

Consideration

Francis agrees to build a swimming pool for Gerald for £5,000, payable on completion. After beginning to dig the pool, Francis hits a layer of rock, which makes the work a great deal harder. Francis refuses to proceed unless he is promised another £2,000. Gerald reluctantly agrees to pay Francis, and as a gesture of goodwill he makes one or two small improvements to the pool. On completion, Gerald tells Francis that all he can afford is £5,000. Since Francis is also short of cash, he agrees to accept £5,000 in full settlement. Francis has now discovered that Gerald is rich enough to install a wave machine in his pool. Advise Francis, who now wants to recover the £2,000 that he was promised.

All contracts require that something is given in return for something else from the other party, this is known as consideration. There are many definitions of consideration, but Currie v Misa (1875) is a very known one, which states 'A valuable consideration 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'. A more up-to-date version of this definition however, is from the case, Dunlop v Selfridge (1915), 'An act or forbearance of one party, or the promise thereof, is the price for which the promise of the other is bought'. Consideration is the distinguishing factor between what is a contract or a gift.

The rules of consideration consist of 5 different categories. Consideration need not be adequate but it must be sufficient. This is shown in the cases of Thomas v Thomas (1842) and White v Bluett (1853), these cases state that what is promised must be real, tangible and have some actual value, this is considered to be sufficient consideration. Items with no apparent value have also been classed as amounting to valuable consideration, seen in the cases of Chappell v Nestle (1960) and Bainbridge v Farmstone (1838). 'Emotional concepts' have also been classed as consideration, i.e. keeping a child happy and well, shown in Ward v Byham (1956). Past consideration is no consideration. If the consideration is given before the promise or act of the other party then it is past

consideration and will not support the contract. This is supported by the case Re McArdle, although there are two exceptions to the rule. Where the past consideration was provided at the promisor's request, shown in Lampleigh v Braithwait or where there is an exception of payment as in a commercial contract, shown in Re Caseys Patents. Consideration must also move from the promises, meaning that a person cannot enforce a promise if they did not provide the consideration for it, this is shown in the case of Tweddle v Atkinson. If a person is doing something they are already obliged to do, this is not considered as sufficient consideration, it is only seen as a new promise if they perform more than an existing duty, as in the case of Hartley v Ponsonby and Williams v Roffey, unlike the case of Stilk v Myrick where the existing duty was performed, not something more. The final rule of consideration is Pinnel's Case.

Pinnel's case is where part payment of a debt does not discharge the full amount even if the other party agrees not to sue for the full amount later; this is supported in the cases of Foakes v Beer, Re Selectmove and Ferguson v Davies. This rule ensures that people are not cheated out of money based on technicalities. There are, however, the following exceptions, If the amount is paid earlier, paid with a chattel, paid into a different place, or by a third party at the creditor's request, this is seen as an exception, along with Promissory Estoppel, shown in the cases of Bracken v Billingham and Inland Revenue v Fry. Promissory Estoppel, however, is relevant to the case of Gerald and Francis.

The concept of Promissory Estoppel is based on the principle that it would be unfair to let the promisor go back on his promise, because this would cause hardship to the promisee. The doctrine traces back to the case of Hughes v Metropolitan Railway Co (1877), although Lord Denning has later developed the doctrine further in Central London Property Trust v High Trees House (1947). In High Trees, Promissory Estoppel was used to suspend liability under the lease, the landlord's rights revived after the war period. Lord Denning's view of D&C

Builders v Rees was that rights could be extinguished altogether if it is fair to do so. This contrasts with the cases Tool Metal Manufacturing v Tungsten Electric, Ajayi v Briscoe and Alan v El Nasr. It is difficult to distinguish whether or not the doctrine operates to suspend or altogether extinguish them completely.

In Francis's case, it would seem that he would be unable to sue, as he accepted he £5,000, but he could be entitled to the £2,000 extra offered, because he did however, exceed his contractual duty. This was done by him dealing with the extra layer of rock. This could be backed up by the case Hartley v Ponsonby, which is a main contractual duty case. In this case, half of a ship's crew deserted the voyage. In order to get home, the captain offered the wage of those who deserted to the existing half, on return to shore. On arrival the captain did not however pay the sailors, and they then sued him. It was held that they were entitled to the wages because they had gone above and beyond their existing contractual duty. A similar case, however, with a different outcome is that of Stilk v Myrick, where two members of a crew deserted ship, and the captain once again promised the sum of the two member's wages to the rest of the crew. The captain failed to produce the money and the crew sued. However, it was held that the remaining crew did not have to go beyond their existing duty, due to only 2 members; it was not a large increase of work, so they were not entitled to the money. Francis would use the Hartley v Ponsonby case to demonstrate why he should be entitled to the extra amount offered.

After the two men had made the promise, Francis made extra improvements to the pool, this is known as extra benefit. By making these improvements, Francis is providing extra benefit resulting in Francis being entitled to the additional money. An example case of this is in Williams v Roffey, when Williams was sub-contracted by Roffey to do carpentry work for a building project, however, he underestimated the job. Roffey offered more money if Williams was able to be finished on time. Roffey later refused to pay the amount due, because he

believed that Williams had only done what he was contracted to. Although this is true, Williams finished on time, therefore, Roffey did not have to pay a late clause and did not have to find another carpenter to finish the job, therefore, Williams was entitled to the money because he provided extra benefit.

Francis was treated unfairly. Therefore, he would be able to claim Promissory Estoppel due to the equity of the case, Francis should receive the £2,000, as he is short of money, and Gerald could afford the extra £2,000, shown in the purchase of a wave machine. Although Francis accepted the £5,000, he did this under pressure, he was already short of money and needed all he could, however, this is seen as he was being held at ransom. A case with similar case facts is D&C Builders v Rees. A similar circumstance occurred between a builder and a family, where the family, Rees, refused to pay full amount due to the work being unsatisfactory, so they only paid half of the total amount. The builders sued, the defendant claimed Promissory Estoppel, stating that the plaintiff had agreed to part payment of a debt when they accepted the money, and the court then held that the builders were held to ransom to accept the lesser amount, and forced to accept what they could get. "He who seeks equity, must do equity", stated by Lord Denning, is the reason why the defendant was not successful in their claim of Promissory Estoppel, it would have been inequitable and not do justice.

In conclusion, Francis is able to sue for the £2,000. Although he accepted £5,000, this was not as part payment of debt seen in Pinnel's case, he accepted it due to no other option, seen in D&C Builders v Rees. Due to the case not being equitable, he is also able to claim Promissory Estoppel, due to the purchase Gerald made of a wave machine. Finally, shown in Hartley v Ponsonby, Francis did exceed his contractual duty due to the rock, and therefore is entitled to the new promise of the additional £2,000.