

## Law of Obligation I

### The Nature of a Contract

An agreement between private parties creating mutual obligations enforceable by law.

The basic elements required for the agreement to be a legally enforceable contract are:

- Mutual assent
- expressed by a valid offer and acceptance
- adequate consideration;
- Capacity
- legality

“A contract is a promise or promises mutually exchanged, setting up against the promisor or promisors, duties of performance which the law will recognize or enforce at the instance or for the benefit of the promisee or promisees, or a third party intended to be benefited”

- C. G. Weeramantry  
Law of Contracts vol 1-

### Agreement and Contract:

Agreement	Contract
An offer when accepted become an agreement.	A contract is entered into by an agreement and hence valid contracts are enforce.
When agreement are illegal the parties are not liable to perform. An agreement may or may not be legal obligation.	A contract necessarily creates a legal obligation.
Every agreement need not necessarily contract.	All contracts are necessarily agreements.
Agreement is not concluded of a binding contract.	Contract is concluded and binding on the concerned parties.

### Void and Voidable Contracts:

**Void contracts** are unenforceable by law. Even if one party breaches the agreement, you cannot recover anything because essentially there was no valid contract. Some examples of void contracts include:

- Contracts involving an illegal subject matter such as gambling, prostitution, or committing a crime.

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- Contracts entered into by someone not mentally competent (mental illness or minors).
- Contracts that require performing something impossible or depends on an impossible event happening.
- Contracts that are against public policy because they are too unfair.
- Contracts that restrain certain activities (right to choose who to marry, restraining legal proceedings, the right to work for a living, etc.).

**Voidable contracts** are valid agreements, but one or both of the parties to the contract can void the contract at any time. As a result, you may not be able to enforce a voidable contract:

- Contracts entered into when one party was a minor. (The law often treats minors as though they do not have the capacity to enter a contract. As a result, a minor can walk away from a contract at any time.)
- Contracts where one party was forced or tricked into entering it.
- Contracts entered when one party was incapacitated (drunk, insane, delusional).

Void	Voidable
Void contract was never legal in the first place, so it isn't valid even if the two parties have reached mutual assent on all the other essential elements of a contract.	A voidable contract contains a legal flaw to the disadvantage of one party, but the contract remains in effect until that party gets a court to declare it void.

“Difference between the two lies in; Voidable contracts are deprived of legal consequences from the time of avoidance and the void contracts are retrospectively annulled as from the date of their formation”.

-CG Weeramantry  
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### **Objective Test and Subjective Test:**

When court seeks to ascertain the intent of the parties, it does not focus on what each party may have thought or believed he was agreeing to (that is, his subjective intent) but on the reasonable perception of that intent, as conveyed by his words or actions (his objective intent).

As mentioned earlier Not all agreements are contracts but agreement is a necessary for contractual obligations to arise.

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The factor which distinguishes contractual obligations from other legal obligations is that they are based on the agreement of the contracting parties.

For most types of contract, the offer and acceptance may be made orally or in writing, or they may be implied from the conduct of the parties.

## Offer

### 1. Not Vague

An offer is a definite promise to be bound under certain specific terms – it cannot be vague (*Gunthing v Lynn – the offeror promised to pay a further sum for a horse if it was lucky*)

However if a vague offer is capable of being made certain either by implying terms or by reference to previous dealings between the parties, then it will be regarded as certain (*Hillas v Arosos – a contract for sale of timber of fair specification between persons well acquainted with the timber trade was upheld*)

### 2. May be made to a particular person, class or persons, or the public at large

*Carlill v Carbolic Smoke Ball Co.*

### 3. Not to be confused with the answer to a question or the supplying of information

*Harvey v Facey* – replying telegraph was an indication of what defendant would sell for when he decided to sell rather than an offer for sale; a mere statement of price

INVITATION TO TREAT: an invitation to another person to make an offer  
e.g.

