***ROSCORLA v THOMAS (1842)***

*Roscorla v Thomas* (1842) , *3 QB 234; 114 ER 496*is a landmark case of “sufficiency of consideration”. It is a notable case in English contract law which shows that past conduct is insufficient consideration to support a valid contract.

**FACTS**

1. The plaintiff, Roscorla bought a certain horse from Thomas, the buyer for 30 euros.
2. Prior to the sale being made, Thomas promised the buyer that the horse was less than 5 years old, sound and ‘free from vice’.
3. The plaintiff sued the defendant for breach of warranty and fraud because the said horse was, quoted- ‘very vicious, ferocious, restive and ungovernable’.
4. The defendant argued that the contract excludes the promise as the claimant did not express any consideration for it.

**ISSUE**

Before starting with the issue, the concept of consideration should be explained for clarity.

Consideration: in English law, consideration is known as one of the three main parts of a legal contract. It is considered as the inducement that renders a promise as enforceable in a court of law. It is anything, an item or action, which both the parties to the contract must accept as an exchange for a binding contract. For example, in a contract for the trade of goods, delivery of money is the consideration to the supplier, whereas, the delivery of the goods is the consideration for the buyer.

If only one party offers consideration and the other doesn’t, it does not constitute a legal contract and cannot be enforceable. A person who has provided consideration in a contract can only enforce it.

Now the issue-

Did the defendant provide a good and clear consideration for the promise that the horse was ‘free from vice’?

The Queen’s Bench ruled in the favour of the defendant. The plaintiff had consented to buy the horse already. His consideration was based on the promise made by the defendant after the offer was accepted. Hence, the promise was declared unenforceable.

**ANALYSIS**

While the proceedings were underway, before Judge, *Wightman J. (1841),* a verdict was ruled for the claimant on the mentioned issues.

An objection relating to a nudum pactum (an agreement made sans consideration and hence is unenforceable) was raised.

The following cases were cited in the proceedings: *Osborne v. Rogers [[1]](#footnote-1)(1 Wms, Saund, 264 a) and Payne v. Wilson (7 B. & C. 423)[[2]](#footnote-2)* should be considered to understand this case. In both of these cases, the respective consideration was executory and hence was declared as executory because the consideration was continuing. In another case, *Thornton v. Jenyns (1 Man. & G. 166)[[3]](#footnote-3),* in the consideration, the plaintiff promised the defendant and then the vice-versa, the defendant promised the plaintiff. It was ruled in this particular case that the consideration was carried out without a request which was ruled as insufficient for a valid contract. It was ruled that the two promises must be considered simultaneously.

Lord Denman C. J. was the judge who delivered the judgment of Roscorla v. Thomas on May 30th, 1842-

The aforementioned dispute was based on an action of assumpsit (an implied or express promise or contract not under seal on which an action may be brought) for a breach of warranty by the defendant for the soundness of the horse. The plaintiff, on request of the offeror bought the horse for the certain amount of money (30 Euros). The seller promised the buyer that the respective horse was healthy, sound and ‘free from vice’. It was rightfully objected that the previously executed consideration was not sufficient to support the subsequent promise.

The judge assumed that, subject to specific exceptions in other cases, the promise must be ‘coextensive with the consideration’[[4]](#footnote-4). In this case, however, the consideration only supports the promise relating to the delivery of the horse to the claimant which was executed. The subsequent claim of warranty will therefore raise no implied promise on the part of the defendant.

1. Osborne v. Rogers ,1 Wms, Saund, 264 a [↑](#footnote-ref-1)
2. Payne v. Wilson ,7 B. & C. 423 [↑](#footnote-ref-2)
3. Thornton v. Jenyns, 1 Man. & G. 166 [↑](#footnote-ref-3)
4. Roscorla v. Thomas, [1842] EWHC QB J74, https://bruneis.bailii.org/cgi-bin/ [↑](#footnote-ref-4)