

# Lecture 5 – Consideration

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ID: 129 – 932 – 071

(questions 1 – 4)

# Question 1



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## What are the requirements for a valid and binding contract?

69



Offer, acceptance, certainty, practicality, and intention to create legal relations

0 (0%)

Offer, acceptance, certainty, consideration, and objectivity

0 (0%)

Offer and acceptance

0 (0%)

Offer, acceptance, consideration and intention to create legal relations

69 (100%)



RE-OPEN



WHAT ARE THE  
REQUIREMENTS FOR A...

1/8

⋮

⌵



# Question 2




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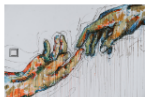


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**Which one of the following statements is incorrect in relation to the rules of acceptance?**  81



Acceptance of an offer means unconditional agreement to all the terms of that offer.

6 (7.41%)

Unilateral contracts are usually accepted by conduct.

18 (22.22%)

Unilateral contracts are usually accepted by communication.

47 (58.02%) 

Generally, remaining silent will not amount to acceptance.

10 (12.35%)

**Correct responses** 47 (58.02%)

**Correct answer**

Unilateral contracts are usually accepted by communication.



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WHICH ONE OF THE FOLLOWING...

2/8

⋮

⌂



# Question 3



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## When does a contract become legally binding?

87



On a date agreed by the parties

5 (5.75%)

As soon as the offer has been accepted

77 (88.51%)



When there is an offer rather than an invitation to treat

5 (5.75%)

At midnight on the day it was made

0 (0%)

Correct responses

77 (88.51%)

**Correct answer**

As soon as the offer has been accepted

**Correct answer explanation**

For the acceptance to be effective, this needs to be communicated to the offeror using one of the mechanisms envisaged or accepted by the offeror (including performance in case of unilateral contracts).



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WHEN DOES A  
CONTRACT BECOME... 3/8



# Question 4



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**Which of the following is not correct in relation to withdrawing an offer?**

74



An offeror is free to withdraw at any time before acceptance takes place

5 (6.76%)

An offeror cannot withdraw an offer where a deposit has been paid

20 (27.03%)

The postal rule does not apply to letters of revocation

12 (16.22%)

The offeror may withdraw the offer within a reasonable time after acceptance

37 (50%) ✓

**Correct responses**

37 (50%)

**Correct answer**

The offeror may withdraw the offer within a reasonable time after acceptance

**Correct answer explanation**

You can withdraw from an offer even if a deposit has been paid or consideration has been given to keep the offer open. However, in these cases the offeror may have to forfeit the deposit and/or pay damages to the offeree. As for the inapplicability of the postal rule to the revocation of an offer, see: *A to Z Bazaars Ltd v Minister of Agriculture* (1975) (SA).



RE-OPEN



WHICH OF THE FOLLOWING IS NOT...

4/8

⋮

🔍

🗨️

01

Introduction: Benefit  
and Detriment

02

Rule 1 – Sufficient  
Consideration

03

Rule 2 – Legal and  
Contractual Duties

04

Rule 3 – Past  
Consideration

05

Rule 4 – Part  
Payment



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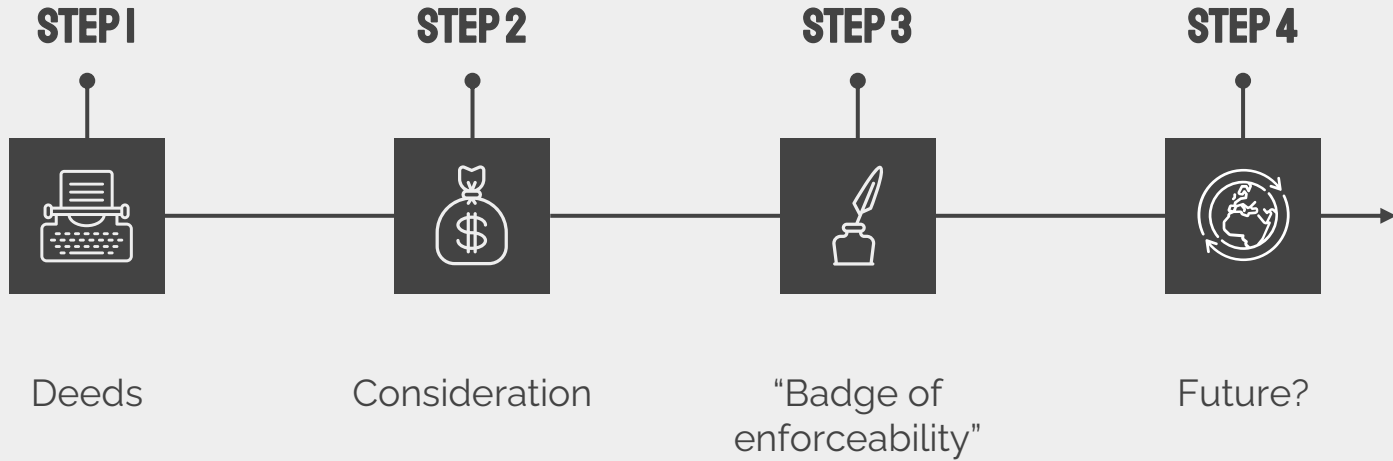
# 1. Introduction



