTS

The rule does not apply to composition agreements. This is an agreement between a debtor and a group of creditors, under which the creditors agree to accept a percentage of their debts (eg, 50p in the pound) in full settlement. Despite the absence of consideration, the courts will not allow an individual creditor to sue the debtor for the balance: Wood v Robarts (1818). The reason usually advanced for this rule is that to allow an individual creditor to claim the balance would amount to a fraud on the other creditors who had all agreed to the percentage.

#### C) PROMISSORY ESTOPPEL

This is the name that has been given to the equitable doctrine which has as its principal source the obiter dicta of Denning J in High Trees House Ltd [1947] (see below)

### PROMISSORY ESTOPPEL

A further exception to the rule in Pinnel's Case is to be found in the equitable doctrine of promissory estoppel. The doctrine provides a means of making a promise binding, in certain circumstances, in the absence of consideration. The principle is that if someone (the promisor) makes a promise, which another person acts on, the promisor is stopped (or estopped) from going back on the promise, even though the other person did not provide consideration (in so far as is it is inequitable to do so).

* [Visit our promissory estoppel page](http://www.lawteacher.net/contract-law/cases/promissory-estoppel.php)...

### DEVELOPMENT

The modern doctrine is largely based on dicta of Denning J in Central London Property Trust Ltd v High Trees House Ltd [1947] 1 KB 130 and on the decision of the House of Lords in Tool Metal Manufacturing Co Ltd v Tungsten Electric Co Ltd [1955] 1 WLR 761 and can be traced to Hughes v Metropolitan Railway (1877) 2 App Cas 439.

(a) Hughes Case (1877) - In October a landlord gave his tenant six months notice to repair and in the event of a failure to repair, the lease would be forfeited. In November the landlord opened negotiations for the sale of the premises, but these ended in December without agreement. Meanwhile the tenant had not done the repairs and when the six months period was up, the landlord sought possession.
The House of Lords held that the landlord could not do so. The landlord had, by his conduct, led the tenant to suppose that as long as negotiations went on, the landlord would not enforce the notice. He could not subsequently take advantage of the tenant relying on this. Therefore, the notice did not run during the period of negotiations. However, the six month period would begin to run again from the date of the breakdown of negotiations.

(b) High Trees (1947) - In 1937 the Ps granted a 99 year lease on a block of flats in London to the Ds at an annual rent of £2500. Because of the outbreak of war in 1939, the Ds could not get enough tenants and in 1940 the Ps agreed in writing to reduce the rent to £1250. After the war in 1945 all the flats were occupied and the Ps sued to recover the arrears of rent as fixed by the 1937 agreement for the last two quarters of 1945.
Denning J held that they were entitled to recover this money as their promise to accept only half was intended to apply during war conditions. This is the ratio decidendi of the case. He stated obiter, that if the Ps sued for the arrears from 1940-45, the 1940 agreement would have defeated their claim. Even though the Ds did not provide consideration for the Ps' promise to accept half rent, this promise was intended to be binding and was acted on by the Ds. Therefore the Ps were estopped from going back on their promise and could not claim the full rent for 1940-45.

(c) Tool Metal Case (1955) - see below.

Thus it seems that if a person promises that he will not insist on his strict legal rights, and the promise is acted upon, then the law will require the promise to be honoured even though it is not supported by consideration.

### REQUIREMENTS

The exact scope of the doctrine of promissory estoppel is a matter of debate but it is clear that certain requirements must be satisfied before the doctrine can come into play:

#### (A) CONTRACTUAL/LEGAL RELATIONSHIP

All the cases relied on by Denning J in High Trees House were cases of contract. However, in Durham Fancy Goods v Michael Jackson (Fancy Goods) [1968] 2 QB 839, Donaldson J said that an existing contractual relationship was not necessary providing there was "a pre-existing legal relationship which could, in certain circumstances, give rise to liabilities and penalties".

