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Evaluate the role of consideration in contract law

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This assignment will be discussing the term of consideration, which is one of the elements of forming a contract and its role in contract law as a whole. Consideration serves as a contract's primary component and a contract is unenforceable if neither party gives any consideration to each other. So, we will be discussing aspects of consideration such as the types of consideration, when consideration is valid and the factors that make a consideration in a contract invalid. Finally, we will provide suggestions that will resolve the issues that are included with considerations in the evaluation of its role in contract law.

A contract is a legally enforceable promise made by one party to another to do an act for that other party in exchange for payment. A contract consists of four elements that are agreement, certainty, intention and consideration. Agreement is when all the parties involved agree to bind a legal contract with each other. Certainty is the clarity of the terms in the contract for all the parties involved. Intention is the intention of the parties to form a legal relationship. Finally, a consideration is defined as a promise made by a promisor in exchange for performance or forbearance is known. All these elements are needed in order for a contract to be formed.

In regards of the types of consideration that exists, there are two. Both of the types are executory consideration and executed consideration respectively. An executory consideration is an undertaking to carry out an act at a later time, meanwhile an executed consideration includes a performed act or service. There are countless businesses that use executory consideration in their operations. For instance, an executory consideration in the form of a rental lease is like when a tenant consents to pay a landlord a specified amount of money on predetermined dates each month. The landlord gives the renter a place to reside in exchange for the rental money. Next, an example of an executed consideration is such as if a random person saw a poster regarding a reward that is offered if they manage to find a missing cat. So, if they actually manage to find the cat, then they can claim the reward from the cat's owner as it was stated in the poster.

The consideration has to be "sufficient" and "adequate," not necessarily of market worth, in order to be valid. For instance, in the 1842 case of *Thomas v. Thomas*, a deal was reached allowing a lady to live in a property for £1 annually. The consideration was sufficient and it was not considered as a gift. Though it excludes earlier acts, consideration must be given at the time of the agreement. In the 1951 case of *Re McArdle*, for instance, prior work was not taken into account while negotiating a contract for a future arrangement.

However, according to *Lampleigh v. Brathwait* (1615) and *Re Casey's Patents* (1892), compensation may be legitimate if the parties agree that prior labour will be incorporated. A contract's consideration cannot be illegal. In the case of *David Taylor and Son v Barnett Trading Co* (1953), Barnett Trading committed to charge a certain amount for David Taylor Irish steak that would be delivered between April and July. An order prohibiting the purchase or sale of meat above a specific price was in effect on the date the contract was entered into—a price that the transaction exceeded. Mr. Taylor filed a claim for damages when Barnett Trading failed to deliver. Initially, Barnett Trading was ordered by the arbitrators to compensate Mr. Taylor for the non-delivery. After an appeal, the Court of Appeal determined that the contract's formation was unlawful because it had set prices that were higher than permitted by law. As a result, the award was revoked since it was founded on an unlawful contract.

In addition, there cannot be an existing duty to give consideration. In the *Collins v. Godefroy* (1831) case, for example, a lawyer who testified in court could not likewise agree to appear in court. *Stilk v. Myrick* (1809) is another example where seamen were required to operate the ship with a reduced crew. This was not a factor when they made the captain a pledge to carry out this task, after all, it was their obligation to do so.

Moving on, there are several issues with consideration in contract law. One of the issues are such as the peppercorn issue. Usually, the term "peppercorn issue" refers to a contract-related legal idea. A peppercorn in contract law is a symbolic representation of something insignificant. A token payment or other consideration given by parties to a contract is referred to as "peppercorn". Determining whether the value transferred in a contract is

sufficient to make the contract legally binding is the crux of the peppercorn question. In the past, for a contract to be binding, English common law required consideration that is, something of value be exchanged between parties to be present. Nonetheless, the judiciary has acknowledged that a consideration's value does not need to be large. A contract can be validated with even a small amount, even like a peppercorn.

