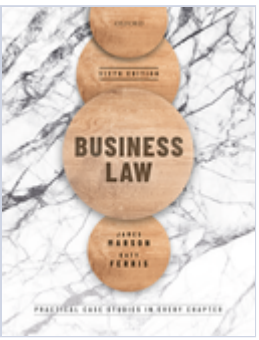

Business Law (6th edn)
James Marson and Katy Ferris

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6. Establishing the Contract: Consideration, Intention to Create Legal Relations, and Certainty Of Terms

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Abstract

This chapter is a continuation of the previous one, and further discusses the essential features of a legally binding, or valid, contract. It puts particular importance on the meaning of 'consideration', which is what makes a promise or agreement a 'bargain' and, therefore, enforceable. The courts are not bound to, and will not, consider a 'bare promise'. Parties to a contract must intend it to be legally binding, and not just be social or domestic agreement, and such contracts must contain certain terms that identify the rights and obligations of both parties. Without an understanding of these crucial elements, agreements may be concluded but they will not create an enforceable contract. Also, although a contract is enforceable by those parties to it, this right can be extended to third parties if the contract has been made for the benefit of these parties.

Keywords: valid contract, consideration, bargain, bare promise, legally binding, domestic agreements, enforceable contract

This chapter continues the discussion of the essential features of a valid contract. Of particular importance is the requirement that the contract be a 'bargain' as, without 'consideration' being present, the courts will not enforce what they deem to be a 'bare promise'. Contracts must also intend to be legally binding, and not just social or domestic agreements, and they must contain certain terms. Without an understanding of these crucial elements, agreements may be concluded but they will not create an enforceable contract.

Business Scenario 6

Clive and Jane are friends. Clive is a plumber who was asked to replace a boiler in Jane's house and install a new central heating system. This job was to start on 1 April and be completed by 10 April. The total cost was £5,000 with payment due in full on completion.

Having completed the job, Clive asked Jane for the payment, but Jane said that she was short of money and would pay him the following week. Jane did this because she had heard that Clive was in financial difficulties and his business may fail. When Clive returned for his payment, Jane informed him that she did not want to give him the full amount, but would pay him £3,000 in cash if he would take that as full payment and sign a contract to that effect. If he did not accept the £3,000 offer, Clive would have to take Jane to court and by this time his business would certainly have become insolvent.

In desperation, Clive agreed to accept the £3,000 and signed the contract that this was in full consideration of the work completed. Further, he agreed to refrain from seeking any further payment.

Learning Outcomes

- Identify and explain consideration in contracts (**6.2**)
- Explain the interaction between consideration and promissory estoppel (**6.2.3**)
- Explain privity of contract and how this affects who may enforce a contract or be sued on it (**6.3**)
- Ascertain how the courts establish when parties intend to create an enforceable contract (**6.4**)
- Explain the necessity of a legally enforceable contract containing definite and certain terms (**6.5**).

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6.1 Introduction

This chapter continues identifying the essential features of a valid contract. Once an agreement has been established, consideration (what makes the agreement a 'bargain' and enforceable) must be present, the parties must intend that the agreement is to be legally binding, and its terms must be sufficiently certain to identify the rights and obligations of the parties. Further, a contract is enforceable by those parties to it (known as privity of contract), although this doctrine has been extended to provide rights for third parties where the contract has been made for their benefit. Having established that each of the features from **Chapter 5** and this one are present, the agreement 'evolves' into a binding contract.

6.2 Consideration

Consideration in contract law has frequently caused confusion for students, but this should not be so. Students are at an advantage when reading about, and applying legal principles of contract law because of their experience in regularly establishing contracts. Consideration is a necessary component of 'simple' contracts, and these are the contracts that are most common in consumer transactions. Certain contracts are required to be made by deed, and in these circumstances the absence of consideration does not make the contract unenforceable.

Consideration in contract law is merely *something of value* that is provided and which acts as the inducement to enter into the agreement. The definition that is most frequently used is from the seminal case on the issue, *Currie v Misa*, where Lush J stated:

> **A valuable consideration, in the sense of the law, may consist either in 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.**

Despite that unwieldy definition, it is sufficient at this stage to recognize consideration as the bargain element of a contract—the price paid for a promise. Courts will enforce a 'bad' bargain (such as agreeing to sell something for a much lower price than its worth) but it cannot enforce a 'bare' (or gratuitous) promise. Consideration must be given in return of the promise made, and it must move from the promisee (therefore, the party who wishes to enforce the contract must provide (or have provided) the other party with consideration). The promisee may exchange promises with the promisor, or they may provide some act of forbearance, to establish good consideration.

An example of consideration may be seen in an agreement to mow someone's lawn. The promisor (A) agrees to mow the lawn of the promisee (B). The detriment to A is that they give up their time and effort to perform the task and the benefit is that they obtain pay or some goods/service in return for the act. The benefit for B is that they have their lawn cut (and therefore is given this service) and the detriment is either paying money, or providing goods or a service in return for the act of A. Therefore, consideration can be payment, or providing a service, or it can even amount to a future promise (so in the above example, if B agreed to wash A's car in return for the lawn being cut, that would be good consideration).

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6.2.1 Executed and Executory Consideration

The two types of consideration are Executed and Executory.

- *Executed:* Executed consideration is often seen in unilateral contracts and involves one party making a promise in return for an act by the other party. The offeror has no obligation to take action on the contract until the other party has fulfilled their part. For example, A offers B £100 to build a wall, payment to be made on completion. B completes the building work and is entitled to the payment from A. If B did not want the work, or did not complete it, A would not have (taken action) and paid the £100.

- *Executory:* Executory consideration is performed after an offer is made and is an act to be executed in the future (hence *executory*)—it is an exchange of promises to perform an act. This form of consideration is frequently seen in bilateral contracts and may lead to a valid contract being established. An example may be where an order for an item is made with the promise that payment will be made in the future (e.g. when the item is delivered), and the other party promises to deliver the products ordered and receive the payment. The fact that consideration has not yet occurred but will take place in the future does not prevent it being 'good' consideration and in the event of, for example, non-delivery, this may lead to a breach of contract (assuming the remainder of the essential features are present).
- *Consideration must be sufficient (not adequate):* Consideration must have some legal, material value but it does not need to be adequate in relation to a 'fair' price for the contract.

White v Bluett (1853)

Facts:

Here a son complained to his father about not having as much money as his siblings. The father promised the son that he would lend him money if he would stop complaining. When the father died, his estate attempted to recover the debt from his son.

Authority for:

There must be valid consideration to establish a binding contract. The debt was repayable as the son was not giving anything in return for the father's loan.

In *Bolton v Madden* Blackburn J stated that 'the adequacy of the consideration is for the parties to consider at the time of making the agreement, not for the Court'. The courts are not in a position to assess what the value of a particular item or service is worth. Further, value may change rapidly or be whatever the parties consider it is worth, and also freedom of contract enters the equation. However, the consideration must have some value that can be assessed in financial terms. As the parties are free to negotiate terms, the courts do not
p. 118 believe it is their place to question the value of the bargain. ↵

Thomas v Thomas (1842)

Facts:

Executors of a deceased person's estate agreed for a house and its surrounding premises to be provided for life for the tenant. A sum of £1 per annum was to be paid towards the cost of the ground rent, and the house was to be kept in good repair.

