

CONTRACT – ICLR and consideration (lectures 4 & 5)

ICLR: “To create a contract there must be a common intention of the parties to enter into legal obligations, mutually communicated expressly or impliedly” – *Rose and Frank Co. v Crompton Bros.* Based on the reasonable man test ie objective test.

Consideration: ‘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*

Presumption of ICLR – commercial agreements

Bunn & Bunn v Rees & Parker; Bowerman v ABTA

HOWEVER, rebuttable presumption – commercial agreements

Hadley & others v Kemp & another

1. Honourable pledge clause – *Rose and Frank co. v Crompton Bros*
2. Statements said in anger/jest – *Licenses insurance Corporation v Lawson; Leonard v Pepsico*
3. Comfort letters – *Kleinwort Benson Ltd v Malaysia mining corporation.*
4. Subject to contract – *Chillingworth v Esche*
5. Collective agreements – *Trade Union and Labour Relations (Consolidation) Act 1992*

Presumption of NO ICLR – social/domestic agreements

1. married couples – *Balfour v Balfour*
2. Parent and child – *Jones v Padavatton*

HOWEVER, rebuttable presumption – social/domestic agreements

1. Separating couples – *Merritt v Merritt*
2. Mutuality of obligations – *Simpkins v Pays*
3. Previous conduct of the parties – *Lea v Leateau*

A new contextual approach?

Edmond v Lawson – “whether the parties intended to enter into a legally binding relations is an issue to be determined objectively and not be inquiring into their respective states of mind. The context is all important.”

The Rule of ‘Good Consideration’

Consideration must be:

1. Not be past - Where a benefit has already been provided, a promise in return for that benefit is a promise for ‘past’ consideration and not enforceable – *Eastwood v Kenyon*

Exception to past consideration rule – *Pao on v Lau Yiu Long*, states:

- a) at request of the promisor? *Lampleigh v Braithwait*
- b) payment understood to be due? *Re Casey’s Patents*
- c) contract enforceable apart from this issue?

2. Move from the promisee

A C can only claim on a contract if he has given consideration – *Tweddle v Atkinson*

Other side of the same coin as privity – *Dunlop v Selfridge*

Note: *S1 The Contract (Rights of Third Parties) Act 1999.*

3. Be sufficient not adequate

‘A peppercorn does not cease to be good consideration if...the promisee does not like pepper and will throw away the corn’ – *Chappell & v Nestlé & Co*

‘giving up a legal right?’ - *White v Bluett*

Contrast with *Hamer v Sidway*

NOTE: An existing obligation is not good consideration and part payment of a debt is not good consideration.

Performance of an existing duty obligation: public duty

Police: *Harris v Sheffield Utd*

Parental: *Ward v Byham*

At law: *Collins v Godefroy*

All about whether you are doing more than you have to.

Performance of an existing duty obligation: contractual

Performance of existing obligation NOT good consideration – *Stilk v Myrick*

Performance of an EXTRA obligation is good consideration – *Hartley v Ponsonby*

EXCEPTION to *Stilk v Myrick* - ‘factual consideration’/ ‘practical benefit’ – ***Williams v Roffey Bros.*** The criteria is: existing contract between the parties to supply goods or services; the paying party has reason to doubt whether the performing party will be able/ willing to complete; the paying party promises an extra payment to ensure completion; paying party gains a practical benefit or obviation of disbenefit; promise to pay extra is not given as a result of fraud or duress. Benefit to B is capable of being consideration, so B’s promise will be binding.

Reaction to *Williams v Roffey Bros.*:

Been confirmed in *Adam Opel GmbH v Mitras Automotive*. However, in *Re Selectmove*, *Williams* will NOT apply to claim for debt owed. *Williams* only applies to goods and services.

Performance of an existing duty obligation: owed to the third party

Can be good consideration – *Scotson v Pegg*; *New Zealand Shipping v Satterthwaite*