#### (B) PROMISE

There must be a clear and unambiguous statement by the promisor that his strict legal rights will not be enforced, ie one party must make a promise which is intended to be binding: The Scaptrade [1983] QB 529. However, it can be implied or made by conduct as in the Hughes Case (1877).

#### (C) RELIANCE

The promisee must have acted in reliance on the promise. There is some uncertainty as to whether the promisee (i) should have relied on the promise by changing his position to their detriment (ie, so that he is put in a worse position if the promise is revoked): Ajayi v Briscoe [1964] 1 WLR 1326, or (ii) whether they should have merely altered their position in some way, not necessarily for the worse.

In Alan Co Ltd v El Nasr Export & Import Co [1972] 2 QB 189, Lord Denning disclaimed detriment as an element of promissory estoppel, saying it was sufficient if the debtor acted on the promise by paying the lower sum. He said that "he must have been led to act differently from what he otherwise would have done".

#### (D) INEQUITABLE TO REVERT

It must be inequitable for the promisor to go back on his promise and revert to his strict legal rights. If the promisor's promise has been extracted by improper pressure it will not be inequitable for the promisor to go back on his promise. See:

* D & C Builders v Rees [1965] 2 QB 617 - The Ps, a small building company, had completed some work for Mr Rees for which he owed the company £482. For months the company, which was in severe financial difficulties, pressed for payment. Eventually, Mrs Rees, who had become aware of the company's problems, contacted the company and offered £300 in full settlement. She added that if the company refused this offer they would get nothing. The company reluctantly accepted a cheque for £300 "in completion of the account" and later sued for the balance. The Court of Appeal held that the company was entitled to succeed. Lord Denning was of the view that it was not inequitable for the creditors to go back on their word and claim the balance as the debtor had acted inequitably by exerting improper pressure.

#### (E) A SHIELD OR A SWORD?

At one point it was said in Coombe v Coombe [1951] 2 KB 215 that the doctrine may only be raised as a defence: "as a shield and not a sword". It was held that the doctrine cannot be raised as a cause of action. This means that the doctrine only operates as a defence to a claim and cannot be used as the basis for a case. However, this was doubted in Re Wyven Developments [1974] 1 WLR 1097 by Templeman J, who appeared to think that this was no longer the case and that it could create rights. Lord Denning in Evenden v Guildford City AFC [1975] QB 917 also adopted this approach.

#### (F) EXTINCTIVE OR SUSPENSIVE OF RIGHTS?

Another question raised by this doctrine is whether it extinguishes rights or merely suspends them. The prevalent authorities are in favour of it merely suspending rights, which can be revived by giving reasonable notice or by conditions changing.

(a) Where the debtor's contractual obligation is to make periodic payments, the creditor's right to receive payments during the period of suspension may be permanently extinguished, but the creditor may revert to their strict contractual rights either upon giving reasonable notice, or where the circumstances which gave rise to the promise have changed as in High Trees. See:

* Tool Metal Case (1955) - Patent owners promised to suspend periodic payments of compensation due to them from manufacturers from the outbreak of war. It was held by the House of Lords that the promise was binding during the period of suspension, but the owners could, on giving reasonable notice to the other party, revert to their legal entitlement to receive the compensation payments.

(b) It is not settled law that there can be no such resumption of payments in relation to a promise to forgo a single sum. In D & C Builders, which concerned liability for a single lump sum, Lord Denning expressed obiter that the court would not permit the promisor to revert to his strict legal right and that the estoppel would be final and permanent if the promise was intended and understood to be permanent in effect.

The preferred approach is to look at the nature of the promise: if as in High Trees and Tool Metal, it is intended to be temporary in application and to reserve to the promisor the right subsequently to reassert his strict legal rights, the effect will be suspensive only; and if on the other hand, it is intended to be permanent (as envisaged in D & C Builders), then there is no reason why in principle or authority the promise should not be given its full effect so as to extinguish the promisor's right.