Authority for:

In determining the existence of consideration, it must have some legal value and is not concerned with the motives of the parties. The £1 payment was a 'bargain' which created the binding contract and hence an enforceable contract, even though the value of the consideration was in reality not adequate for the benefit provided.

The courts have established that even if an item is of little value in itself, it may represent a benefit to one of the parties and therefore be good consideration, such as the submission of a chocolate bar wrapper in a sales promotion.

Consideration is also linked with the doctrine of freedom of contract, although there remains some uncertainty in the courts as to how the doctrines operate together. In *Rock Advertising Ltd v MWB Business Exchange Centres Ltd*, Rock had run into difficulties paying its monthly licence fees on office space owned by MWB. An oral agreement was reached between MWB's credit controller and a director of Rock for a rescheduling of the payments (at a lower rate for a period of months). The licence agreement included a clause that '… all variations to this licence must be agreed, set out in writing and signed on behalf of both parties before they take effect'. Despite the clause, the Court of Appeal held that the oral agreement was enforceable. Under the principle of freedom of contract the parties may agree whatever terms they choose (including the variation of such terms). The agreement was also supported by fresh consideration which made it binding—the defendant would not have empty premises or have to seek legal action to recover the rent. However the Supreme Court reversed the Court of Appeal's judgment. Such 'no oral modification' clauses prevent parties from being exploited and, on the Court of Appeal's point regarding the concept of freedom of contract, it also allowed the parties to agree to bind their future conduct. The Supreme Court has thus returned the certainty of such clauses but did question whether the law on consideration needed re-examination.

6.2.2 Good Consideration

What will establish 'good' consideration can be seen through the development of the case law, and this is underpinned by the rules outlined later. **Figure 6.1** provides an overview of what, from case law, constitutes good consideration.

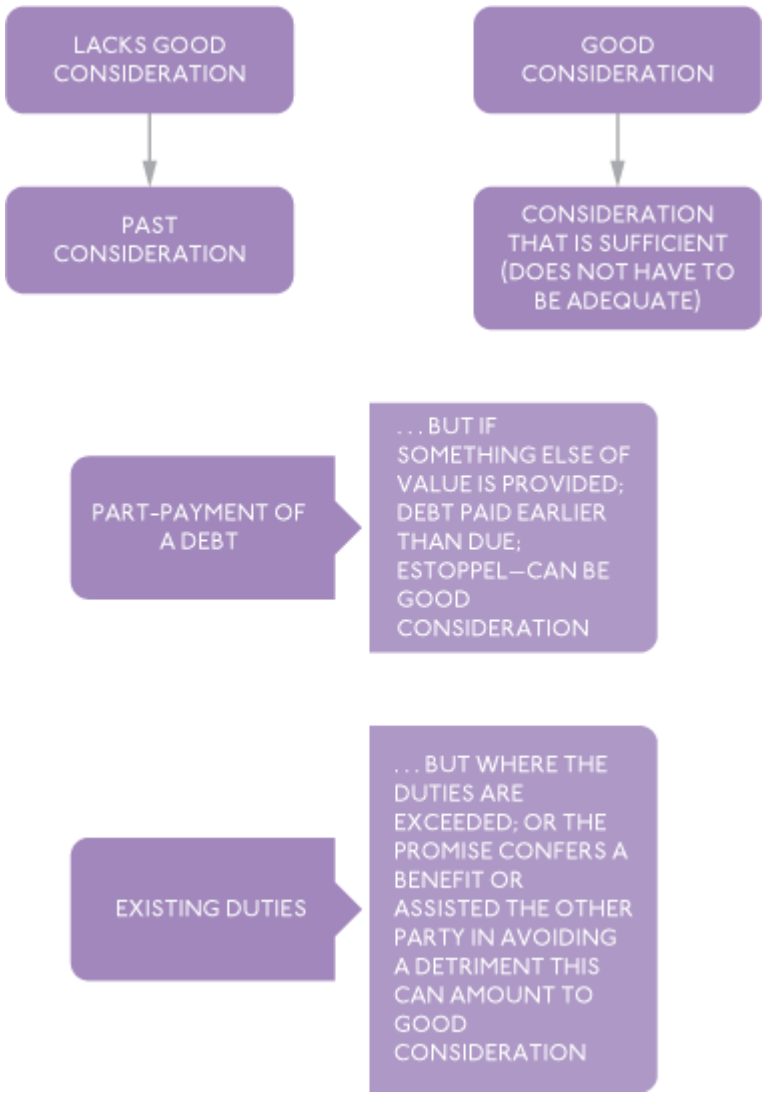

Figure 6.1 Good consideration

Chappell & Co. Ltd v Nestlé Co. Ltd (1959)

Facts:

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Nestlé were manufacturers of milk chocolate products. Nestlé entered into a contract with Chappell where Nestle were permitted to sell copies of the song 'Rockin' Shoes' ↵ (Chappell owned the copyright). Purchasers duly paid 1s. 6d for each record and submitted three of Nestlé's chocolate wrappers with the application. The contract provided that Chappell was to be paid a proportion of the 1s. 6d for each copy of the song Nestlé sold, but it was silent as to the 'value' that each of the wrappers reflected. As Nestlé received a profit and benefited from each sale of its chocolate bars, Chappell considered that these should also form part of its remuneration. The House of Lords held that each of the wrappers amounted to good consideration, as the whole object of selling the record was to increase the sales of chocolate. This was so even if Nestlé was to discard the wrappers: they represented sales of its product.

Authority for:

Consideration must be sufficient, not adequate. As evidenced in this case, whilst the chocolate wrappers had no real value in themselves, they did represent three sales of packets of Nestlé's chocolate and hence provided a benefit to Nestlé.

p. 120 ↵ The consequences of this case can be seen (e.g.) where vouchers are offered in magazines providing a discount on goods and services. The voucher/token will identify a stipulated value of (e.g.) 0.001p because such vouchers do have a legal value and will constitute consideration.

- *Consideration must not be past:* If a party performs an act and following the completion of the act the other party makes a promise, then the act will not have been sufficient to provide consideration. For example, if A gives B a lift to work in A's car and at the end of the journey B expresses his thanks and states that he will give A £10 for her trouble, there is no enforceable contract to enforce the £10 payment if none is received. This is because the lift was given voluntarily and not for gain. B did not agree to provide £10 for the lift and as the offer was made after the act, it did not amount to good consideration:

Re McArdle, Decd. (1951)

Facts:

Mr McArdle died in 1935 and left a bungalow that he owned to his wife. McArdle had four children and one of the four (Montague) and his wife, lived in the property.

Montague's wife had been improving the property and had repaired it at a cost of £488. Later, Montague submitted a document to his brothers and sister in which they agreed to pay his wife the £488 for the improvements. However, there was a disagreement about whether the payment should be made and when Montague's wife attempted to enforce the agreement the Court of Appeal held that no contract had been established. The agreement to pay the sum was made after the work had been undertaken and there was no clear intention or expectation that payment would have been made.

Authority for:

Past consideration is not good consideration unless *Lampleigh v Brathwait* (see later) applies.