#### (i) Tenders:

*Spencer v Harding* – a statement that goods are to be sold by tender is not normally an offer, so that the person making the statement is not bound to sell to the person making the highest tender

*Harvela Investments Ltd. Royal Trust of Canada* – it is difference where the person inviting the tender states in the invitation that he binds himself to accept the highest offer to buy or the lowest offer to sell and the contract is concluded as soon as the highest offer to buy or the lowest to sell etc... is communicated

*Blackpool and Flyde Aero Club v Blackpool Borough Council* – invitation to tender received before

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last date specified by the Blackpool Council but not considered as it was not opened in time; held that it is possible to have exceptions to the rule that invitations to tender are not contractual offers, applying where tenders are invited from known persons and selected persons under a clear and prescribed procedure

### (ii) Display of goods for sale:

*Fisher v Bell* – shopkeeper displayed flick knife in window, police alleged that this offer for sale was contrary to restrictions in Offensive Weapons Act; held that general rule is that a display of price marked goods in a shop is not an offer to sell goods but is an invitation to customer to make an offer to buy

*Pharmaceutical Society of Great Britain v Boots Cash Chemists Ltd* – taking of articles from the shelves constitutes an offer by the customer to buy and not the acceptance of an offer by the chemist to sell; the sale was not completed until the customer's offer to buy had been accepted by the defendants by their acceptance of the purchase price; and, therefore, the transaction took place "under the supervision of a registered pharmacist" as required by the Pharmacy and Poisons Act

### (iii) Advertisements

*Grainger v Gough* – advertisements that goods are for sale is not an offer therefore, the circulation of a price list by a wine merchant was only an invitation to treat

However, in a situation where an advertisement offers a reward for the return of lost property it will be considered to be an offer rather than an invitation to treat. If the finder returns the property knowing of the reward offer, he is entitled to the reward.

A unilateral contract is a one sided contract in the sense that one party binds himself by a conditional promise leaving the other party free to perform the condition for not, as he pleases. In an unilateral contract the offeror will not know whether the contract is on until the other party has performed his part.

*Carlill v Carbolic Smoke Ball Co.* – defendants issued an advertisement in which they promised to pay £100 to anyone who caught influenza after having used their product in the prescribed manner and that they have deposited £1000 with their bankers for such purpose to show sincerity. Mrs. Carlill used the said product and still caught influenza; it was held that unilateral contract was created and that it was not mere puff because of the deposit made with the bank

*Lallyett v Negris Co.* – Defendants advertised hams for sale and plaintiff posted order from Nuwara Eliya for 3 hams which were dispatched from Colombo and paid for by plaintiff. Hams allegedly unfit for human consumption. Court held that the advertisement was an invitation to treat an not an

offer, therefore the contract was made in Colombo and the Nuwara Eliya court did not have jurisdiction.

### (iv) Auction

In an auction, the auctioneer's call for bids is an invitation to treat. The bids made by a person at the auction are offers which the auctioneer can accept or reject as he chooses. Similarly the bidder may retract his bid before it is accepted – *Payne v Cave*

### Counter Offers

*Hyde v Wrench* – W offered to sell farm for £1000, H then offered to buy for £950 which W refused. H then tried to accept the original offer. Court held that the counter offer was a rejection of original terms and the original offer was put to an end thereby.

*Stevenson v McLean* – offeree asked for information as to terms of credit: not a counter offer; counter offer should be distinguished from a mere request for information.

### Acceptance

An acceptance is the final and unqualified expression of assent to the terms of an offer. To make a binding contract the acceptance must exactly match the offer. The offeree must accept all the terms of the offer. Where there is continuous negotiation between the parties, the courts look at the whole course of the negotiations and decide whether the parties ever did agree to the same terms.

### Acceptance by Conduct:-

If X offers a reward for the return of his lost purse, then Y by taking the purse to X, both accepts the offer of the reward and performs the act necessary to gain it.

*Brogden v Metropolitan Railway Co.* – Parties acted according to the agreement document's terms which had not been validly accepted. Then some more serious disagreements arose, and Brogden argued that there had been no formal contract actually established. House of Lords held that a contract had been created by conduct and that it came into existence when the company ordered its first load of coal upon the terms of the draft or at least when Brogden supplied it.

*Muthukuda v Sumanawathie* – held that an offer of marriage may be accepted by conduct which is unequivocal and which indicates a definite understanding between the parties that a marriage is to take place.