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# EVOLUTION





“**EITHER** some right, interest, profit, or benefit  
accruing to one party,  
**OR** some forbearance, detriment, loss or  
responsibility, given, suffered or undertaken  
by the other”.

—*Currie v Misa*  
(1875 ) L.R. 10 Ex 153, 162

# Third Party Beneficiary



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*Shadwell v Shadwell* (1860) 142 E.R. 62



The uncle promised to pay his nephew £150 a year until the nephew's income reached 600 guineas provided the nephew married his fiancée.



Was the uncle offering a generous wedding present?



**No.** At that time, a promise to marry was an enforceable contract, even if it was made with a TP (the fiancée).



# Third Party to the Contract



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*Tweeddle v Atkinson* (1861) 121 E.R. 162



The father and father-in-law of the claimant entered into a contract, in which they promised to pay him £300 if he married. The father-in-law breached the contract.



Are the executors of the father-in-law bound to pay what promised?



**No.** It is settled that an action for breach of contract must be brought by the person from whom the consideration moved: *Price v Easton* 4 B. & Ad. 433.



# Condition



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*Wyatt v Kreglinger and Fernau* [1933] 1 K.B. 793 (CA)



W was not entitled to a pension. K&F offered him a £200/year pension if he didn't work in the wool trade. The pension was later discontinued.



Has W provided consideration for the promise of an annual pension?



**No.** The contract was illegal. Even if it wasn't illegal, W's stipulation was merely a condition and not a detriment/consideration (Scrutton LJ).



# Benefit and Detriment



- Usually both parties get some benefit and detriment from the same transaction (e.g. sale):
  - SELLER gets money but loses good(s);
  - BUYER gets good(s) but loses money.
- There is no rule as to the **magnitude** of the benefit or detriment arising from the transaction;
- Benefit and detriment need not to be BOTH present (e.g. payment to a TP).



- Key person = PROMISEE;
- Promisee must suffer some detriment, even if this is for the advantage of a **TP**;
- A gift subject to a **condition** not under the promisee's control is not enforceable under the law;
- **Illegal** promises are not enforceable, even if the promisee acted to their detriment.



## Consideration



YOU

ARE

ENOUGH

## 2. Rule 1 – Sufficient Consideration



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# "Sufficient" Consideration



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*Bainbridge v Firmstone* (1838) 112 E.R. 1019



F promised to return 2 boilers in as perfect condition after having weighted them. F returned the boilers after an unreasonable time, and in pieces, forcing B to spend time and money to re-assemble them.



Has F breached a contract with B?



**Yes.** The consideration is that the plaintiff, at the defendant's request, had consented to allow the defendant to weigh the boilers.





“The defendant had some reason for wishing to weigh the boilers; and he could do so only by obtaining permission from the plaintiff [...]. We need not enquire what benefit he expected to derive”.

—*Bainbridge v Firmstone*  
(1838) 112 E.R. 1019, 1020

# "Adequate" Consideration

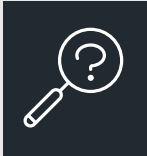


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*Chappell & Co. Ltd v Nestlé & Co. Ltd* [1960] A.C. 87 (HL)



N sold records to the public for 1s 6d and 3 wrappers. C sued N for copyright infringement, as they sold disks with one of their music records without paying royalties.



Are chocolate wrappers part of the retail price?



**Yes.** As royalties can only be paid if the selling price is "money only", N was in breach of the law and should be refrained from selling the records.