The decision rested on the fact that since all the repair work had been completed before the document had been agreed, the consideration was wholly past and the agreement to 'repay' the £488 was a nudum pactum. If the children had agreed before Marjorie McArdle's actions to pay £488 for the work being carried out, that would have amounted to a contract supported by consideration, and consequently would have been

enforceable. Consideration has to be a bargain and the children in this case had already benefited from the work being carried out, so there was no bargain for the agreement. Beyond this general rule regarding past consideration, exceptions do exist:

Lampleigh v Brathwait (1615)

Facts:

p. 121 Brathwait had killed another man and requested that Lampleigh seek from the King a pardon for his actions. This necessitated many days of following the King in attempting ↵ to raise and discuss this matter. Lampleigh was successful in obtaining the pardon and as a result, Brathwait made a promise to pay £100 for the service, but this payment was never made. It was held that Lampleigh was able to recover the £100 because the court felt that both parties must have contemplated that payment for the service would be made.

Authority for:

In comparison with *Re McArdle*, the following are necessary for an enforceable contract to exist when supported by past consideration:

1. the act that is the subject of the contract must have been requested by the promisor;
2. there must have been in the contemplation of both parties that payment would have been made;
3. all the other elements of a valid contract must have existed.

In a modern setting, if no price had been established for the act performed (such as the supply of a service), then the court would look to s. 51 of the Consumer Rights Act 2015 and determine a ‘reasonable’ price. Also, in most employment situations, where, for example, an employee has performed work or hours beyond what their contract stipulates, this may imply additional payment is expected and reasonable:

Re Stewart v Casey (Casey’s Patents) (1892)

Facts:

Mr Casey was employed to promote the defendant’s patents. When the majority of the work was completed the defendant promised to pay him for his service through a one third share of the patents. They later attempted to remove his name from the register of patents.

Authority for:

Despite the promise of payment (consideration) being made after the work had been completed, this was not a case of past consideration. The parties entered into the agreement on the understanding that remuneration would be provided.

- *Existing duties are not good consideration:* The courts have identified that consideration must be 'real and material' and as such, if the promisor is merely receiving what they are already entitled to, then there is no consideration furnished. For example, if you do some act, which you already have an existing duty to perform, then this will not provide a benefit for the promisor and hence a contract based on this will be unenforceable due to lack of consideration:

p. 122

Collins v Godefroy (1831)

Facts:

The claimant was under a subpoena (an official order) to appear as a witness in a trial involving Godefroy, and whose evidence was to the benefit of Godefroy. To appease Collins, Godefroy offered to pay him a sum in respect of his trouble. Godefroy did not pay and this led to Collins' action to recover the money promised. In the judgment, the court acknowledged that Godefroy did make the promise, and received a benefit from Collins' attendance at court. However, Collins was already under a duty to give evidence (due to the subpoena) and this did not constitute real or 'good' consideration. Collins had done no more than what he already had a duty to do.

Authority for:

Performing an existing duty (and doing no more) will not constitute good consideration.

This rule seeks to ensure that improper pressure cannot be applied to renegotiate a contract on better terms for the promisee:

Stilk v Myrick (1809)

Facts:

The captain of a vessel on a voyage from London to the Baltic promised the existing crew an equal share of the wages of two seamen who had deserted (and who could not be replaced). On the vessel's return, the wages were not paid.

Authority for:

In the action to recover the wages, the court held that there was no consideration provided in support of the promise. The seamen were under an existing duty to 'exert themselves to the utmost to bring the ship in safely to her destined port.'

Exceeding an existing duty can establish good consideration for a promise:

Hartley v Ponsonby (1857)

Facts:

During a voyage half of the ship's crew deserted. The remaining sailors were promised additional money if they completed their voyage, but on their return the captain refused to pay the additional sum.

Authority for:

The court held the sailors were entitled to the extra pay as they exceeded their existing duties due to the significant risk of continuing the voyage with insufficient crew. They were therefore entitled to negotiate a new contract.

p. 123 ↵ A more recent example of this rule can be seen in the following case:

Harris v Sheffield United Football Club Ltd (1987)

Facts:

The football club questioned whether they were required to pay South Yorkshire Police (represented by Harris) for the policing of the football matches held at its stadium. The argument presented was that the police force had a duty to protect the public and thus there was no consideration for requesting payment from the club.

Authority for:

The Court of Appeal held that supervision of the football matches went beyond protecting the public and maintaining law and order, and amounted to a 'special police service' that was good consideration.

Further, performance of an existing duty may be held as good consideration from the following case:

Williams v Roffey Bros & Nicholls (Contractors) Ltd (1991)

Facts:

Roffey Bros was a firm of building contractors that had entered into a contract with Shepherds Bush Housing Association Ltd in September 1985 to refurbish a block of flats. Roffey subcontracted various carpentry jobs to Mr Williams for a total price of £20,000. However, by the end of March 1986 it was common knowledge that Williams was in financial difficulty based on the fact that the price of £20,000 was too low to enable Williams to operate at a profit (at court, evidence was supplied by a surveyor, who stated a reasonable price should have been £23,783). Williams informed Roffey that he would be unable to complete the work. Roffey was concerned at this development because, in part at least, Roffey was subject to a delay clause in the contract that would have led to it being liable for substantial fees if the contract was not completed on time. Therefore Roffey agreed to pay Williams a further sum of £10,300 in excess of the original £20,000 for the work to be completed at the agreed date. When the additional payment was claimed, Roffey refused to pay on the basis that Williams had only performed an existing duty.

Authority for:

Where the promisee has actually conferred on the promisor a benefit or has assisted them in avoiding a detriment, and no unfair pressure or duress was used in the renegotiation, an existing duty may be good consideration.

The Court of Appeal held that the promise to pay the additional sum was binding. Despite Roffey's argument to the contrary, consideration was provided as Roffey did receive a benefit, or at the very least would avoid a detriment, through the completion of the work and the avoidance of the penalty fee and/or the difficulty in
p. 124 hiring a new subcontractor. ↵ The requirement of the benefit or avoiding a detriment factor of the decision in *Williams v Roffey* was confirmed in *Re Selectmove*:

Re Selectmove (1995)

Facts:

Selectmove had been subject to a winding-up petition by the Inland Revenue (IR) for arrears of tax under Pay As You Earn. Selectmove appealed on the ground that in October 1991 it held a meeting with the IR where it was agreed that due to Selectmove's cash flow problems, the tax owed would be paid in arrears of approximately £1,000 per month. The tax inspector who made the promise informed Selectmove that if it did not hear from the IR again, the plan outlined for the repayments would be acceptable. However, some time later, the IR did petition for the company to be wound up. The Court of

Appeal held that the tax inspector who made the arrangement with Selectmove did not have the authority to bind the IR, and dismissed Selectmove's claim to have the petition set aside. The agreement was not enforceable as there was no consideration to support it.

Authority for:

Part-payment of a debt will not amount to good consideration, and where the promisee is merely performing an existing duty, this will not establish an enforceable contract.

Selectmove argued that in providing the payments, albeit late and over a longer period of time than required, there was a benefit to the IR. If wound up, the IR would be unlikely to receive the full amount of tax owed from the company, where the arrangement entered into would provide full repayment. However, the Court of Appeal distinguished *Williams v Roffey* as that case involved performing an act, whereas in the current case it was simply the repayment of money, and essentially could be considered the part-payment of a debt that is not, generally, good consideration.

Consider

Can Jane pay £3,000 in full settlement of her bill from Clive and prevent Clive from seeking the balance? No, part-payment of a debt is not good consideration regardless of whether Clive agrees to this or not. Clive would be advised to accept the £3,000 and then bring proceedings to recover to remaining £2,000.

