

CASES ON CONSIDERATION

RULES GOVERNING CONSIDERATION

Re McArdle (1951)

A wife and her three grown-up children lived together in a house. The wife of one of the children did some decorating and later the children promised to pay her £488 and they signed a document to this effect.

It was held that the promise was unenforceable as all the work had been done before the promise was made and was therefore past consideration.

Lampleigh v Braithwait (1615)

Braithwait killed someone and then asked Lampleigh to get him a pardon. Lampleigh got the pardon and gave it to Braithwait who promised to pay Lampleigh £100 for his trouble.

It was held that although Lampleigh's consideration was past (he had got the pardon) Braithwaite's promise to pay could be linked to Braithwaite's earlier request and treated as one agreement, so it could be implied at the time of the request that Lampleigh would be paid.

Re Casey's Patent (1892)

A and B owned a patent and C was the manager who had worked on it for two years. A and B then promised C a one-third share in the invention for his help in developing it. The patents were transferred to C but A and B then claimed their return.

It was held that C could rely on the agreement. Even though C's consideration was in the past, it had been done in a business situation, at the request of A and B and it was understood by both sides that C would be paid and the subsequent promise to pay merely fixed the amount.

Pao On v Lau Yiu Long (1980)

Lord Scarman said:

“An act done before the giving of a promise to make a payment or to confer some other benefit can sometimes be consideration for the promise. The act must have been done at the promisors' request: the parties must have understood that the act was to be remunerated either by a payment or the conferment of some other benefit: and payment, or the conferment of a benefit, must have been legally enforceable had it been promised in advance.”

Chapple v Nestle (1959)

Nestle were running a special offer whereby members of the public could obtain a music record by sending off three wrappers from Nestle's chocolate bars plus some money. The copyright to the

records was owned by Chapple, who claimed that there had been breaches of their copyright. The case turned round whether the three wrappers were part of the consideration. It was held that they were, even though they were then thrown away when received.

Price v Easton (1833)

Easton made a contract with X that in return for X doing work for him, Easton would pay Price £19. X did the work but Easton did not pay, so Price sued. It was held that Price's claim must fail, as he had not provided consideration.

Alliance Bank v Broom (1864)

The defendant owed an unsecured debt to the plaintiffs. When the plaintiffs asked for some security, the defendant promised to provide some goods but never produced them. When the plaintiffs tried to enforce the agreement for the security, the defendant argued that the plaintiffs had not provided any consideration.

It was held that normally in such a case, the bank would promise not to enforce the debt, but this was not done here. By not suing, however, the bank had shown forbearance and this was valid consideration, so the agreement to provide security was binding.

Collins v Godefroy (1831)

Godefroy promised to pay Collins if Collins would attend court and give evidence for Godefroy. Collins had been served with a subpoena (ie, a court order telling someone they must attend). Collins sued for payment. It was held that as Collins was under a legal duty to attend court he had not provided consideration. His action therefore failed.

Glassbrooke v GCC (1925)

The police were under a duty to protect a coal mine during a strike, and proposed mobile units. The mine owner promised to pay for police to be stationed on the premises. The police complied with this request but when they claimed the money, the mine owner refused to pay saying that the police had simply carried out their public duty.

It was held that although the police were bound to provide protection, they had a discretion as to the form it should take. As they believed mobile police were sufficient, they had acted over their normal duties. The extra protection was good consideration for the promise by the mine owner to pay for it and so the police were entitled to payment.

Stilk v Myrick (1809)

Two out of eleven sailors deserted a ship. The captain promised to pay the remaining crew extra money if they sailed the ship back, but later refused to pay.

It was held that as the sailors were already bound by their contract to sail back and to meet such emergencies of the voyage, promising to

sail back was not valid consideration. Thus the captain did not have to pay the extra money.

***Hartley v Ponsonby* (1857)**

When nineteen out of thirty-six crew of a ship deserted, the captain promised to pay the remaining crew extra money to sail back, but later refused to pay saying that they were only doing their normal jobs. In this case, however, the ship was so seriously undermanned that the rest of the journey had become extremely hazardous.

It was held that sailing the ship back in such dangerous conditions was over and above their normal duties. It discharged the sailors from their existing contract and left them free to enter into a new contract for the rest of the voyage. They were therefore entitled to the money.

***Williams v Roffey* (1990)**

Roffey had a contract to refurbish a block of flats and had sub-contracted the carpentry work to Williams. After the work had begun, it became apparent that Williams had underestimated the cost of the work and was in financial difficulties. Roffey, concerned that the work would not be completed on time and that as a result they would fall foul of a penalty clause in their main contract with the owner, agreed to pay Williams an extra payment per flat. Williams completed the work on more flats but did not receive full payment. He stopped work and brought an action for damages. In the Court of Appeal, Roffey argued that Williams was only doing what he was contractually bound to do and so had not provided consideration.

It was held that where a party to an existing contract later agrees to pay an extra "bonus" in order to ensure that the other party performs his obligations under the contract, then that agreement is binding if the party agreeing to pay the bonus has thereby obtained some new practical advantage or avoided a disadvantage. In the present case there were benefits to Roffey including (a) making sure Williams continued his work, (b) avoiding payment under a damages clause of the main contract if Williams was late, and (c) avoiding the expense and trouble of getting someone else. Therefore, Williams was entitled to payment.

***Scotson v Pegg* (1861)**

Scotson contracted to deliver coal to X, or to X's order. X sold the coal to Pegg and ordered Scotson to deliver the coal to Pegg. Then Pegg promised Scotson that he would unload it at a fixed rate. In an action by Scotson to enforce Pegg's promise, Pegg argued that the promise was not binding because Scotson had not provided consideration as Scotson was bound by his contract with X (a third party) to deliver the coal.

It was held that Scotson's delivery of coal (the performance of an existing contractual duty to a third party, X) was a benefit to Pegg and was valid consideration. It could also be seen as a detriment to Scotson, as they could have broken their contract with X and paid damages.