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Literature, Russian Literature

TheEnglish legal system was unable to provide a sufficient and practicaldefinition for the contractual element of consideration for centuries. The caseof Currie v. Misa (1875) became a significant case in terms of providing thedefinitive definition for consideration, consequently the case presented JudgeLush with the opportunity to define consideration as " Either…some right, interest, profit or benefit accruing to the one party or some forbearance, detriment, loss or responsibility, given, suffered or undertaken by the other". Meaningthat a party must provide something in exchange for the promise, in order to beable to impose that promise, that " something" is called " consideration" 1.

In terms of the necessity of consideration in the formation of a contract, itis clear that it is one of the fundamental aspects as contracts will mostlyonly be binding if they are supported by the concept of consideration and thefact that consideration is demanded by the common law. Despite this, it wouldbe incorrect to assume that the doctrine of consideration is " too firmly fixed" due to the existence of promissory estoppel. Lord Denning established thedoctrine of promissory estoppel in the case of Central London Property Trust vHigh Trees House 1947, which meant that in some instances can stop a persongoing back on a promise, which is not supported by some form of consideration. This essay will examine the true extent in which courts require contracts to besupported by consideration through three/four main arguments. Inorder for consideration to take place, there are four main rules, which should betook into account. Firstly, the promisee must provide consideration and it mustmove from the promisee. Meaning that, the person who wishes to enforce thecontract must show that they provided

consideration; it is not enough to showthat someone else provided consideration.

The promisee must show thatconsideration came from him in some form. As it is not adequate for someoneelse to provide consideration, this rule of consideration has caused somedifficulty in contract law, especially in assessing contracts that have morethan two parties involved. This can be explored further through the case ofPrice v Easton (1833). Adeclaration between the parties stated that X owed the plaintiff a sum ofmoney. Due to this, X agreed to complete work for the defendant in exchange forpayment, which would clear the debt that he owed to the plaintiff.

Thedefendant agreed he would pay the plaintiff on X's behalf once the work wasfinished. However, once the work was completed for the defendant, he did notpay the plaintiff, or X, as had been promised. The plaintiff sued the defendantfor the money that X owed him. The court held that X performed his part of theagreement with the defendant but the plaintiff was not involved with thecontract between the parties and therefore could not sue for the sum owed bythe defendant. This was in consideration of the fact that the money owed wouldhave been paid to the plaintiff to clear the previous debt. The court found thaton this basis the plaintiff had not provided any consideration for the promisebetween the parties.

The plaintiff's claim was dismissed by the court. Although, this case clearly highlighted the major extent in which courtsrequired consideration when tackling cases, it was ultimately flawed when athird party was introduced as it created complications for the courts. Despitethe significant time gap, this

case and many other cases including thirdparties consequently lead to the parliament passing down the Contract (Rightsof Third Parties) Act in 1999 and “ thereby removed one of the mostuniversally disliked and criticised blots on the legal landscape” 2. The Act allows third parties to enforce terms of contracts that benefit them insome way. In addition, it allows them access to a range of remedies if theterms are violated. Moreover, the act limits the ways in which a contract canbe altered without the permission of an involved third party. Simultaneously, it provides protection for the promisor and promisee in situations where thereis a disagreement with the third party, and allows parties to a contract tospecifically exclude the protection prohibited by the Act if they want to limitthe involvement of third parties3. The “ cardinal necessity” of consideration is pinpointed here, as it is one ofthe most significant factors in the formation of a contract.

Thesecond rule states that consideration must be ‘ sufficient’ but does not need tobe adequate. It is commonly stated that the court will “ not inquire into the adequacyof the consideration4”. However, the adequacy of consideration may be relevant in determining theextent in which the other party is obligated. The case of Bainbridge vFirmstone (1838) reveals that consideration does not need to be adequate (generousenough to appear a fair bargain in terms of monetary value) but must besufficient (of enough recognisable value to satisfy the courts). The caseconsisted of the defendant asking the claimant to let him weigh his twovaluable boilers, the claimant agreed, the defendant then left the boiler inpieces and the claimant was unable to reassemble the boiler. The defendantattempted to argue that

there was no consideration and therefore no contract; however, his claim was dismissed by the court.

The claimant received the recovereddamages due to the breach of contract5. The validity of consideration can bequestioned once again as there are some promises that are regarded as a void ornullity. Although, a promise to do an act or to refrain from doing an act isgenerally deemed as adequate consideration, there are certain acts and promises, which are deemed to be of no value in law. The case of Gaisberg v Storr (1950)6assessed both promises made by both parties as void. The wife's promise not totake her husband to court to seek maintenance from her husband was deemed voidand the courts would not countenance the exclusion of their statutoryjurisdiction to award maintenance, therefore, her husband's promise to pay hermoney in consideration of her not going to court was made without considerationand was deemed as void too. Revealing that a void promise is not to be regardedas consideration. The second rule reveals that, whilst the existence ofconsideration in decision making for the courts is significant, factors such asthe sufficiency of consideration must be took into consideration or thepotential for the consideration to be deemed as void is present.

Thethird rule for consideration to take place follows by promises to do what onehas the duty to do. It is the preexisting contractual obligations where a partymerely does something by which they are already legally bound to do, this cannever be sufficient to amount to consideration for an entirely fresh agreement. Essentially, X is only doing what he is already legally bound to do

and Y isgetting nothing more than what he is entitled to under the law, thereforeconsideration is not present7. The case of Glasbrook Bros Ltd v Glamorgan County Council (1925) 8isa significant case in support of the principle that the performance of a dutyimposed by law is not an adequate consideration.