- *Part-payment as consideration:* It is a general rule of contract law that part-payment of a debt will not prevent the party owed money from later claiming the balance. This is even if they have agreed to take the lower sum:

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Pinnel's Case (1602)

Facts:

The claimant was owed the sum of £8 10 s and the defendant, through agreement, paid £5 2 s in full settlement. Could the claimant succeed in claiming the balance owed?

Authority for:

Despite the claimant accepting the lesser amount, the full amount could be recovered. The court held that there was no consideration in a part-payment of a debt unless the payment was made and accepted before the due date and/or the part-payment included some 'non-monetary' chattel.

Generally because there is no advantage for the party taking a lesser sum than that owed:

Foakes v Beer (1881–85)

Facts:

John Foakes owed £2,090 19s to Julia Beer but was in financial difficulties. He entered an agreement with Beer where she would not take any action to recover the sum owed if Foakes would agree to pay an initial sum of £500, and then £150 every six months until the full amount was repaid. Due to the financial difficulties suffered by Foakes, Beer further stipulated in the agreement that she would not claim any interest on the sum due. However, later Beer did sue Foakes for the interest that would have accumulated with the late payment.

Authority for:

The House of Lords held that Beer was entitled to the interest on the payment, even though she had agreed not to claim. The promise by Foakes to pay the money owed did not amount to sufficient consideration, as he was only doing what he was obliged to do, which was to pay the money, and there was no benefit to Beer for the agreement.

Consider

Would your answer differ if Jane offered £3,000 to Clive as well as a new spanner in full settlement? Remember, the courts will not assess the adequacy of non-cash consideration. If it has a legal value, the courts will uphold a bad bargain as readily as a good bargain.

p. 126 ↵ A debt may be extinguished by proving something else of value other than money (a good or a service), whether this is to the value of the sum owed or not (as consideration need not be adequate). However, the general presumption of why a lower sum or part-payment cannot provide good consideration is that money is a constant factor (£1 is £1). Also, exceptions exist to this rule regarding part-payment. If the party has paid a

lower amount, but has done so at an earlier date, then this may amount to consideration; or if there have been goods or another benefit provided along with the lower payment then this may also provide good consideration.

D&C Builders Ltd v Rees (1966)

Facts:

D&C Builders was in financial difficulties, and Rees owed the firm £482. Rees offered D&C a cheque for £300 'in completion of the account' or D&C may not get any payment at all. This was accepted by D&C, which then brought the action for the remaining money (£182).

Authority for:

The Court of Appeal held that D&C was entitled to claim the owed money as there was no consideration for the lesser amount and the financial pressure applied for the acceptance resulted in no true accord (agreement) being established.

The rule remains regarding the ability of the party who has accepted a lesser sum than owed to still claim the balance. The major exception to this rule, alongside the others noted earlier, is the doctrine of promissory estoppel.

6.2.3 The Doctrine of Promissory Estoppel

Whilst the rule of part-payment not being good consideration was established through the common law, the courts also created an equitable defence, which stops a party that has made a (gratuitous) promise from reneging.

Consider

Could Jane bring a counter-claim against Clive insisting that he made a promise not to recover the remaining money and she relied on this promise? No. Promissory estoppel will allow a promise lacking consideration to be legally binding, but it is only available as a defence (a shield) and not a cause of action (a sword).

Combe v Combe (1951)

Facts:

A husband promised to make maintenance payments to his wife following their separation. He never made the payments and the wife brought a claim for recovery of those sums arguing promissory estoppel.

Authority for:

The wife's claim failed. The court considered that promissory estoppel is only available as a 'shield not a sword' and as such can only be used in the defence of a claim against the party, not a cause of action.

For example, if a party makes a promise to accept a lower rent than that contracted for, and the other party relied on this promise, the promisor may be estopped (prevented) from reneging on this promise and claiming the balance owed if the court considers this unreasonable. This is a very interesting area of law, although not greatly developed through case law (and it is beyond the scope of this text to discuss it in any detail). Essentially, it seeks to suspend rights rather than to remove them (although this is a moot point in many instances).

Tool Metal Manufacturing Co v Tungsten Ltd (1955)

Facts:

Tungsten were infringing patents owned by Tool Metal. On discovery, Tool Metal offered to waive the rights to claim damages for this infringement in return for Tungsten paying a 10 per cent royalty and a further 30 per cent as compensation where Tungsten's sales exceeded 50kg in a single month. Tungsten considered these figures excessive, but agreed to them so as to avoid legal action for patent infringement. Tungsten had difficulties in making the payments, particularly during the years of the war, and Tool Metal agreed to waive the 30 per cent payments during this period.

Authority for:

Tool Metal were unable to claim the 30 per cent payments during the years of the war but were able to claim the payments afterwards. Promissory estoppel suspends legal rights, it does not extinguish them.

p. 128 The seminal case on promissory estoppel is *High Trees* and the *obiter dicta* provided by Lord Denning. ↵

Central London Property Trust v High Trees House Ltd (1956)

Facts:

High Trees House leased a block of flats at £2500 per annum from Central London Property Trust in 1937. With the outbreak of war, and the consequent bombings in London, occupancy of the property was reduced. To limit the adverse effects, and to stop the property becoming unoccupied, High Trees entered into a new agreement in January 1940 with Central London Property under which the rent would be reduced by half. This period of reduced rent was not specified, but in the following five years High Trees paid the reduced rent. In 1945, the flats were full and Central London Property claimed for the full rent to be paid. The High Court held that when the flats became fully let, the (prior) full rent could be claimed.

Authority for:

Denning's statement (albeit *obiter dicta*) was that where the promisor makes a promise that is relied on by the promisee, they will be unable to renege on it due to the doctrine of promisory estoppel, even in the absence of consideration moving from the promisee.

Consideration is often linked with the concept of privity of contract, where the contract involves, or is for the benefit of, a third party. This is because the party whom the contract concerns has not provided any consideration and hence has no rights or obligations under the agreement.

6.3 The doctrine of privity of contract

The doctrine of privity of contract arose through the common law as a means of regulating the relationships between parties to a contract. The doctrine establishes that only parties to a contract may sue or be sued on it, and consequently provides rights and imposes obligations on those parties alone. This is important as many situations involve contracts where a right or benefit is to be provided for a third party. Even though the contract is for the benefit of this third party, they are unable to enforce it as they are not privy to the contract. The two elements necessary to enforce a contract are that the claimant must be a party to it, and there must be consideration provided by the promisee. These have become somewhat merged in the cases, although they remain legally separate.

- *'Only a person who is a party to a contract can sue on it' (Per Lord Haldane in Dunlop v Selfridge):* Only a promisee may enforce a contract as others are not privy to it:

Dunlop Tyre Co. v Selfridge (1915)

Facts:

p. 129

Dunlop Tyre Company had contracted with a wholesale distribution company called Dew & Co. The contract provided that Dew would obtain an agreement from the retailers to whom it sold tyres that they would not sell them below the list price established by ↵ Dunlop. Dew obtained the agreements, and in a contract with Selfridge, it transpired that Selfridge sold tyres below this contracted price. Dunlop sought to obtain an injunction against Selfridge from continuing to sell the tyres at the price, and also initiated a damages action for breach of contract. The House of Lords held that there was no agreement between Dunlop and Selfridge. The contracts were between Dunlop and Dew, and Dew and Selfridge, therefore Selfridge was not party to the contractual agreement between Dunlop and Dew, and Dunlop could not enforce the contract. Selfridge was not the agent of Dunlop, and there was no consideration from Dunlop in return for Selfridge's promise to sell at the list price.