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*Jones v Daniel* – acceptance must be unqualified; where in reply to an offer a contract for signature accepting offer but containing new terms was returned, a counter offer has been made which the original offeror may reject.

Tenders:-

A tender is an offer, the acceptance of which leads to the formation of a contract e.g. Where X advertises for offers to supply a specified quantity of goods, to be supplied at a specified time and Y offers to supply, acceptance of Y's tender creates a contract under which Y is bound to supply the goods and the buyer X is bound to accept them and pay for them.

However, difficulties arise where tenders are invited for the periodical supply of goods e.g. *Great Northern Railway Co. v Witham* – where X advertises for offers to supply goods up to a stated maximum, during a certain period, the goods to be supplied as and when demanded, acceptance by X of a tender received from Y does not create a contract; instead, X's acceptance converts Y's tender into a standing offer to supply the goods up the stated maximum at the stated price as and when requested to do so by X. The standing offer is accepted each time X places an order, so that there are a series of separate contracts for the supply of goods.

Communication of Acceptance

(a) General rule – acceptance must be communicated to the offeror (**declaration theory**); until and unless the acceptance is so communicated, no contract comes into existence – Lord Denning in *Entores v Miles Far East Corporation*

In the case of unilateral contracts the requirement of communication of acceptance is waived by the offeror – acceptance does not require communication in the ordinary sense but, of course, there is a kind of communication in performing the task for which the reward is offered unilaterally by the offeror

Postal Rule (expedition theory): *Adams v Lindsell* – postal acceptance dates from posting even if the letter is delayed (*University of Ceylon v Fernando* accepts this rule in Sri Lanka). Postal rule applied even where letter is lost – *Household Fire Insurance Co. v Grant*. The postal rule will not apply where acceptance has not been properly posted – *Re London & Northern Bank*

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- (b) Offeror cannot impose a condition that silence shall constitute acceptance without the offeree's consent e.g. *Felthouse v Bindley* – F wrote to N saying that “if I hear no more about him I will consider the horse is mine at £30 15s. N wrote to B, an auctioneer, in whose possession the horse was telling him not to sell the horse but B sold by mistake. F sued B in conversion (tort alleging wrongful disposition of the plaintiff's property by the defendant). B's defence succeeded on the basis that there was no valid contract between F and N because the condition that silence constituted acceptance was ineffective.
- (c) Acceptance must be communicated by the offeree or by someone with his authority e.g. *Powell v Lee* – it was decided by managers of a school to appoint P as head master and an unauthorised manager notified P of appointment by telegram. When it was later decided to reverse the decision, P sued for damages and it was held that no contract had been made due to improper communication of acceptance.
- (d) The offeror may expressly or impliedly prescribe the method of communicating acceptance. *Quener Duaine v Cole* – an offer by telegram is evidence of a desire for a prompt reply, so that acceptance sent by post may be treated as ineffective.

*Tinn v Hoffman* – D offered to sell P iron requesting reply ‘by return of post’ (not made clear that no other method would suffice); does acceptance have to be by post? Hoenyman J: an equally expeditious method would suffice.

*Yates Building Co. Pulleyn Ltd* - D gave P option to purchase land, stating notice of acceptance should be returned ‘by registered or recorded delivery. P returned notice by ordinary post, D refused notice stating: ‘the option agreement provides for notice to be sent by registered or recorded delivery post, Your letter was not sent so...’. No enforceable contract as precise method of acceptance was prescribed.

- (e) Acceptance is not effective is communicated in ignorance of the offer: *R v Clarke* - The claimant wanted to compel the Crown to pay a reward it had offered for information leading to the conviction of a murderer. The claimant gave the information. But he gave it while he was under investigation himself for murder. He told the police "exclusively in order to clear himself". It was uncertain whether he was thinking about the reward at the time he provided the information. The Court held it was necessary to act in "reliance on" an offer in order to accept it, and therefore create a contract and therefore there was no contract in this instance.