The council sued on a contractthey had made with the owners of a colliery, arguing that a fee was agreed withthe owners in order to receive the police garrison supplied to the colliery inorder to protect the workers of the coal mine. The coal miners refused to go towork, unless the police supervised them. The owners of the colliery argued thatthey should not have to pay the council, as there was no consideration for thepromise, as the police were under the oath of protecting the public and theproperty.

In this particular case, the court deemed the verdict in favor of thecouncil. However, this was only because the judge held that that what the managersrequired of the police was more than what is required of their public duty. Ifthe police had done no more than their duty then they would have inevitably beobliged to do so without extra pay. Therefore, through this case it could beconcluded that the courts do not require consideration to be present in allcases. Nonetheless, law is a constantly evolving and ever-changing subject, ifthe events described in Glasbrook Bros Ltd v Glamorgan County Council tookplace today, the verdict could possibly be different. The Police Act (1996) 9states that " Thechief officer of police of a police force may provide, at the request of anyperson, special police services at any premises or in any locality in thepolice area for which the force is

maintained, subject to the payment to thepolice authority of charges on such scales as may be determined by thatauthority.” 10 Furthermore, Lord Denningcontested the rule that the performance of a duty is not sufficientconsideration on numerous cases.

As an example in Ward v Byham (1956), 11a man promised to pay the mother of his child £1 per week on the basis that thechild was “ well looked after and happy”. Lord Denning believed that even thoughthe mother is doing nothing more than her statutory duty to look after thechild, in essence she was still providing consideration to support the man’spromise since she was providing a benefit to the father of her child. Which canbe interpreted as a “ practical benefit” and consequently, consideration12. The colliery case highlights the fact that previously in contract law, variouscases did not require consideration due to certain parties being legallyobliged to do certain acts. Yet, a more modern approach by Lord Denning and theexistence of law reforms reveals that in most cases some sort of considerationis still present and necessary in the formation of a contract. Thefourth role states that past consideration is not generally consideration.

Anoffer demands for something in return if a binding contract is to be formed13. This means that apromise is not enforceable if it is only to pay for services already rendered, or for some other benefit already conferred. As an example, the case of Eastwoodv Kenyon (1840) 14 John Sutcliffe died and left Eastwood as thecarer of her child, Sarah. Eastwood borrowed money to pay for Sarah’s educationand Sarah promised to pay him back when she came of age and paid one year’sinterest to him.

Sarah then married Kenyon who also promised to pay Eastwoodback. Kenyon failed to do so and Eastwood sued. Kenyon stated that he would repaythe money after he and Sarah have their first child15. However, this promise is not enforceable. The only possible consideration, whichcould be found in this case is the sum of money used to pay for the child maintenanceof Sarah. However, because these acts took place in the past before anypromises had been made, resulting to the consideration not being valid. Tofurther dissect past consideration, it could be argued that that a minorexception is present to the rule.

Under the Bills of Exchange Act 1882 itquotes that " Valuableconsideration for a bill may be constituted by,—(a)Anyconsideration sufficient to support a simple contract;(b)Anantecedent debt or liability. Such a debt or liability is deemed valuableconsideration whether the bill is payable on demand or at a future time." 16Althoughbeing regarded as a limited exception, if person X is owed a sum of money andthat sum is returned to person Y in the form of a variety of bill exchange inpayment, it is possible to sue on that payment and the original debt. Promissory estoppel stands as the mainobstacle to the concept of consideration, as it allows some promises to berevoked. The case of Central London Property Trust v High Trees House 1947. HighTrees, leased a block of flat from Central London Property Trust. The property wasstruggling to be fully let because of to the crisis of World War II. Therefore, a conscience decision was made to reduce the rent by half.

However, the partiesmade the mistake of not determining how long the temporary reduced price shouldstay. HTH continued to pay the rent at this

new rate. The war had ended half adecade later and the flats were at full occupancy. The CLPT then sued HTH forthe full rent from 1945 onwards. In order to reach a conclusion, the courtsreviewed previous cases such as Hughes v Metropolitan Railway Co (1877)17.

Denning J took a controversial approach by stating that previous similar casesshowed that a promise, which the promisor knew was going to be acted on by theperson to whom it was made, was enforceable even though a lack of considerationwas present. Here, the plaintiffs had made a binding promise. However, this wasonly applicable during the period of war.

Therefore, only after the war thedefendants were liable for the full sum they claimed. 1 Book 742 Dean (2000) p. 1433 http://www. legislation. gov. uk/ukpga/1999/31/section/14 Photo Productions vSecuricor 1980; 1 ALL ER 556 in Chapter 155 Book 806 1 KB 107, CA. 7 Book 83 8 AC 2709 Section 25(1)10 http://www. legislation. gov. uk/ukpga/1996/16/section/2511 Ward v Byham 1956 1WLR 49612 Book 8413 Paul S Davies 78 14 Eastwood v Kenyon (1840), 11 Ad 43815 http://casebrief. wikia. com/wiki/Eastwood_v_Kenyon16 Bills of Exchange Act1882, Section 27 (1)17 Hughes v Metropolitan Railway Co (1877) 2 App Cas 439,