Authority for:

The common law rule established in the case was that only parties to a contract had obligations and rights on it.

- *Consideration must move from the promisee:* It is a necessary aspect of contract law that there must exist a bargain element to establish an enforceable contract:

Tweddle v Atkinson (1861)

Facts:

Mr Tweddle was engaged to marry Miss Guy and the fathers of the couple agreed to pay a sum of money when they got married. The contract stated that the husband should have the right to bring an action if either party failed in their obligations to pay the money. Mr Guy, however, died before the couple were married and hence before any money was paid. Following the wedding, Mr Tweddle attempted to enforce the contract from Mr Guy's estate; however, he had not provided any consideration to Mr Guy for the promisee to pay him. Mr Tweddle was merely a beneficiary to the contract and not a party to it.

Authority for:

The promisee must provide a good consideration to the promisor in order for a contract to be made. (Note, this rule is subject to the exceptions discussed at **6.3.1**.)

Having stated the tests that have developed the doctrine of privity, it must be observed that the doctrine could, in certain circumstances, produce unfairness and inconvenience to the parties. As a consequence the common law created many exceptions.

6.3.1 The Exceptions to Privity

Various exceptions to the general rule of privity have developed through the common law and examples of these are identified as:

- *Agency:* An agent is someone who has the authority to conclude binding agreements on behalf of someone else (known as the principal). This means that if an agent makes a contract with a third party, and the third party is aware that the person is acting as an agent with the authority of the principal, the principal can sue and be sued on the contract as if it were they who had agreed the contract:

p. 130

Scruttons Ltd v Midland Silicones Ltd (1962)

Facts:

Scruttons were a company providing dock workers and were hired by a shipping company. The contract between Midland and the shipping company included a limitation clause that damage to goods through negligence would be restricted to $500 per unit. The dock workers damaged a drum containing chemicals and Scruttons attempted to rely on the limitation clause, despite Midland being unaware of the contract between the shipping company and Scruttons.

Authority for:

The House of Lords would not allow the dock workers to benefit from the limitation clause. Third parties may take advantage of a contract as agent where: the third party was intended to benefit from the term in the contract, the contracting party was also contracting as agent for the third party, the contracting party had authority to contract on this basis, and any problem with consideration to the agreement was overcome.

- *Collateral contracts:* A contract established between two parties may indirectly create another contract with a third party:

Shanklin Pier v Detel Products (1951)

Facts:

Shanklin employed a firm of contractors to paint its pier. Shanklin had negotiated with a paint manufacturer (Detel) about the suitability of its paint, and having received such assurances that it would last for seven years, included a term of the agreement with the contractors that they must purchase and use Detel's paint for the purpose of the job. However, when the paint was used it only lasted for three months before beginning to peel, therefore Shanklin brought an action for damages against Detel. Detel claimed that privity of contract stopped Shanklin from suing them.

Authority for:

The court held a collateral contract had been established between the two parties following the contract between Shanklin and the contractors. Further, consideration had been established for the promise through Shanklin's insistence that the contractors use Detel's paint.

- *Trusts:* A person may transfer property to a second person (known as the trustee) who maintains the property for the benefit of others (known as a beneficiary). The person who has created the trust identifies the rules by which the trust is to be administered, and if these terms are not complied with, the beneficiary may seek to enforce it:

p. 131

Les Affreteurs Réunis v Leopold Walford (1919)

Facts:

A broker negotiated a charter-party. The owner of the vessel promised to the charterer that payment of a commission would be made to the broker.

Authority for:

The court held the charterer to be a trustee of the promise to the broker and it was thus enforceable against the owner.

- *Insurance contracts:* A third party may be able to claim under an insurance policy that has been established for their benefit. This is despite the fact that they did not create the contract or pay the premiums, and can be most commonly seen in life insurance policies where the benefit is provided for the insured person's family.

- *Restrictive covenants:* Restrictive covenants are used to protect land and bind purchasers as to the provisions laid down which benefit adjoining owners and interested parties in the area:

Tulk v Moxhay (1848)

Facts:

An owner of several houses in Leicester Square sold the garden in the centre of the premises to the purchaser, who covenanted to maintain the gardens in their present condition and enable individuals' access to, and use of, the gardens. This land was later sold and the purchaser (Moxhay) announced that he intended to build on the land, despite being aware of the covenant. Mr Tulk, who owned houses adjacent to the land, applied to the court for an injunction to restrain the action of building on the land.

Authority for:

The court held that the covenant would be enforced against Moxhay and all subsequent purchasers.

Note that in *Law Debenture Trust Corp. v Ural Caspian Oil Corp*. an injunction awarded by the court will be restricted to negative injunctions.

- *Contracts for interested groups:* A contract may be established by one party but for the interests of themselves and others. Whilst the other parties have no right themselves to initiate a breach of contract claim, as there is no contract between themselves and the supplier of the good or service, the contracting party may seek that the court takes the losses of the other parties into account when determining damages:

p. 132

Jackson v Horizon Holidays Ltd (1975)

Facts:

The Court of Appeal considered a claim for damages from Mr Jackson for the disappointment he suffered at the lack of available facilities (as promised) in a holiday. The brochure for the holiday stated that there was a mini golf course, an excellent restaurant, swimming pool, health salons, and so on, none of which materialized. Horizon Holidays accepted liability as to the sub-standard holiday, but Mr Jackson also wished to claim damages for his family's disappointment, and Horizon Holidays asserted that he was unable to do so.

Authority for:

The court awarded Mr Jackson £1,100 in damages for the breach of contract and disappointment for himself and his family, as Mr Jackson had entered the contract partly on their basis.

Subsequent to the case, the House of Lords criticized the decision in *Jackson* in the following case;

Woodar Investment Developments Ltd v Wimpey Construction UK Ltd (1980)

Facts:

Wimpey contracted for the construction of a development and, as part of the agreement, were to pay a third party £150,000 on completion. Wimpey ended the contract before paying the £150,000. Woodar brought the claim for the payment on behalf of the third party.

Authority for:

Woodar's action failed. In reversing the decision in *Jackson v Horizon Holidays*, the Lords affirmed the general rule of privity of contract which prevented the recovery for or on behalf of a third party.

It is therefore questionable whether a similar case would be decided in the same manner as *Jackson*. If the case did involve a package holiday, and there existed a loss of enjoyment, then the Package Travel, Package Holidays and Package Tours Regulations 1992 enables the person who entered into the contract to claim on behalf of the others in the party.

6.3.2 Reform of the Law

The privity rule had been criticized as being unfair as it prevented those parties who had a genuine interest in a contract from being able to take any action on it. This concern led to legislative action in the form of the
p. 133 Contracts (Rights of Third Parties) Act 1999. ↵ The legislation was not enacted to replace the common law that had been developed, but rather to add rights for the third party. It enabled a third party to enforce the terms of a contract if the contract expressly provided for it, or if the contract conferred on them some benefit (unless the contract did not intend that the relevant term should be actionable by the third party—s. 1). This involves the third party being named in the contract to enable them to claim under the Act.