However, where the existence of the offer plays some part, however small, in inducing a person to do the required act, there is a valid acceptance of the offer – *Williams v Carwardine* - Walter Carwardine was murdered in Hereford. The plaintiff, Mrs Williams, gave evidence at the Hereford assizes against two suspects, but did not say all she knew. The suspects were acquitted. On April 25, 1831, the victim's brother and defendant, Mr Carwardine, published a

handbill, stating there would be a £20 for 'whoever would give such information as would lead to the discovery of the murder of Walter Carwardine.' Mrs Williams gave more information which led to the conviction of two men (including a Mr John Williams, the plaintiff's husband). She claimed the reward. Mr Carwardine refused to pay. At the trial her motives were examined. It was found that she knew about the reward, but that she did not give information specifically to get the reward. It was apparent that after the first murder trial, Mrs Williams had been savagely beaten by Mr Williams. The advertisement amounted to a general promise or contract to pay the offered reward to any person who performed the condition mentioned in it, namely, who gave the information. Two judges clearly stated that motives were irrelevant. Littledale J said, "If the person knows of the handbill and does the thing, that is quite enough." Patteson J said "We cannot go into the plaintiff's motives."

*Tinn v Hoffman* – Cross-offers i.e. two identical offers exchanged between the parties, does not form and agreement but rather two separate offers which require acceptance to form a contract.

### **Termination of Offer**

An offer may be terminated in the following circumstances:-

- (i) Acceptance: once an offer has been accepted, a binding contract is made and the offer ends.
- (ii) Rejection or counter offer: If the offeree rejects the offer or makes a counter offer that is the end of it.
- (iii) Revocation: The offer may be revoked by the offeror at any time until it is accepted. However the revocation of the offer must be communicated to the offeree(s). Unless and until the revocation is so communicated, it is ineffective.

*Byrne v Van Tienhoven* – expedition theory which applies in the case of the postal rule will not apply in the case of postal revocation of offers: there is a more stringent rule for revocation than offers.

*Dickinson v Dodds*: revocation need not be in communicated by the offeror personally, it is sufficient if it is done through a reliable third party

*Boyd v Nel* – an option offer is an offer to keep open for a definite or indefinite period an offer that has already been made.

An option offer cannot be terminated during the term specified in such contract or if no term is specified, the offer must be kept open for a reasonable time (Roman Dutch law position which does not recognise the English law doctrine of consideration). In English law however, a promise to keep an offer open for a fixed period does not prevent its revocation within that period.



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However a person by giving consideration may buy a promise to keep an offer open for a fixed period.

*Shuey v U.S.* – held that an offer made by advertisement in newspaper could be revoked by a similar advertisement even though second advertisement was not read by some offerees – revoked by reasonable steps.

*Errington v Errington and Woods* – once the offeree has commenced performance of an unilateral offer, the offeror may not revoke the offer

Weeramantry – in a system governed by Roman Dutch law where absence of consideration has no effect, the doctrine of causa would be flexible enough to include sufficient part performance of a unilateral contract as sufficient causa whereby the offeror would be bound not to revoke the offer even before completion of the act or performance.

- (iv) Lapse of time: where an offer is stated to be open for a specific length of time, then the offer automatically terminates when that time limit expires. Where there is no express time limit, an offer is normally open only for a reasonable time.

*Ramsgate Victoria Hotel v Montefiore* – defendant’s delay in allotting the shares caused the lapse of the plaintiff’s offer to buy the same.

- (v) Failure of a condition subject to which the offer was made: an offer may be made subject to conditions. Such a condition may be stated expressly by the offeror or implied by the courts from the circumstances. If the condition is not satisfied, the offer is not capable of being accepted.

*Financings Ltd. v Stimson* – D who wished to purchase a car signed a hire purchase form (offer – becomes binding once the finance company signed the form). Car was stolen before signing by finance company and it was held that D was not bound to take the car as there was an implied condition that the car would be in substantially the same condition as when the offer was made when it was accepted.

- (vi) Death: the offeree cannot accept an offer after notice of the offeror’s death. However, if the offeree does not know of the offeror’s death and there is no personal element involved, then he may accept the offer – *Bradbury v Morgan*

### **Intention to create legal relations**

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The parties must intend the agreement to be legally binding. The nearest courts can get to discover this intention is to apply an objective test and judge the situation by what was said and done. The law divides agreements into the following:-

### (i) Social and Domestic Agreements

The law presumes that social agreements are not intended to be legally binding. However, if it can be shown that the transaction had the opposite intention, the court may be prepared to rebut the presumption and to find the necessary intention for a contract.