“It seems to me quite unrealistic to divorce the buying of the chocolate from the supplying of the records. It is a perfectly good contract if a person accepts an offer to supply goods if he (a) does something of value to the supplier and (b) pays money: the consideration is both (a) and (b)”.

—*Chappell & Co. Ltd v Nestlé & Co. Ltd*  
[1960] A.C. 87, 108 (Reid LJ)

# “Forbearance” Consideration



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*Pitt v PHH Asset Management Ltd* [1994] 1 W.L.R. 327



PHH wanted to prevent an injunction from P to disrupt a sale to a TP. PHH agreed on a lock-out agmt: 2 weeks to conclude a contract. During the 2-week period, PHH sold to a TP.



Was consideration provided for the lock-out agmt?



**Yes.** Forbearance of a legal right to sue and avoiding the nuisance of a threatened injunction is a form of consideration as it has economic value.



# “Forbearance” Consideration (2)



## *Re R-Squared Holdco Ltd* [2020] EWHC 23 (Ch)



The applicants wanted to buy another business, but the board of their company threatened disciplinary proceedings against them. The applicant wanted to apply for: (a) unfair prejudice petition; and (b) injunctive relief against disciplinary proceedings. The company started disciplinary proceedings despite stating that they will wait the outcome of the main petition.



Was consideration provided for the forbearance of injunctive relief?



**Yes.** Forbearance of a legal right to sue and avoiding the nuisance of a threatened injunction is a form of consideration as it has economic value.



# “Forbearance” Consideration (3)



- Bluett Sr provided money to his son, which replied with a promissory note (promise to pay). The executor tried to enforce it;
  - Bluett Jr argued that the obligation had been discharged by his promise to stop complaining about the distribution of the father’s property with his brothers;
  - HELD: no consideration given.
- Hamer promised his uncle to not drink, swear, use tobacco or play cards or billiards for money until he was 21, in exchange for US\$5,000;
  - Hamer complied but uncle’s executor refused to pay;
  - HELD: consideration provided.

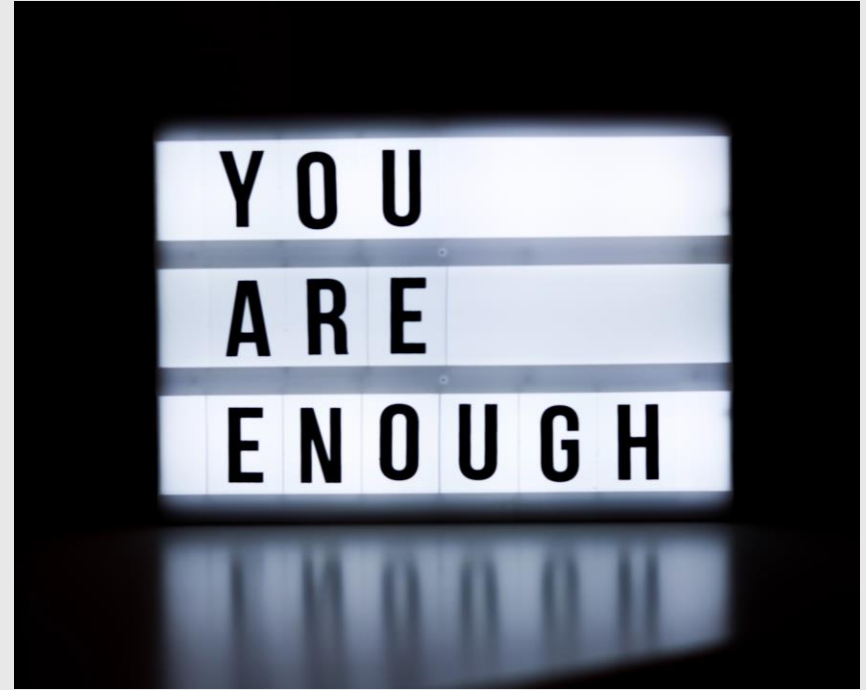


*White v Bluett* (1853) 23 LJ Ex 36



*Hamer v Sidway* (1891) 22 NE 256 (CA New York)

- Consideration does not need to adequately reflect the value of the promise given;
- However, “sufficient” means that it needs to have some “economic value”;
- Some promises that have economic value may still not be valid forms of consideration.