Themis Avraamides v Colwill and Martin (2006)

Facts:

Themis Avraamides (TA) entered a contract with a company to renovate bathrooms. The company was later sold to Colwin and Martin (C and M) and a term of the contract of sale was that C and M would complete existing orders. The renovation of the bathrooms was not to the satisfaction of TA and, in the absence of a contract between TA and C and M, TA attempted to enforce their rights under the Contracts (Rights of Third Parties) Act 1999.

Authority for:

The Court of Appeal assessed the use of s. 1(3) of the Act and that as the contract between the company and C and M did not expressly identify third parties (including TA), the claim had to fail.

This Act further enables the third party to enforce the contract and seek damages as they would have been able to if they had been a full party to it (s. 1(5)). However, the third party will be unable to claim these damages if the injured party has already claimed (s. 5). The second section of the Act continues protecting third parties by preventing the parties from varying or cancelling the contract without the third party's permission unless this has been expressly stated in the contract. There are limitations to the Act such as preventing a contract being enforced by a third party against employees in contracts, or in contracts concerning the carriage of goods (s. 6).

6.4 Intention to create legal relations

For the parties to be able to sue and be sued on a contract, they must intend it to create legal relations. 'Legal relations' means that the parties view the agreement as a legally enforceable contract and a breach of the contract could result in a remedy being sought. The courts have traditionally looked to the parties' intentions, which may be viewed in light of what a 'reasonable person' would have considered the intentions to be.

Consider

Is the agreement between Jane and Clive legally binding? Probably yes. They may be friends, but the nature of the work and the value of the job would likely mean that they intended this to be a legally binding agreement. There would have been a legitimate expectation that Clive expected payment.

p. 134 ↵ In determining their intentions, the courts will look to the parties' use of words and the context in which they use them.

Parker v Clark (1960)

Facts:

Mrs Clarke wrote to her niece (Mrs Parker) inviting her to sell her property and for Parker and her family to live with Clarke. In the letter, Clarke also promised to leave this property to Parker on Clarke's death. Parker wrote back to Clarke accepting the offer. Later, and following an argument, the Parkers were asked to leave the property and they brought an action for breach.

Authority for:

It was held that whilst this was a social relationship, there was an intention for it to be legally binding. The sale of Parker's property and the changing of Clarke's will demonstrated its legally binding nature.

The presumptions of contract and the intention to create legal relations have fallen into one of two camps (as outlined in **Figure 6.2**). Those involving social and domestic arrangements are generally presumed as not intended to be legally binding, unless this is specifically established in the agreement. On the other hand, in business and commercial arrangement, the presumption is that the parties do intend to create legal relations,
p. 135 and if one of the parties wishes to rebut this presumption, they must produce evidence in ↵ support of this contention. Situations exist that sit somewhere between these two camps, where the parties have a social relationship but also negotiate an agreement that may be viewed as commercial. In such a scenario, the onus is placed on the party wishing to assert the contract to demonstrate tangible grounds that they intended to create legal relations (although this onus is less burdensome than if the relationship had been purely domestic).

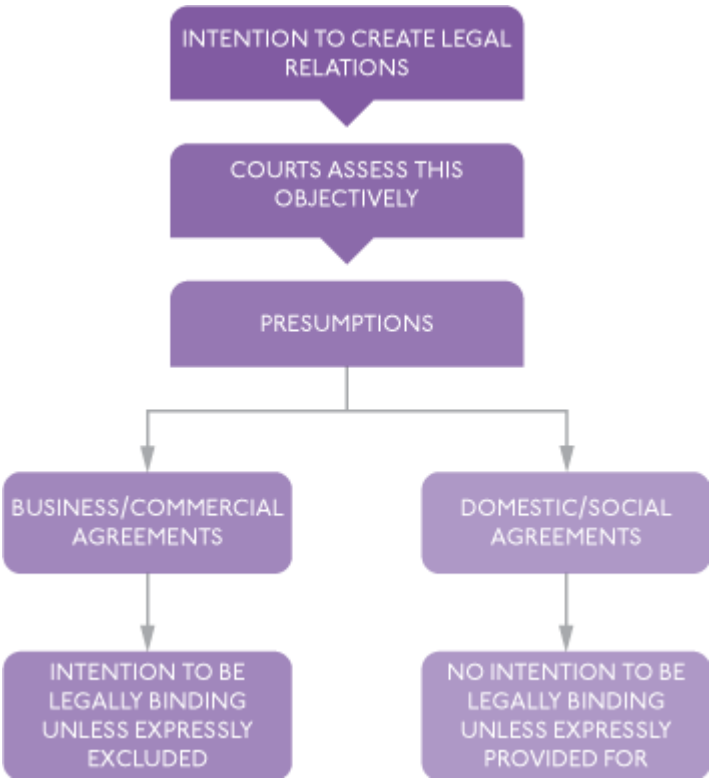

Figure 6.2 Presumption of contract and intention to create legal relations

John Sadler v George Reynolds (2005)

Facts:

Mr Reynolds agreed to have Mr Sadler ghostwrite his autobiography. However, Reynolds contracted another person to undertake the work.

Authority for:

There had been a contract between the parties. Whilst the meeting where the agreement was established was 'somewhere between an obviously commercial transaction and a social exchange' Reynolds knew Sadler was an experienced journalist who made money from ghostwriting. He met Sadler in this capacity.

In the first case dealt with in this section, it can be seen that the courts have viewed that agreements between a husband and wife will not generally be considered to have been intended to be legally binding.

Balfour v Balfour (1919)

Facts:

The parties were husband and wife. The husband was a civil engineer, employed by the Government of Ceylon as Director of Irrigation. Following their marriage, the couple lived in Ceylon together until they came to England when the husband was on leave. When the husband's leave was finished he returned to Ceylon while the wife remained in England and he agreed to contribute £30 per month for her living expenses. It transpires that some time later significant differences arose between the husband and wife. He agreed he would pay the £30 per month for her maintenance as agreed, and some time later the wife commenced divorce proceedings. The wife was seeking to recover the money agreed between herself and her husband that had not been paid. Her claim failed.

Authority for:

Arrangements between husband and wife will not presume to constitute a legally binding contract.

The case demonstrates the need for the parties to agree and confirm that the contract intends to be legally binding for an enforceable contract to be established. *Balfour* identifies that social or domestic arrangements will be deemed *not* to intend to create legal relations unless specifically identified by the parties. Note,
p. 136 however, that such a presumption is not made when the married couple are separated. ↵

Merritt v Merritt (1970)

Facts:

The husband left his wife and went to live with another woman. The marital house was jointly owned by the husband and wife and the husband agreed in writing that he would pay her £40 per month so she could meet the repayments if she would pay the other charges relating to the mortgage. When the mortgage was fully repaid, he would transfer his share of the property to her. Following the repaid mortgage, the wife brought an action for a declaration that the house belonged to her.

Authority for:

The Court of Appeal held the agreement was binding. Spouses who are separated, unlike cohabiting married couples, generally intend their agreements to be legally binding. This was furthered by the evidence of a written agreement between the two.

The interpretation of the parties' intention to create legal relations in social arrangements has also been extended to friends and social acquaintances.