*Balfour v Balfour* – Husband promised to pay £30 monthly while he was abroad on work but when the couple drifted apart, the wife argued that there was an enforceable agreement. It held that there is a rebuttable presumption against an intention to create a legally enforceable agreement when the agreement is domestic in nature and that the wife did not rebut the same.

*Merritt v Merritt* – While under the principles laid out in *Balfour v Balfour*, domestic agreements between spouses are rarely legally enforceable, this principle was rebutted where two spouses who formed an agreement over their matrimonial home were not on good terms.

*Jones v Padavatton* – demonstrates how domestic agreements, such as in between a mother and daughter, are presumed not to be legally binding unless there is clear intention.

*Parker v Clarke* – If social agreements have serious consequences for the parties, it may rebut the presumption of no intention to create legal relations in social agreements: Devlin J held that the Clarks were liable for damages to the Parkers given that the Parkers had relied to their detriment on the assurance of the Clarks that they would have a place to stay.

In *Simpkins v Pays* an informal agreement between a grandmother, granddaughter and a lodger to share competition winnings was binding. Sellers J held, applying the objective test, that the facts showed a "mutuality" between the parties, adding: "If my conclusion that there was an arrangement to share any prize money is not correct, the alternative position to that of these three persons competing together as a "syndicate", as counsel for the plaintiff put it, would mean that the plaintiff, despite her propensity for having a gamble, suddenly abandoned all her interest in the competition in the Sunday Empire News. I think that that is most improbable ..."

### (ii) Business/Commercial Agreements

In business agreements the presumption is that the parties intend to create legal relations and make a contract. This presumption can be rebutted by the inclusion of an express statement to that effect in the agreement – *Rose and Frank Co. v Crompton Bros. Ltd.*

## **Consideration and Justa Cuasa**

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“In the Roman Dutch law and in most continental systems based on the civil law the simple requirement of *justa causa* is used to satisfy the requirement that the promise must be serious and deliberate while English law employs the test of consideration to ensure the presence of the bargain element it deems so essential in contract.”

- Weeramantry

## I. JUSTA CAUSA

*Causa* conveys the following meanings: “seriousness or deliberateness of intention, the motive or reason for a transaction; the reasonableness objectively judged of the *causa* for a transaction; and even the nature of the particular transaction fell within the scope of *causa* as explained by Dutch jurists.

- Weeramantry

*Lipton v Buchanan* – Wendt J defined *justa causa* as “denoting the ground, reason or object of a promise giving such promise a binding effect in law. It has a much wider meaning than the English term consideration and comprises the motive or reason for a promise and also purely moral consideration”

Attempts have been made to equate the concepts of *Causa* and Consideration by South African jurists headed by Lord de Villiers. However, the concept of *causa* as a distinct and different concept from that of English consideration was firmly established after the judgement of the Privy Council in the Sri Lankan case of *Jayawickrama v Amarasuriya* and the South African case of *Robinson v Randfontein Estates G.M.Co.*

*Jayawickrama v Amarasuriya* – Privy Council held that the defendant’s promise to pay the plaintiff Rs. 150,000/- was enforceable inasmuch as it was made deliberately in discharge of a moral obligation resting upon the defendant

*Public Trustee v Udurawana* – an employee instituted legal action to enforce a promise made by his employer to pay him a pension or gratuity in consideration of past faithful services. Dias J observed “since the decision of the Privy Council in *Jayawickrama v Amarasuriya*, it is settled law that a lawful promise deliberately made to discharge a moral duty or to do an act of generosity or benevolence can be enforced under the Roman Dutch law”

## II. CONSIDERATION:-

Despite our common law being Roman Dutch law, the requirement of *causa* is an essential element for the formation of a legally binding contract in Sri Lanka. However the presence of consideration is necessary for the formation of a valid contract governed by English law in our country e.g. consideration is an essential element in a contract for sale of goods under the Sale of Goods Ordinance No. 11 of 1896 (*Attorney-General v Abraham Saibo & Co.*); the same position prevails with regard to a contract governed by the Bills of Exchange Ordinance.