## Sufficient Consideration





### 3. Rule 2 – Legal and Contractual Duties



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# Legal Duty



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*Glasbrook Bros v Glamorgan CC* [1925] A.C. 270 (HL)



During a strike, a colliery manager asked the police to protect their premises. The police asked for extra payments for providing police officers at the colliery. GB refused to pay.



Was the council entitled to the payment? Was consideration provided for the job?



**Yes.** If police provided the “standard” protection, they would not be entitled to extra payment. Here, they went beyond their legal obligation to protect the safety of the population.



# Legal Duty (2)



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*Ward v Byham* [1956] 1 W.L.R. 496 (CA)



The father of an illegitimate child promised to pay a week allowance to the mother if she kept the child and looked after her. The father stopped paying when she remarried.



Was the mother entitled to the week allowance?



**Yes**, as there was good consideration for the father's promise.





“I approach the case, therefore, on the footing that the mother, in looking after the child, is only doing what she is legally bound to do. Even so, I think that there was sufficient consideration to support the promise. I have always thought that a promise to perform an existing duty, or the performance of it, should be regarded as good consideration, because it is a benefit to the person to whom it is given”.

—*Ward v Byham*  
[1956] 1 W.L.R. 496, 498 (Denning LJ)

# Contractual Duty



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*Stilk v Myrick* (1809) 2 Camp 317



After two seamen deserted, the captain promised that their wages would be divided between the remaining crew.



Was this promise enforceable?



**No.** There was no consideration for the ulterior pay promised to the crew. The alternative solution would put employers subject to their employees' requests every time that they face shortages.



# Contractual Duty (2)



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*Hartley v Ponsonby* (1857) 7 El & Bl 872



17 of a 36-man crew deserted. The master, to induce the remaining seamen to perform the rest of the voyage, promised to pay them a sum of money in addition to their wages.



Was this promise enforceable?



**Yes.** There was consideration for the ulterior pay promised to the crew.





# Contractual Duty (3)



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*Williams v Roffey Bros Ltd* [1991] 1 Q.B. 1 (CA)



W (sub-c) offered to refurbish some flats for RB (c). They entered into a bad bargain. To complete the work on time and avoid a penalty clause, RB offered more money to W, but refused to pay.



Was this promise enforceable?



**Yes.** As RB obtained a “practical benefit” in enforcing this promise, W was entitled to the extra money even if they were doing what originally promised (like in *Stilk v Myrick*).





A enters into a contract with B.  
It becomes clear to B that A cannot  
perform as agreed.

Does B promise MORE money for the  
SAME duty/job?

Does A ask for MORE money for the  
SAME duty/job?

Does B obtain a practical benefit or  
obviates a disbenefit?

Y

N

Y

N

UNENFORCEABLE promise

*Stilk v Myrick* (1809) 2 Camp 317

ENFORCEABLE promise

*Williams v Roffey Bros Ltd* [1991] 1 Q.B. 1

Is B's promise given as a result of  
economic duress or fraud?



- Performance of a duty that a person is already bound to do by the law is not a form of valid consideration;
- Performance of a contractual duty is not a form of valid consideration, unless the promisor receives some “practical benefit” from the performance.



## Legal and Contractual Duties



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(questions 5 – 6)

# Question 5



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**In Tweddle v Atkinson, why was the son not entitled to the money from his father-in-law's estate?**

61



Because he was a beneficiary of the contract, but he wasn't part of it

49 (80.33%) ✓

Because the consideration was not sufficient

4 (6.56%)

Because it was a domestic agreement

5 (8.2%)

Because the consideration was not adequate

3 (4.92%)

**Correct responses** 49 (80.33%)

**Correct answer**

Because he was a beneficiary of the contract, but he wasn't part of it

**Correct answer explanation**

In this case, the claimant is a TP, and he is barred from suing the promisor, even if the parties expressly gave to the claimant in their contract the full power to sue them in any Court of law or equity "for the aforesaid sums hereby promised and specified".



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IN TWEDDLE V  
ATKINSON, WHY WAS...