Hadley and Others v Kemp and Another (1999)

Facts:

Tony Hadley and the other claimants were members of the pop group Spandau Ballet, who brought an action against a fourth member of the group (Gary Kemp) and the Reformation Publishing Company Ltd. Hadley et al stated an oral agreement had been established in 1980–81 when the band were on the verge of being famous and successful, where Mr Kemp would share with the other members his 'publishing income' (Gary Kemp was credited as being the composer of the band's lyrics and music). However, following 1988 (when the relationship of the band members soured), no further payments were made. Hadley argued that this act constituted a breach of contract. The High Court decided that there was no contract (and hence no breach) because, *inter alia*, four of the band members had been at school in North London together (and the fifth member was the brother of one of the four), the band was established to play music together rather than make money, and as such the parties did not intend to create legal relations.

Authority for:

The presumption of parties not intending their agreements to be legally binding is applied to social acquaintances where there has been a prior history between the parties.

The parties in social or domestic arrangements must make clear, through express words or actions to the contract, or provide some positive outward sign to establish that they intend the agreement to be a legally
p. 137 binding contract. ↵

Simpkins v Pays (1955)

Facts:

A grandmother (Pays), her granddaughter, and a lodger (Simpkins) regularly entered competitions in a newspaper. They each shared the costs of entering the competitions and had agreed to share in any prize money. When one of the competition entries won, the prize (£750) was claimed in the name of the grandmother and the lodger claimed one-third of the money. Pays refused to provide this money on the basis that this was a social arrangement and not legally enforceable.

Authority for:

The courts disagreed and held that the nature of sharing the costs of entry and the specific agreement elevated this beyond the typical social arrangement to one where the parties had intended to create legal relations.

Between commercial parties, intention to create legal relations is presumed unless the parties establish an agreement to the contrary.

Rose and Frank Company v JR Crompton (1925)

Facts:

Rose and Frank Company was an organization based in the United States trading in carbonizing tissue paper. Rose and Frank began trading with JR Crompton and later with a third company (Brittains Ltd). The three companies entered into an agreement under which the English companies agreed to confine the sale of all of their carbonizing tissue in the United States and Canada to Rose and Frank; and Rose and Frank confined its purchases of the tissues exclusively to the two English companies. This arrangement included a clause to the effect that the agreement was in honour only and not legally enforceable. When a disagreement occurred between the companies, a breach of contract claim was made. The House of Lords held that the arrangement had not created a binding contract because of the clause inserted that it was 'in honour' only and hence had removed this essential feature of a valid contract.

Authority for:

The presumption that business/commercial contracts intend to be legally binding may be reversed where the parties clearly identify an agreement to be binding in honour only.

The final element required in a valid contract is that the terms of the agreement are sufficiently certain for the courts to determine the boundaries of the agreement and by what terms the parties had accepted to be bound.

p. 138

6.5 Certainty of terms

The terms of the contract must be certain if they are to be considered sufficiently precise to be enforced by a court. The courts will not rewrite a contract which has been incorrectly or negligently drafted. Of course, the courts may ignore a term of a contract which is meaningless:

Nicolene Ltd v Simmonds (1953)

Facts:

A contract was prepared on the basis that it was on one of the parties 'usual conditions of acceptance'. In reality there were no usual conditions of acceptance and the defendants attempted to escape from the contract on the basis that this was a meaningless term and the contract failed because of it.

Authority for:

The Court of Appeal held the term to be meaningless, but in this respect it could simply be ignored and the rest of the contract remained.

Further, the courts may look to particular customs in a trade/industry in an attempt to remove the uncertainty in the parties' intentions:

Shamrock SS Co. v Storey & Co. (1899)

Facts:

A contract was established for a vessel to load coal at Grimsby dock, but at the time a strike was affecting collieries in South Wales. This led to a backlog of other vessels attempting to use the dock, resulting in a delay in the vessel getting into the berth. An exclusion clause was included in the contract concerning actions of striking individuals which, beyond the control of the freighter, might prevent or delay the loading of the ship.

Authority for:

The court rejected the argument that this excused the delay as there was no strike at the place where the defendant's coal was procured. That this indirectly led to an increase in the use of the Grimsby dock was irrelevant to the parties' contract.

... and consideration of the previous dealings between the parties to ascertain any terms omitted in a contract may be required (consider in particular Lord Wright's comments in *Hillas & Co. Ltd v Arcos Ltd*). It is also worthy of note as to why such eventualities exist. Uncertainty may not be present simply due to poor drafting or some incompetence, but rather it may reflect changing conditions (where products have a 'lead time' before
p. 139 delivery can take place, and these are taken into consideration). ↵

Consider

The terms of the agreement between Clive and Jane are sufficiently clear and certain to make them enforceable. However, if the price and dates by which the works were to be completed were not settled, or there were other elements of the agreement which were to be agreed in the future, the courts would likely consider these too speculative and uncertain to establish a binding contract.

There may exist situations where the parties establish 'an agreement to agree' that the courts may consider too vague.

Scammell and Nephew Ltd v HC and JG Ouston (1941)

Facts:

An agreement was reached between the parties for Scammell to supply a van for a price of £286 on hire purchase terms over a two-year period. As part of the deal, Ouston agreed to trade in an older vehicle for £100, however following a disagreement between the parties Scammell refused to supply the van.

Authority for:

There was no contract as there was a lack of certainty over important terms in the contract. Issues including the instalments to be paid and their frequency were missing from the agreement.

The agreement may fail due to uncertainty:

May & Butcher v R (1934)

Facts:

The parties agreed with a State body to purchase tents on terms which included 'a price to be agreed.' When the agreement broke down the court had to determine whether a contract had been reached.

Authority for:

There was no contract. The terms were too uncertain and an agreement to agree is not binding on the parties.

p. 140 However, the courts will attempt to identify the legal effect of such terms. ↵

Sudbrook Trading Estate Ltd v Eggleton (1982)

Facts:

As part of a lease, the tenant was provided with an option to purchase the freehold of the property at a price to be agreed between values of two surveyors, one appointed by each party. The tenant obtained a valuation and wished to exercise the option. The landlord refused to appoint a surveyor and argued there was no contract as the clause relating to the price was too vague and uncertain.

Authority for:

The clause was not uncertain as, whilst not identifying a purchase price, it did clearly outline the mechanism to determine it.

Parties must ensure that the terms contained within contracts are sufficiently precise and detailed to enable the parties, and indeed the courts if necessary, to identify the true intentions and responsibilities contained therein. As per Lord Wright 'It is a necessary requirement that an agreement in order to be binding must be sufficiently definite to enable the court to give it a practical meaning. Its terms must be so definite, or capable of being made definite without further agreement of the parties, that the promises and performances to be rendered by each party are reasonably certain.' Specifically, where a term is meaningless, then this term, if not the entire contract, may be considered as not forming a valid contract or contractual term. However, if this is simply a means to attempt to avoid the contract, the Court of Appeal has already limited the scope of such arguments. In *Nicolene Ltd v Simmonds* (see **6.5**) a contract was prepared on the basis that it was on one of the parties 'usual conditions of acceptance'. In reality, there were no usual conditions of acceptance and the defendants attempted to escape from the contract on the basis that this was a meaningless term and the contract failed because of it. The Court of Appeal held the term to be meaningless, but in this respect it could simply be ignored and the rest of the contract remained. A further example of a term in a contract which is meaningless and cannot be enforced is demonstrated in the following case:

Guthing v Lynn (1831)

Facts:

In the negotiations for the sale of a horse, a clause was inserted into the contract that a further £5 would be paid to the offeror if the horse 'proved to be lucky' for the purchaser. This clause led to a claim for the £5.