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Under English law, both parties to a contract must provide consideration if they wish to sue on the contract.

### Definitions –

*Currie v Misa* – Lush J referred to consideration as consisting of a detriment to the promisee or a benefit to the promisor: “some interest, profit or benefit accruing to one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other”.

*Dunlop v Selfridge Ltd* – “an act or forbearance 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 –

#### a) Executory Consideration

Where there is an exchange of promises to perform acts in the future e.g. 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, B can sue and if A delivers the goods, then his consideration becomes executed.

#### b) 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 e.g. in an 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. Note that when B made his claim his act was in the past, but it was not in the past when A made his promise.

If a person suing to enforce a promise has only provided past consideration, he will not succeed in his action. *Re McArdle* – a lady 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; held that the promise was unenforceable as all the work had been done before the promise was made and was therefore past consideration.

*Salman v Obias* (Sri Lankan case) – ‘valuable consideration’ as used in section 17 of the Registration of Documents Ordinance was subject of interpretation by the courts – deed of transfer to appellant by grandmother alleged that consideration was attending to her and covering her medical costs – no consideration as alleged consideration was past consideration.

Exceptions to the rule that past consideration is no consideration:-

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- (i) Bills of Exchange Ordinance 1927 section 27 provides that any antecedent debt or liability is valid consideration for a bill of exchange
- (ii) A past act is saved from the rule that past consideration is no consideration if two conditions are satisfied:-
  - a. That the act was done at the request of the promisor; and
  - b. That the parties all along contemplated that payment would be made.

*Lampleigh v Braithwait* – B killed an man and asked L to obtain an royal pardon. L did so and B then promised to pay him £100. B broke promise and L sued him. L succeeded in action because B’s request was regarded as containing an implied promise to pay and the subsequent promise to pay £100 was simply fixing the amount

### Consideration must be sufficient but need not be adequate:-

Consideration has to have some value. Where consideration is recognised by the law as having some value, it is described as “real” or “sufficient” consideration.

*Chappell & Co Ltd v Nestle Co Ltd* –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 wrappers were held to be “sufficient” consideration.

*Thomas v Thomas* – £1 rent per year and promise to keep the house in good repair was “sufficient” consideration for the conveyance of a house.

### Consideration must move from the promisee:-

The person who wishes to enforce the contract must show that he provided consideration; it is not enough to show that someone else provided consideration.

*Tweddle v Atkinson* – an agreement was made between William Guy and John Tweddle whereby each promised the other that he would pay a sum of money to William Tweddle, who was the son of John Tweddle and the prospective son-in-law of William Guy who died without having paid this sum. William Tweddle was unable to sue the executors for the sum as he was a “stranger to the consideration”.

### Forbearance to sue:-

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If one person has a valid claim against another (in contract or tort) but promises to forebear from enforcing it, that will constitute valid consideration if made in return for a promise by the other side to settle the claim – *Alliance Bank v Broom*

### Existing public duty:-

If someone is under a public duty to do a particular task, the agreeing to do that task is not sufficient consideration for a contract

*Collins v Godefroy* – G promised to pay C if C would attend court to give evidence. C was served with a summons and therefore he was unable to sue G for payment as he was already under a duty to attend court

*Glassbrooke Bros v Glamorgan County Council* – if someone exceeds their public duty, then this may be valid consideration

### Existing contractual duty:-

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

*Stilk v Myrick* – Two out of eleven sailors deserted ship. The captain promised to pay remaining sailors extra money if they sailed the ship back but then refused to pay: held that sailors were already bound to sail back and promising to sail back was not valid consideration for the promise of extra payment.

*Hartley v Ponsonby* – nineteen out of thirty six crew deserted ship and captain promised to pay extra to remainder. Here promise to sail back in dangerous and seriously undermanned conditions discharged the sailors from their existing contract and left them free to enter into a new contract for the rest of the voyage.

*Stilk v Myrick* principle is 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.

*Williams v Roffey Bros Ltd* - The defendants were building contractors who entered an agreement with Shepherds Bush Housing Association to refurbish a block of 27 flats. This contract was subject to a liquidated damages clause if they did not complete the contract on time. The defendants engaged the claimant to do the carpentry work for an agreed price of £20,000.

