

Business law. tutorial 2 1: ali and abu

[Law](#), [Contract Law](#)



TUTORIAL 2 1. Ali and Abu were neighbours. Ali had to go to Singapore for a business seminar. Before he left, he told Abu “ Please look after my house”. After two weeks of being away, Ali’s house caught fire and Abu could only save a briefcase containing RM30, 000. When Ali returned home, he thanked Abu for saving his briefcase and promised he would pay Abu RM2, 000 for what he had done. Later, Ali refused to pay what he had promised. Advise Abu.

Referring to section 2(d) of Contracts Act 1950, the use of the words “ has done or abstained from doing” imply that even if the act was prior to the promise, such an act would constitute consideration so long as it is done at the desire of the promise. Therefore, referring to the situation of Ali, he is bound to fulfil his promise to Abu as in Malaysia, past consideration is good consideration. This principle was established in the case of *Kepong Prospecting Ltd v. Schmidt*. In 1953 Tan applied to the Government of the State of Johore for a prospecting permit for iron ore.

He was assisted in the negotiations by Schmidt, a consulting engineer. A prospecting permit was granted to Tan in November 1953, and in December 1953 Tan wrote to Schmidt stating that Schmidt was to be paid 1 percent of the selling price of all ore that might be sold from any portion of the said land and this was in payment for the work Schmidt had done assisting to obtain the prospecting permit and for any work that Schmidt might do in assisting to have mining operations started up.

Tan then executed a power of attorney in favour of Schmidt which conferred upon Schmidt widely expressed powers to contract for the disposal of any of Tan’s mining properties on such consideration and subject to such conditions

as Schmidt thought proper. In September 1955, an agreement was made between the company and Schmidt.

Under Clause 1 of the agreement the company inter alia agreed to pay Schmidt 1 percent of all ore that might be won from any land comprised in the 1954 agreement in 'consideration of the services by the consulting engineer for and on behalf of the company prior to its formation, after incorporation and for future services'. Dispute arose between those originally interested in the company and the persons who were subsequently interested. Schmidt commenced the present proceedings in July 1959 claiming inter alia an account of all monies payable to him under the 1955 agreement.

The court held this case with Clause 1 of the 1955 agreement established that a legally sufficient consideration had moved from Schmidt. Services prior to the company's formation could not amount to consideration as they could not be rendered to a non-existent company, nor could the company bind itself to pay for the services claimed to have been rendered before its incorporation. But the inclusion of that ineffective element did not prevent the other two elements. 2. Abby promise to Ben RM2, 000 when Ken paints Abby's house.

As soon as Ken completed painting Abby's house, Ben claims the amount from Abby. Abby refuse to pay Ben as she argued that Ben did not paint her house as she had instructed. Decide. In this case, under the Contracts Act 1950 a party to an agreement can enforce the promise even if he himself has given no consideration as long as somebody has done so [Section 2(d) of Contracts Act 1950]. Hence, section2(d) of Contracts Act 1950 provides <https://assignbuster.com/business-law-tutorial-2-1-ali-and-abu/>

that Abby is liable to pay to Ben because there was good consideration for the promise even though it did not move from Ben.

This can be illustrated in the case of VenkataChinnaya v VerikataraMa'ya. A sister agreed to pay an annuity of Rs653 to her brothers who provided no consideration for the promise but on the same day their mother had given the sister some land, stipulating that she must pay the annuity to her brothers. The sister subsequently failed to pay the annuity and was sued by her brothers. The court held that the sister was liable to pay the annuity. There was good consideration for the promise even though it did not move from her brothers. 3. What is the general rule of consideration?

In the section 26 of the Contract Act 1950 provides that, as a general rule, an agreement without consideration is void. In Guthrie Waugh Bhd v MalaippanMuthucumaru[1972] 1 MLJ 35 the High Court held that there was no cause of action in the statement of claim as the claim was based on a deed of arrangement for which there was no consideration. The Court held that the deed was executed by the defendant neither for any past consideration, nor in respect of any forbearance to sue him for the supplies made to the estates, nor in consideration of any promise to supply him goods on credit in future.

The deed was made without consideration and all that the defendant could be said to have undertaken was a moral obligation. 4. Is there any exception available to the general rule of consideration? According to section 26 of the Contracts Act 1950, an agreement made without consideration is void, unless- (a) It is in writing and registered It is expressed in writing and registered under the law (if any) for the time being in force for the

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registration of such documents, and is made on account of natural love and affection between parties standing in a near relation to each other; (b) Is a promise to compensate for something done

It is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do; or (c) Is a promise to pay a debt barred by limitation law It is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits. .

What is meant by adequacy of consideration? Although the consideration must be adequate in order to make a contract enforceable, adequacy does not mean that the contract price exactly matches, or exceeds, the fair market value of the property. Adequacy of the consideration is measured as of the parties' entry into the contract, not at the time for performance or at the time of trial. To measure the adequacy of the consideration at any other time would deprive the buyer of the benefit of his bargain.

In the case of Phang Swee Kim v Beh I Hock (1964) MLJ 383 stated that in 1994 in consideration of RM20, 000 in Japanese currency, the respondent executed a memorandum of transfer of his half-share of the land in question to the appellant's husband, now deceased. The transfer was not registered but the deceased obtained possession of the land and in 1946, he died intestate. The appellant, the widow of the deceased, extracted grant of letters of administration in 1951 and continued to be in possession of the land.

Sometime in 1963, the land was subdivided into two lots and the respondent became the sole proprietor of the lot occupied by the appellant. Subsequently on 21 January 1963, the respondent's solicitor notified the appellant that she had trespassed on the said land and asked for vacant possession and also for an account of all income received by her from the land. In May 1963, the respondent instituted an action against her claiming the relief stated. The appellant counter-claimed for a declaration that she was entitled to the said land.

At the hearing in the court below, the appellant contended that the basis of her claim was an oral agreement made between her and the respondent in 1958. The learned trial judge accepted her evidence, but held that the agreement was void due to inadequacy of consideration. The appellant appealed and the respondent cross-appealed. The Court held that there was adequate consideration in this case (there being no evidence of fraud or duress) because the respondent agreed to transfer the land to the appellant on payment of \$500 when the land was subdivided. The appellant was therefore entitled to the declaration sought by her.