

Geoff is the owner of a 1927 Bentley car, which he is renovating to its original condition with considerable help from his brother, Paul. When the work is nearly completed, Geoff decides to get married and can no longer keep the car.

He discusses the situation with Paul and they agree that in consideration of all the work Paul has done on the car, Paul can have it for £2,000 (which is far less than the car is worth). They agree that the money will be paid in four half – yearly instalments of £500, the first being due in December. A note of their agreement is drawn up by Geoff, and signed by Paul and himself.

Paul makes the first payment in December but soon after he discovers that it will cost much more to complete, the renovation than was originally thought, as some of the parts are having to be custom-made. Paul tells Geoff about this, and Geoff then agrees to forego the second payment, which has just fallen due in June of the following year. As a result Paul fees able to order the parts required.

**Geoff now regrets having made a promise to forego the second payment.
Advise him about recovering the money from Paul.**

The requirements for the formation of a contract are agreement, intention to create legal relations and consideration. Agreement has been reached. With regard to intention to create legal relations with domestic and family agreement, the intention is that you do not wish to create legal relations. But this is rebuttable, **Merritt v Merritt (1970)**. In this case, Geoff and Paul are brothers therefore Geoff would have to rebut the presumption. **Snelling v J G Snelling (1972)** may help him which states of parties who are family members involved in a business arrangement then that will be sufficient intention to create legal relations. Further evidence for Geoff that they are intended the contract to be legally binding is the fact that they drew up an agreement and signed it. Therefore, it is likely there was an intention to create legal relations.

Next has consideration been given?

Consideration was defined by Pollack as the price paid for the promise, i.e. part of a bargain. **Currie v Misa (1875)** said there must be a detriment to the promisee or a benefit to the promisor. By **Roscorla v Thomas (1842)**, past consideration is not valid consideration, but **Lampleigh v Brathwait (1615)** said it could be valid consideration if done at the other's request. **Re Caseys Patents (1892)** clarified this rule and said past consideration was only valid if it was done at the promisor's request and both parties contemplated that payment must follow. Therefore here by **Roscorla v Thomas (1842)** it is unlikely that the work Paul had done to the car would be considered valid consideration or, indeed fall within the rule in **Re Casey's Patents (1892)**. The fact that the past consideration is not valid, consideration does not matter here as by **Thomas v Thomas (1842)** and **Chappell v Nestle (1960)** consideration must have value, but need not be sufficient. Therefore the £2,000, although less than the value of the car, is valid consideration.

Therefore, there is a contract that Paul will buy the car for £2,000.

Now Paul realises he cannot keep the payments. Therefore we will look at whether G agreeing to forego the 2nd payment is a contract. By **Pinnel's Case (1602)**, part payment of a debt does not discharge the whole debt unless there is further consideration e.g. paying earlier, or in a different form or if a different place. This was approved in **Foakes v Beer (1984)**. This means Paul is already bound to pay Geoff the full amount and has furnished no consideration by the new promise to accept less. **Re Selectmove (1995)** tried to apply the approach in **Williams v Roffey (1990)** to debts and said that if the creditor got a benefit from the part payment, it should discharge the debt. The court said no. The Court of Appeal was bound by the House of Lords decision in **Foakes v Beer**. Therefore, if Paul tells Geoff to keep his promise to forego the £500 June payment as following **Pinnel's case**, part payment of a debt will not discharge the full debt.

As there appears to be no consideration for Geoff's promise, the defence of promissory estoppel must be considered. In **Central London Trust v High Trees (1947)**, the court said that a promise to accept part payment in full discharge of a debt, could still be binding, even without consideration; if it would be inequitable for the promisor to go back on his promise. What is required for promissory estoppel is, firstly, by **Brikom v**

Carr, a contractual relationship must exist. Paul and Geoff have such a relationship. Next there must be a clear and unambiguous promise by the promisor that he will not enforce his legal rights. This was said in Scandinavian Tanker Trading Co. v Flota Petrolera Ecuatoriana. Therefore, here Geoff agrees to forego the 2nd payment, it seems to be a clear and unambiguous promise to me, but it would be up to the court to decide, based on all the facts if this was so. Subsequently, there must be reliance on the promise by the promisee. In Hughes v Metropolitan Railways (1877), the court held that there must be detrimental reliance, but in W J Alan v El Nasr Export & Imports, the court said there need not be detriment; the promisee must have been led to act differently than he would otherwise have done.

Furthermore, in James v Heim Galleries, the court said that the promise must be made with the intention or at least the knowledge that it would be acted upon, but it is acted upon in such a way that it is inequitable for the promisor to go back on his promise. Based on the promise Paul has ordered more parts and hence it would be inequitable for Geoff to go back on the promise. Geoff can argue however that Paul has merely ordered the parts and could cancel the order and then would have suffered any detriment or acted any differently. For estoppel, it must be inequitable for Geoff to go back on his promise. In DC Builders v Rees (1966), it was inequitable as the promisor had made the promise in response to pressure exerted by the promisee. Geoff could argue that he has not acted inequitably while he did not know Paul would order new parts. Paul as already go the car for well below motor value and Geoff has acted honestly and reasonably.

Whether estoppel suspends or extinguishes rights is debatable. Tool Metal v Tungsten Electric Co (1955) said it suspends rights but the High Trees case says it extinguishes rights. It is thought that here it would extinguish Geoff's rights to the £500, if estoppel was held valid. Finally by Combe v Combe (1951), estoppel must be used as a shield and not as a sword. Here, it appears that Paul is using it as a defence and should have no problems. Thus, Paul and Geoff had an agreement at law that Geoff will sell Paul the car for £2,000. This is binding on the parties. The agreement by Geoff to forego the £500 June payment is not binding at law, so Geoff can require the full debt to be repaid (Foakes v Beer (1984)). The only bad point for Geoff is that Paul could rely on Promissory Estoppel and stop Geoff from claiming the full debt.