6 months after commencing the work, the claimant realized he had priced the job too low and would be unable to complete at the originally agreed price. He approached the defendant who had recognised that the price was particularly low and was concerned about completing the contract on time. The defendant agreed to pay the claimant an additional £575 per flat.

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The claimant continued work on the flats for a further 6 weeks but only received an additional £500. He then ran out of money and refused to continue unless payment was made. The defendant engaged another carpenter to complete the contract and refused to pay the claimant the further sums promised arguing that the claimant had not provided any consideration as he was already under an existing contractual duty to complete the work.

Consideration was provided by the claimant conferring a benefit on the defendant by helping them to avoid the penalty clause. Therefore the defendant was liable to make the extra payments promised.

### Existing contractual duty 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.

*Scotson v Pegg* – 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.

### Part payment of a debt:-

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*) is that part payment of a debt is not good consideration for a promise to forego the balance.

*Pinnel’s case* – at Pinnel’s request Cole paid Pinnel £5 on £8 owed in full settlement. Pinnel subsequently sued Cole for the balance. It was held that part payment was not in itself valid consideration. However, it was held that the agreement to accept part consideration would be binding if the debtor, at the creditor’s request, provided some fresh consideration e.g. early part-payment, chattel instead of money, part-payment in a different place.

*Foakes v Beer* – B obtained a judgement against F for a debt owed. F asked for time to pay and B agreed to take no further action provided that F pays £500 immediately and the remainder by half-yearly payments of £150. F kept to the payment plan but was liable to pay interest accrued because such interest payment was the consideration for which F had bought B’s promise to take no further action.

*Re Selectmove* – arrears in tax put Inland Revenue in a position to put Selectmove in liquidation. Selectmove tried to rely on the agreement made with collector of taxes that they would pay arrears in instalments when they were put in liquidation and it was held that they had not provided consideration for the promise not to put into liquidation.

Exceptions to the rule in Pinnel’s case

### 1. Third party part-payment of the debt

*Hirachand Punamchand v Temple* – father paid smaller sum to money lender which was accepted as full payment of son's debts. Held to be valid consideration.

### 2. Composition Agreements

An agreement between a debtor and a group of creditors agree to accept a percentage of their debts in full consideration. Despite the absence of consideration, the courts will not allow an individual creditor to sue the debtor for the balance (*Wood v Roberts*). The reason is that allowing an individual creditor to claim the balance would amount to fraud on the other creditors who all agreed to the percentage.

### 3. Promissory Estoppel

Strict application of the rule in Pinnel's case causes hardship to a person who relies on a promise of the other party that a debt will not be enforced in full. Thus to mitigate the harshness of this rule, the doctrine of promissory estoppel was propounded in equity (which is founded on fairness) and does not look with favour on a man who promises relief to another and then goes back on his promise.

*Central Property Trust v High Trees House Ltd* – In 1937, High Trees House Ltd leased a block of flats in Clapham, London, for a rate £2500/year from Central London Property Trust Ltd. Due to the conditions during the beginning of World War II occupancy rates were drastically lower than normal. In January 1940, to ameliorate the situation the parties made an agreement in writing to reduce rent by half. However, neither party stipulated the period for which this reduced rental was to apply. Over the next five years, High Trees paid the reduced rate while the flats began to fill, and by 1945, the flats were back at full occupancy. Central London sued for payment of the full rental costs from June 1945 onwards (i.e. for last two quarters of 1945) and succeeded in such claim.

The court considered whether the plaintiff would have succeeded if he had claimed the full rent back to the date of the commencement of the war. Denning J stated that he would not have been successful because he would have been stopped in equity from going back on his promise. It should be noted that equitable estoppel is suspensory i.e. when circumstances change so as to remove the reasons for the promise, the original rights of the promisor become enforceable again. Further as Birkett and Asquith LJ stated in the High Trees case, the principle acts as a shield and not a sword i.e. it only prevents the promisor from insisting on his strict legal rights when it would be unjust to allow him to do so and it does not enable the promisee to sue on an action unless he has given consideration.