5/8

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# Question 6



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**A offers her new Google Pixel 7 Pro to B for £10. B accepts. Is this a form of valid consideration?** 68



No - consideration needs to be sufficient and adequate

13 (19.12%)

Yes - sufficient consideration is paid in this transaction

42 (61.76%) ✓

Yes - but A can ask more if they wish

10 (14.71%)

No - the phone is worth more than £10

3 (4.41%)

Correct responses 42 (61.76%)

**Correct answer**

Yes - sufficient consideration is paid in this transaction

**Correct answer explanation**

Chappell & Co. Ltd v Nestlé & Co. Ltd [1960]  
A.C. 87 (HL): chocolate wrappers can be a valid form of consideration.



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A OFFERS HER NEW  
GOOGLE PIXEL 7 PRO T...

6/8





## 4. Rule 3 – Past Consideration



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# Past Consideration



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*Eastwood v Kenyon* (1840) 113 E.R. 482



E spent large sums of money to educate SS and to look after her business affairs. SS promised to repay such money when she came of age. Once she married, Mr K refused to pay.



Is SS' promise binding? Was consideration provided?



**No.** Moral obligations can only revive a precedent good consideration (e.g. voidable contract). They cannot provide new consideration.





“The doctrine of moral obligation as a ground for a promise must be limited to those cases where the law would have given a clear right of action originally, if some legal impediment had not suspended or precluded the liability of the party”.

—*Eastwood v Kenyon*  
(1840) 113 E.R. 482, 484-5

# Past Consideration?



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*Lampleigh v Brathwait* (1615) 80 E.R. 255



B killed a person. He then asked for help from L, who worked to obtain a pardon from the king. B promised to give L £100 if he was pardoned, but then failed to keep the promise.



Is B' promise binding? Was consideration provided?



**Yes.** The case is different from the previous one because there was from the beginning an implied promise to pay L for their services.







“A mere voluntary curtesie will not have. But if that curtesie were moved by a suit or request of the party that gives the assumpsit, it will bind, for the promise, though it follows, yet it is not naked, but couples it self with the suit before”.

—*Lampleigh v Brathwait* (1615) 80 E.R. 255

# Past Consideration - Test



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## *Pan On v Lau Yiu Long* [1980] A.C. 614 (PC)



A subsidiary of PO owned a building, which LYL wanted to buy. PO agreed to sell their shares to LYL and become minority shareholders. They fixed the sale price, and later negotiated an indemnity to protect themselves against market fluctuations.