The peppercorn issue can occur when parties contest a contract's validity on the grounds that the consideration given was insufficient. For instance, the opposing party may contend that the contract is unenforceable for lack of sufficient consideration if one party argues that they merely agreed to pay a nominal amount as consideration (such as a dollar or even a symbolic token like a peppercorn). However, in contemporary contract law, the idea of consideration has changed, and judges are typically more lenient when it comes to defining what kinds of consideration are legitimate. Though courts may still examine whether the consideration given in a contract is sufficient, especially when one party claims unfairness or unconscionability, the idea of the peppercorn issue is still relevant today.

An example of a case for this issue is such as the case of *Chappell v Nestle* (1960). This instance involved a promotion run by Nestle whereby customers could obtain a record as payment for three chocolate bar wrappers, one shilling, and sixpence (1s 6d). Music publisher Chappell claimed that since the wrappers and coins were not Nestle's property and were therefore insufficient under the law, they could not qualify as legitimate payment. Chappell was granted a favourable ruling by the House of Lords, which was the highest court at the time and set a significant precedent. The wrappers and coins were deemed by the court to be third-party items, meaning they had no inherent worth for Nestle and hence could not be considered genuine consideration. For the contract to be legally enforceable, Nestle had not given enough attention. As we can observe, the case served as a reminder of the requirement that consideration be given by the party making the offer and must have some minimal worth. It also emphasized how crucial it is to discern between true consideration and insignificant objects or signs. However, going back to the original statement of the issue, the idea of "reliance" allows for the legal enforcement of a mere promise in the absence of any consideration flowing in the other direction.

The next issue that will be pointed out is the issue with moral obligation in consideration. In contract law, the moral obligation issue with consideration refers to circumstances in which one party feels ethically bound to keep a promise but does not have a legal obligation to do so because consideration was lacking. There are situations in which one person may promise something and then rely solely on a moral or ethical commitment, without expecting anything concrete in return. Let's say someone pledges to help their old parents financially without expecting anything in return. Even if there might be a moral need to keep this commitment, it doesn't have the right elements to form an enforceable legal agreement. Unless there is an extraordinary situation, like promissory estoppel, courts typically do not enforce agreements made without thought.

A legal principle known as promissory estoppel forbids someone from breaking a pledge when the other party negatively benefits from it. It may be used to uphold unconsidered promises, especially if one party has negatively benefited from the promise. But depending exclusively on moral duties without taking the law into account may make it difficult to uphold pledges in court. The conflict that exists in contractual agreements between legal and moral obligations is brought to light by the moral duty debate. The enforceability of pledges in a legal context might be complicated by the lack of legal consideration, even when parties may feel morally obligated to keep their word. Because of this, parties should exercise caution and think through the legal consequences of any promises they make outside of a formal contract. In a neutral perspective, the issue with moral obligations in consideration is certainly not something simple. The parties involved should clearly understand the terms of the promises made and the consequences that will come regarding the promises made.

Moving on, there are a few suggestions that can be implemented in order to reform the peppercorn and the moral obligation issues in consideration. One of the suggestions to reform the peppercorn issue specifically is to make determining adequacy flexible. Urge judges to use a broad methodology when assessing whether contemplation was sufficient. Understand that consideration need only indicate a sincere desire to establish legal ties; it need not have a substantial monetary worth. Another method is to encourage communication and cooperation between the parties to resolve disputes over the adequacy of consideration by coming to

mutually agreeable solutions. To resolve issues and come to just compromises, parties should be encouraged to talk in an honest and open manner. Next, in terms of the moral obligation issue, methods such as making contractual intentions more clearly stated. It is recommended that parties specify their goals explicitly when signing contracts. To reduce ambiguity and potential disagreements, stress the significance of differentiating between legally bound responsibilities and moral commitments.

