"The courts have insisted that no contract (other than a contract under seal) can be enforceable in the absence of consideration."

Shears & Stephenson [1996]

Under English law, for a simple contract to be valid, there must be 'consideration' from the party accepting the offer. The traditional definition comes from the case of *Currie v Misa [1875]* where Luch LJ states:

> 'A valuable consideration in the sense of the law may consist either in some right, interest, profit or benefit accruing to one party or some forbearance, detriment, loss or responsibility, given suffered or undertaken by the other.'

The legal meaning of 'consideration' is not very different from the everyday use of term. For example, if it was said, "For a small consideration I will…" it is probably an offering to do something for money. However, the consideration need not be monetary. It need not even be a benefit, i.e. if my next-door neighbours offer me money to desist from playing the saxophone in the evenings, the consideration is my desisting, it is not the offer of money, as Sir Fredrick Pollock states: *'An act of forbearance of one party, or the promise thereof, is the price for which the promise of the other is bought, and the promise thus given for value is enforceable* [1]*.'*

For the consideration to be valid it must have the following features:

- Consideration must 'move from' the offeree to the offeror.
- It must be something of value (however nugatory) to the offeror, or something of detriment to the offeree.
- Consideration must be sufficient in law, but need not be sensible.
- It must usually impose an obligation in the future; it is not usually adequate to base an offer on some consideration that was gained in the past.

If no consideration is present, then the contract may not be enforceable, even if it contains a clause to the effect that it should be enforceable[2]. It is also very clear in law that consideration may be meagre or even negligible but it has to exist[3]. However, there are certain exceptions to this rule.

If one person owes a sum of money to another and agrees to pay part of this in full settlement, the rule at common law is that part-payment of a debt is not good consideration for a promise to forgo the balance[4]. However, it is held that the agreement to accept part-payment would be binding if the debtor, at the creditor's request, provided some fresh consideration. Consideration might be provided if the creditor agrees to accept:

- Part-payment on an earlier date than the due date.
- Chattel instead of money.
- Part-payment in a different place to that originally specified.

[1] Dunlop *v* Selfridge [1915]
[2] Tweddle *v* Atkinson [1861]
[3] Chappell & Co *v* Nestle [1960]
[4] Stilk *v* Myrick [1809]

Also a promise to accept a smaller sum in full satisfaction will be binding on a creditor where the part-payment is made by a third party on condition that the debtor is released from the obligation to pay the full amount[5].

A further exception to the rule is to be found in the equitable doctrine of promissory estoppel. This is the name given to the equitable doctrine which has as its principal source the obiter dicta of Denning LJ in *Central London Property Trust Ltd v High Trees House Ltd [1947]*. The principle is that if someone makes a promise, which another person acts on, the promisor is stopped, or estopped, from going back on the promise, even though the other person did not provide consideration.

In the case of *High Trees [1947]*, the prosecution, in 1937, granted a 99 year lease on a block of flats to the defendants at an annual rent of £2,500. Because of the outbreak of war in 1939, the defendants could not get enough tenants. In 1940 the prosecution agreed in writing to reduce the rent to £1,250. After the war in 1945 all the flats were occupied and the prosecution sued to recover the arrears of rent as fixed by the 1937 agreement for the last two quarters of 1945. Denning J held that they were entitled to recover this money as their promise to accept half was intended to apply only during war conditions. He also stated that if the prosecution had sued for arrears from 1940–45, the 1940 agreement would have defeated their claim. Even though the defendants had not provided consideration for the prosecution's promise to accept half rent, this promise was intended to be binding and was acted on by the defendants. Therefore the prosecution, in the name of equity, were estopped from going back on their promise and could not claim the full rent for 1940–45.

The exact nature and scope of the doctrine of promissory estoppel is a matter of debate but it is clear that certain requirements must be satisfied before the doctrine can come into play:

- It must be a contractual or legal relationship.
- There must be a clear and unambiguous statement by the promisor that his strict legal right will not be enforced.
- The promisee must have acted in reliance on the promise.
- It must be inequitable for the promisor to go back on his promise and revert to his strict legal rights[6].

Furthermore, it must be said on the promissory estoppel doctrine is that it cannot be used to found a cause of action; that is, it may not be used in legal proceedings brought to force someone to uphold a promise. It can only be used to prevent someone going back on their promise and insisting on enforcement of their strict right[7]. It is to be used as a shield, not a sword. Denning LJ states on this matter: '…that principle does not create new causes of action where none existed before…'

Thus there is, in the name of equity, a doctrine which makes certain promises enforceable despite the absence of consideration.

[5] Hirachand Punamchand *v* Temple [1911]
[6] D & C Builders *v* Rees [1965]
[7] Coombe *v* Coombe [1951]