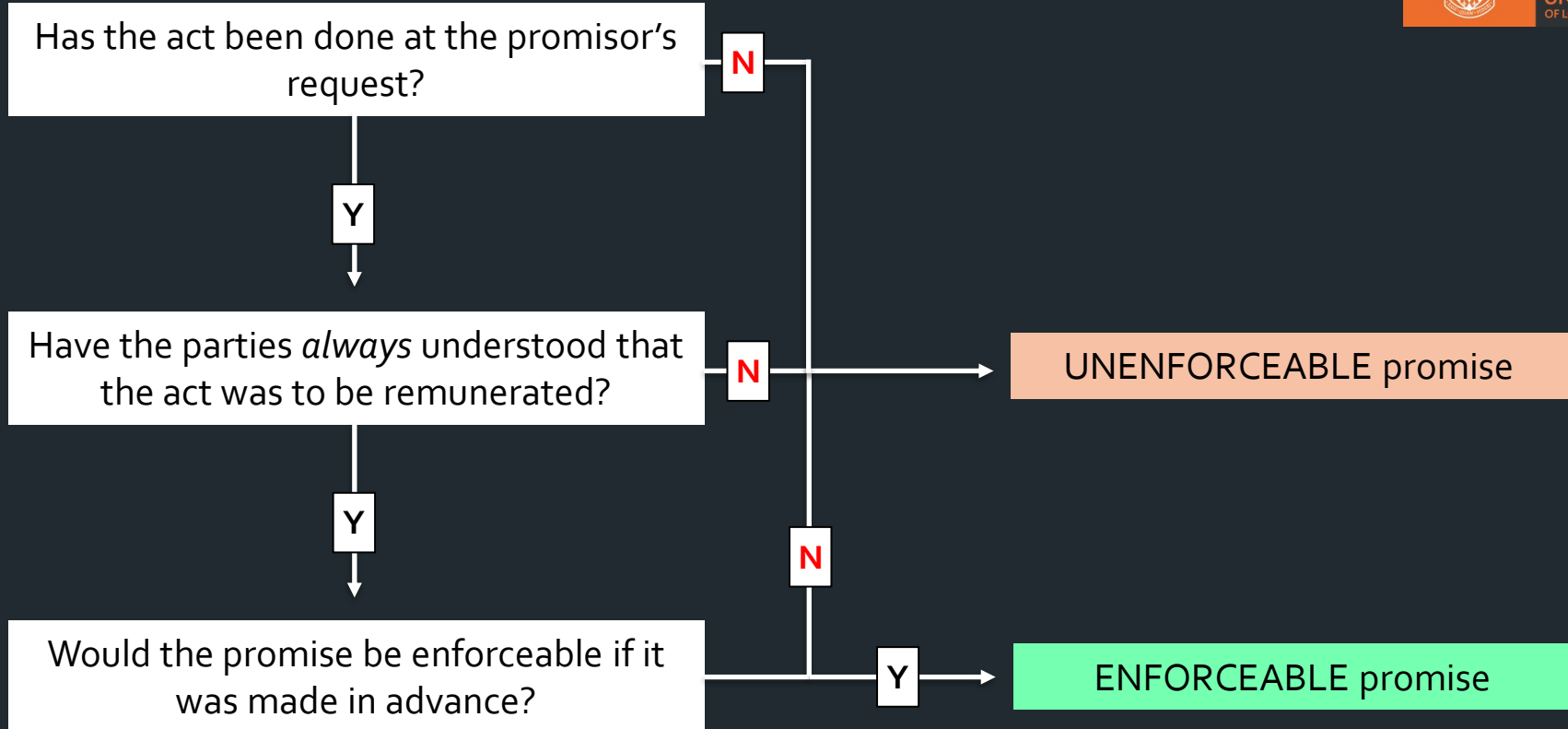


Is the indemnity agreement binding? Was consideration provided?



**Yes.** Despite the fact that it was granted after the agmt to sell, such agmt was reached on the assumption that PO would be protected against a loss of their investment in LYL.





- A promise to enforce services already rendered, goods already delivered, or some other benefits already conferred is NOT enforceable;
- Exceptions apply (*Pao On*);
- Executed consideration (e.g. performance in unilateral contracts) IS enforceable.



## Past Consideration



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## 5. Rule 4 – Part Payment



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# Part Payment



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*The Pinnel's Case (1602) 5 Co. Rep. 117*



Cole paid £5 to Pinnel one month before the debt was due, in satisfaction to a larger debt. Pinnel sued for the entire debt.



Was there valid consideration for the payment of a lesser sum than is due?



**Yes** and **No**. Part payment cannot be satisfaction for the whole, **UNLESS** some additional benefit is given to the promisor (e.g. early payment).





“Payment of a lesser sum on the day in satisfaction of a greater sum cannot be any satisfaction of the whole [...] but the gift of a horse, hawk, or robe etc. in satisfaction is good. For it shall be intended that a hawk, horse, or robe, etc. might be more beneficial to the plaintiff than the money”.

—*Pinnel's Case*  
(1602) 5 Co. Rep. 117a (Coke LJ)



# Part Payment (2)



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*Foakes v Beer* (1884) 9 App. Cas. 605 (HL)



B agreed not to take proceedings against F if he paid a judgment debt by instalments. F did it, but then asked for interests.



Was B entitled to interests even if F paid as agreed?



**Yes.** Payment without interests is a form of part payment, and no consideration was provided for it. No promise of doing anything different or more than what he was already liable to do.





# Part Payment (3)



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## *MWB Business Exchange Centres Ltd v Rock Advertising Ltd* [2016] EWCA Civ 553