Authority for:

It was held to be ineffective as it lacked certainty as to what 'lucky' meant.

p. 141 ↵ If the agreement has already begun, and the parties are performing obligations on the basis that a valid contract is in existence, the courts are much less likely to hold that there is no contract.

Percy Trentham Ltd v Archital Luxfer Ltd (1993)

Facts:

Percy Trentham was the main contractor of industrial units and Archital were walling sub-contractors. Quotations for the work, and offer and counter-offer, were exchanged between the parties without a formal contract ever being signed. The sub-contracted work was completed, but as this was late and led to the main contractor sustaining penalty payments, Percy Trentham attempted to recover this cost in damages. Archital argued there was no sub-contract in existence.

Authority for:

The Court of Appeal held there was a contract. An agreement was established between the parties and they were performing obligations on the basis that a valid contract was in existence.

The courts will also attempt to give effect to agreements between businesses where there was clear evidence of an intention to create legal relations.

Durham Tees Valley Airport Ltd v BMI Baby Ltd (2010)

Facts:

The defendants agreed to operate two aircraft from the airport for a ten-year term. There was no identification in the contract of minimum passenger movement or flight details. As such, was there a contract?

Authority for:

The Court of Appeal held there was a contract capable of enforcement. The missing terms were implied on the basis of business efficacy.

Conclusion

This chapter has concluded the provisions required that establish a valid, enforceable contract. The agreement must contain each of the provisions, and the cases identified in this chapter and **Chapter 5** will assist in recognizing the factors the courts take into consideration when determining the existence of a contract. Having identified the essential features of a valid contract, the next step is to determine possible restrictions on individuals who may be party to an agreement or defects in the formation of a contract. These factors need to be appreciated as they can prevent an
p. 142 otherwise valid contract from having effect (and being legally enforceable). ↵

Summary of main points

Consideration

- Consideration is the bargain element of a contract and may be referred to as the ‘price paid for a promise’.
- Consideration must move from the promisee.
- Consideration must be legally sufficient but need not be adequate.
- The courts will not recognize a ‘bare’ promise.
- Consideration may be executed—one promise in return for an act by the other party (usually evidenced in unilateral contracts).
- Consideration may be executory—an exchange of promises (usually found in bilateral contracts).
- Simple contracts must be ‘good’ consideration.
- Performing an existing duty may not be good consideration.
- If the benefit provided exceeds an existing duty this may constitute good consideration.
- Past consideration is not good consideration unless the act was performed at the request of the promisor, there was a contemplation of both parties that payment would be made, and all the other elements of a valid contract exist.
- Part-payment of a debt will not prevent the innocent party seeking the balance owed. However, if something of value other than money is provided or if the part-payment has been provided at an earlier date than required, this may be good consideration.
- An exception to this general rule is the doctrine of promissory estoppel. This enables the court to prevent a party from reneging on a promise that was relied on by the other party if to do so would be unfair.

Privity

- The general rule in contract is that only those parties to a contract may sue and be sued on it.

- Exceptions exist where the contract is made by an agent for the principal, in collateral contracts, where property is transferred in trust to another party, where the contract has been made under an insurance agreement for the benefit of another, and where restrictive covenants are imposed on property.
- The enactment of the Contracts (Rights of Third Parties) Act 1999 has enabled third parties to enforce contracts conferring a benefit on them, or where the contract expressly permits the third party to enforce it.

Intention to create legal relations

- The parties must intend for an agreement to establish legal relations to create an enforceable contract.
- Social agreements are presumed not to intend to create legal relations (such as between husband and wife (unless they are separated) and social acquaintances).
- In commercial agreements, the presumption is that legal relations exist, unless the parties expressly state an agreement to the contrary.

Certainty of terms

- Terms of a contract must be drafted carefully and precisely if they are to be relied on by the parties.

p. 143 ## Summary questions

Essay questions

1. ‘The presumptions advanced in the assessment of whether parties intended an agreement to create legal relations are wrong. It provides for uncertainty and inconsistent judgments, and should be made more transparent (particularly necessary for vulnerable people).’

   Discuss.

2. ‘Privity of contract is such an antiquated doctrine, resplendent with exceptions and caveats, that its practical effect is meaningless.’

Discuss this statement in relation to business agreements.

Problem questions

1. All Bright Consumables (ABC) Ltd manufactures PC components. It runs this aspect of its operation from a factory that it leases from JJ Industrial Rentals Ltd (JJ), and the machines used in the production process are rented from iMachines and Tools Ltd (iMachines Ltd).

Given the economic crises in 2010, and increasing competition from the Far East, ABC is in financial difficulties. In March 2010 ABC wrote to JJ of its financial problems and stated 'We are suffering severe financial difficulties in these austere times. We both know you have factories that you are unable to rent, and unless you can reduce the rent on this factory we will have no choice but to cease trading and you'll be left with another unrented factory'. Following a discussion between the managing directors of both companies, JJ agree to accept half rent payment until such a time as ABC's business picks up.

ABC also informed iMachines Ltd in the same manner about its financial problems and it agreed to take a quantity of the PC components manufactured in lieu of its hire charges for the financial year 6 April 2010 to 5 April 2011.

In January 2011 JJ were suffering financial difficulties and demanded that ABC pay the full rent on the factory from February 2011. It also demanded payment of the rent owed from March 2010. It considers this part-payment of a debt and wishes to exercise its right to obtain payment. At this time, iMachines Ltd discovered that the PC components it had taken in lieu of hire charges were worth only half of the hire charges for the year. It has demanded that ABC pay the balance owed in cash.

Advise ABC as to whether the payments demanded have to be made.

2. Juana is the managing director of ABC Ltd She arrived at the company's head office to discover the building was ablaze. She called the emergency services and when the firefighters arrived at the scene Juana told them that the contents of her office were extremely valuable and contained irreplaceable items. As such, if they could prevent the fire spreading there she would reward them with £100 each. The firefighters were successful in extinguishing the fire and it did not reach Juana's office.

Assess the likely success of the firefighters claiming the reward.

You can find guidance on how to answer these questions **here** *<https://oup-arc.com/access/content/marson6e-student-resources/marson6e-chapter-6-indicative-answers-to-end-of-chapter-questions?options=name>*.

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Further Reading

Books and articles

Coote, B. (1990) 'Consideration and Benefits in Fact and Law' *Journal of Contract Law*, Vol. 3, p. 23.

Hedley, S. (1985) 'Keeping Contract in its Place: *Balfour v Balfour* and the Enforceability of Informal Agreements' *Oxford Journal of Legal Studies*, Vol. 5, No. 3, pp. 391–415.

Hird, N. J. and Blair, A. (1996) 'Minding Your Own Business—*Williams v Roffey* Revisited: Consideration Reconsidered' *Journal of Business Law*, May, p. 254.

Online Resources

Visit the online resources <https://oup-arc.com/access/marson6e-student-resources#tag_chapter-06> for further resources relating to this chapter, including self-test questions, an interactive glossary, and key case flashcards.

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