

# Contract law: fulfilling the reasonable expectations of honest men



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“ I have no radical proposals for the wholesale review of the doctrine of consideration. I am not persuaded that it is necessary. And great legal challenges should only be embarked upon when they are truly necessary.

... On balance it seems to me that in modern practice the restrictive influence of consideration has markedly receded in importance. Secondly, it seems to me that in recent times the courts have shown a readiness to hold that the rigidity of the doctrine of consideration must yield to practical justice and the needs of modern commerce. [Lord Steyn in ‘ Contract Law: Fulfilling the Reasonable Expectations of Honest Men’ (1997) 113 LQR 433, 437]

Critically evaluate this view and consider whether you are persuaded that it is necessary to review the doctrine of consideration.

Consideration stands an idealistic approach to ensuring that a promise is fair, understood and ultimately enforceable. It returns to the basic idea of party A giving party B something as long as he promises, in example, a service.

Logically it makes sense that one would not just take someone’s word for it, especially in a commercial setting, without the idea of a deposit or safeguard that action will come from the words exchanged. The conditional element of consideration that there must be a benefit to the promisor as the consideration moves from the promisee ensures this. 1The doctrine of consideration could be pictured as the bridge between stage one; the intent of the parties, the actual promise or contract set out and the benefit received and stage two; the action and consequences.

It is when the benefit received creates uncertainty or the intent of parties is not clear when that bridge is not complete and consideration becomes a

claim in court. Through case law it is quite transparent that the doctrine of consideration is not always one of easy application to circumstances in court. The 1809 case of *Stilk v. Myrick*<sup>2</sup> explored an element of consideration; performance of a contractual duty owed to the promisor, and made it clear that it was not good consideration. This precedent was set, established and exercised for the next 147 years until it was challenged in *Ward v. Byham* in 1956.

Lord Denning in *Ward v. Byham* went against the general rule and claimed that performance of an existing contractual duty did provide sufficient consideration. <sup>4</sup> The doctrine then remained unchallenged and not considered to have 'receded in importance'<sup>5</sup> until the turning point case of *Williams v. Roffey Bros and Nicholls (Contractors) Ltd*<sup>6</sup>.

This case broke down the precedent of all previous cases as it was held that performance of an existing contractual duty was good consideration, and the pragmatic approach <sup>7</sup>by the courts introduced the concept of the promisor gaining a "practical benefit". Although this case concerned the re-arrangement of the contract originally decided it still stood significant in its ability to go against the general doctrine. The aforementioned quote from Lord Denning did highlight the importance of 'public interest' and the facts of this case indicate it was in the interest of public that the claimant was successful due to components of the case such as him under pricing the job in question. In a lay persons mind this ignites thoughts of unfairness and questions the intent of the defendants as to whether they were aware of this under pricing. *Williams v. Roffey*<sup>9</sup> provided breeding ground for arguments that consideration was no longer required in the law of contract and other <https://assignbuster.com/contract-law-fulfilling-the-reasonable-expectations-of-honest-men/>

existing doctrines such as intention to create legal relations<sup>10</sup>, economic duress and promissory estoppel were capable of deciding the enforceability of a promise or representation.

In his article of 1991 Phang takes the view that the decision of *Williams v. Roffey*<sup>11</sup> shows 'that the requirement of consideration either be modified or abolished'<sup>12</sup>. Phang highlights the view of Halson<sup>13</sup> that 'the principles of economic duress offer a more sophisticated means of distinguishing extorted and non-extorted modifications'<sup>14</sup> but unlike Halson states that the doctrine of economic duress is in its 'infancy'<sup>15</sup>. The author goes on to explore attempts of 'moral' and 'technical' consideration<sup>16</sup> before exclaiming that promissory estoppel is the only doctrine ready to supplement the gaps in consideration<sup>17</sup>. Phang appreciates Halson's acknowledgement of economic duress as a 'logical substitute for consideration'<sup>18</sup> but stresses the doctrine 'is in need of more concrete and workable guidelines'<sup>19</sup>, claiming use of economic duress instead of consideration would be 'substituting one vague doctrine for another'<sup>20</sup>. This implies that Phang agrees with Lord Steyn's statement in relation to the fact that 'great legal challenges should only be embarked upon when they are truly necessary'<sup>21</sup> as he acknowledges the doctrine of economic duress as only adequate enough to supplement consideration but not replace it meaning consideration still upholds some importance, but as Steyn refers to that importance has 'receded'<sup>22</sup>.

Blair and Hird explore the idea that the legal change referred to by Steyn should be addressed by the legislature<sup>23</sup>. The authors explain that despite consideration and its effectiveness being an issue the legislature are in 'no hurry to address this issue'. This agrees with Lord Steyn's statement that the <https://assignbuster.com/contract-law-fulfilling-the-reasonable-expectations-of-honest-men/>

change should only take place when 'truly necessary'<sup>24</sup>. Yet alternatively they argue that the decision in *Williams v. Roffey*<sup>25</sup> did not indicate that the doctrine of consideration should be replaced but that it highlighted it as a 'fundamental part of contract law'<sup>26</sup>. Additionally, Blair and Hird further explain that suggestions of replacing consideration with the intentions to create legal relations doctrine would not satisfy the needs of business relationships as intention is not a great concern in commercial contracts<sup>27</sup>.

This relates to Steyn's view that in order to meet 'the needs of modern commerce' <sup>28</sup> the use of consideration should not be stopped but adapted to lead to practical justice that is fair and satisfying to the victim of the situation. To conclude, despite the flaws of the doctrine of consideration its purpose still remains 'fundamental part of contract law'<sup>29</sup>, ensuring that enforceability is fair, just and more recently practically just. The inconsistency of case law has indicated a need for reform but not to the extent that the doctrine should be replaced.