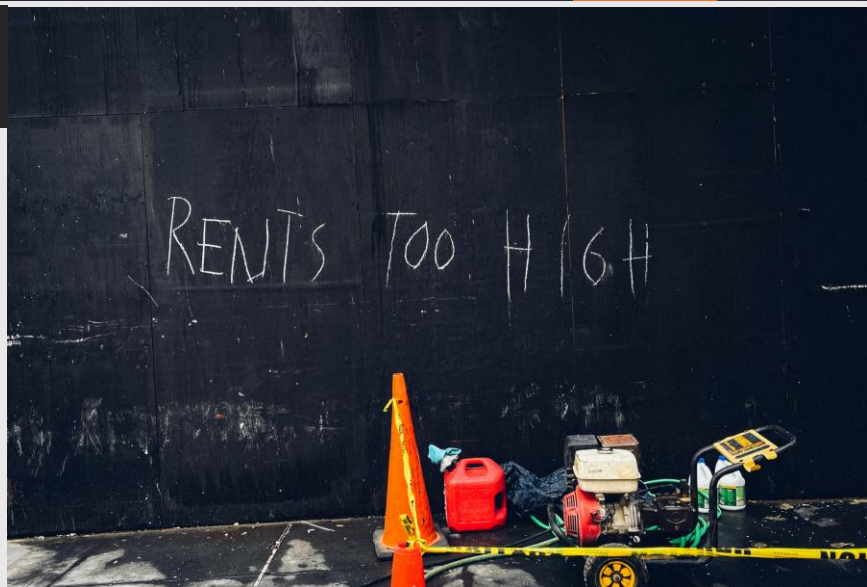
MWB rented office space to RA. As RA fell into arrears, MWB allegedly agreed on a revised schedule of payments (NO more money, longer period for payment).



Was there valid consideration in this oral agreement?



**Yes.** An oral variation to a property rental agreement to pay arrears over an extended period of time might be good consideration if “practical benefit” is conferred to the promisor.





“[The practical benefit] is an identifiable benefit over and above the mere fact of accommodating the debtor and not having to enforce the payment of debt”.

—*MWB Business Exchange Centres Ltd v Rock Advertising Ltd* [2016] EWCA Civ 553 at [87] (Arden LJ)

# Part Payment (4)



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## *Simantob v Shavleyan* [2019] EWCA Civ 1105



Sh failed to settle a debt of US\$1.5m with Si. This triggered an interest clause of US\$1,000/day. Sh agreed to pay US\$800k while renouncing to challenge the interest clause as being void for being a penalty clause. Upon failure to pay as agreed, Si claimed what originally owed.



Was consideration provided for the part payment through the forbearance of legal claim?



**Yes.** This is even if the defence – as in this case – was found to be without legal merit, as long as Sh thought he had a valid claim and wanted to pursue it in front of a court.





- **Forbearance** to raise a defence later found to be without legal merit could constitute sufficient consideration to support an agreement between the parties;
- The validity of **part consideration** had to be judged at the time the agreement was made;
- There is a **public policy** in favour of holding people to their commercial bargains.

- The promise to accept a smaller sum than originally due is not binding for lack of consideration;
- This is unless the debtor can prove that the creditor obtained some “additional” (*Foakes*) or “practical” (*MWB*) benefits;
- Where the part payment is made by a TP, the creditor cannot go back on their promise and sue for the full.



## Part Payment



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# Question 7



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## Why was past consideration considered sufficient in *Lampleigh v Braithwaite* (1615)?

64



Because the promisor had requested the performance

30 (46.88%) ✓

Because the plaintiff had gone beyond their duty

7 (10.94%)

Because it would be unconscionable to deny the payment

3 (4.69%)

Because the claimant had conferred a benefit

24 (37.5%)

Correct responses 30 (46.88%)

### Correct answer

Because the promisor had requested the performance

### Correct answer explanation

From the beginning, B promised to pay L for their services. Technically, this is not a case of past consideration.



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WHY WAS PAST  
CONSIDERATION...

7/8

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# Question 8



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**What is the key principle established in the Pinnel's case (1602)?**

47



Part payment of a debt is not good consideration for a promise to forego the balance

33 (70.21%) ✓

Performing an existing public duty is not a valid form of consideration

4 (8.51%)

Consideration must not be past

1 (2.13%)

Consideration must be sufficient but needs not be adequate

9 (19.15%)

**Correct responses** 33 (70.21%)

**Correct answer**

Part payment of a debt is not good consideration for a promise to forego the balance

**Correct answer explanation**

Part payment cannot be satisfaction for the whole, UNLESS some additional benefit is given to the promisor (e.g. early payment).



RE-OPEN



WHAT IS THE KEY PRINCIPLE ESTABLISHED... 8/8

⋮

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💬



# Summary

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- ✓ Consideration requires some detriment to one party, or some benefit to the other; it must come from the promisee;
- ✓ Consideration needs not to be adequate, but it has to be sufficient;
- ✓ Performance of a Legal Duty is *rarely* seen as a form of consideration. Performance of contractual duties can result in consideration;
- ✓ Past Consideration is *in itself* no good consideration;
- ✓ Part Payment is *in itself* no good consideration.