In conclusion, consideration is essential since it signifies the transfer of something valuable between people. A contract needs consideration to be enforceable, regardless of whether it is an executed act or service or an executory promise to perform an act in the future. The law acknowledges that consideration need not always be of market worth, but it still needs to be sufficient and sufficient. Nonetheless, problems with consideration can occur. One such problem is the peppercorn issue, which centres on whether the consideration given in a contract is sufficient. Even in cases where the consideration is only nominal, the courts carefully analyse whether it is substantial enough to support the contract. Furthermore, there is an additional level of complexity to contract law considerations due to the moral obligation issue. Promises can be difficult to enforce without legal consideration, even though parties may feel ethically bound to keep them. In some situations, promissory estoppel could be helpful, but depending purely on moral obligations without taking the law into account can make things more difficult. In the end, negotiating the complexities of consideration in contract law necessitates having a firm grasp of legal precepts, moral issues, and possible outcomes. Contractual agreements should be approached cautiously by the parties, who should make sure that all necessary components are included to safeguard their interests and fulfil their obligations.

References

Cornell Law School (2022). *Consideration*. Available at [:https://www.law.cornell.edu/wex/consideration#:~:text=Consideration%20is%20a%20promise%2C%20performance,a%20contract%20cannot%20be%20enforceable.](https://www.law.cornell.edu/wex/consideration#:~:text=Consideration%20is%20a%20promise%2C%20performance,a%20contract%20cannot%20be%20enforceable.)

Hall Ellis (ND). *Consideration: contract law (meaning, types and purpose)*. Available at [:https://hallellis.co.uk/contractual-consideration/#:~:text=The%20consideration%20which%20is%20the,can't%20be%20legally%20binding.](https://hallellis.co.uk/contractual-consideration/#:~:text=The%20consideration%20which%20is%20the,can't%20be%20legally%20binding.)

Study Smarter (ND). *Consideration*. Available at [:https://www.studysmarter.co.uk/explanations/law/contract-law/consideration/#:~:text=The%20main%20types%20of%20consideration%20in%20contract%20law%20are%3A%201,it%20refers%20to%20acts%20performed](https://www.studysmarter.co.uk/explanations/law/contract-law/consideration/#:~:text=The%20main%20types%20of%20consideration%20in%20contract%20law%20are%3A%201,it%20refers%20to%20acts%20performed)

Laver, N (ND). *Consideration in contract law*. Available at [:https://www.claims.co.uk/knowledge-base/contract-law/consideration-in-contract#:~:text=Consideration%20must%20be%20'sufficient'%20and,was%20not%20a%20mere%20gift.](https://www.claims.co.uk/knowledge-base/contract-law/consideration-in-contract#:~:text=Consideration%20must%20be%20'sufficient'%20and,was%20not%20a%20mere%20gift.)

Upcounsel (ND). *Executory Promise: Everything You Need To Know*. Available at [:https://www.upcounsel.com/executory-promise](https://www.upcounsel.com/executory-promise)

Thomson Reuters (ND). *Contract*. [https://uk.practicallaw.thomsonreuters.com/4-107-6271?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/4-107-6271?transitionType=Default&contextData=(sc.Default)&firstPage=true)

vlexJustis (ND). *Taylor (David) & Son Ltd v Barnett Trading Company*. Available at [:https://vlex.co.uk/vid/taylor-david-ltd-v-792753269](https://vlex.co.uk/vid/taylor-david-ltd-v-792753269)

Scholarly Community Encyclopedia (ND). *Peppercorn (legal)*. Available at [:https://encyclopedia.pub/entry/32254](https://encyclopedia.pub/entry/32254)

Thomas v Thomas (1842) 2 QBR 851; 114 ER 330.

Re McArdle (1951) Ch 669; (1951) 1 All ER 905; (1951) 95 SJ 284; (1947-51) CLY 4321.

Lampleigh v. Brathwait (1615) Hobart 105; (1615) 80 ER 255.

Oxbridge Law Team (2024). *Re Casey's Patents (1892) 1 Ch 104*. Available at https://www.oxbridgenotes.co.uk/law_cases/re-casey-s-patents

Collins v. Godefroy (1831) 1 Barnwalle and Adolphus 950; 109 ER 1040.

Stilk v. Myrick (1809) 2 Campbell 317; 170 ER 1168.

Chappell v Nestle (1960) AC 87; (1959) 3 WLR 168; (1959) 2 All ER 701; (1959) 103 SJ 561; (1959) CLY 573.