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Contract Law

Level 5

Evaluate the Role of Consideration in Contract Law

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Consideration is one of the fundamental concepts in contract law that guarantees a contract's legality and equity. This assignment aims to examine how considerations function in contract law. In the beginning, the contract creation will be covered, along with the required components and steps. After that, understanding the definition of consideration and its significance is important. The various kinds of consideration will be examined, and it will be talked about whether a consideration is legitimate. After that, it will look at potential consideration-related concerns: "the potential for insufficient reciprocal trade, and the uncertain or vague of consideration". Lastly, suggestions for changes to remedy the problems brought about by contract law considerations will be given. By demanding a reciprocal exchange of value, consideration plays a crucial role in ensuring legality, and equity in contract law.

An agreement that creates legally enforceable or recognized obligations between 2 parties is called a contract. While contracts can be presented in various ways, they must adhere to certain concepts. A legally valid contract must meet all the fundamental concepts, agreement, certainty, intention, and consideration. All contracts are formed according to the fundamental concepts of contract creation, regardless of whether you: purchase or sell a service, market a product, etc. (Hall Ellis, 2018). Upon fulfilling all requirements, the agreement will then take on legal force (Summize, 2022). Since consideration guarantees the preservation of the agreement's integrity, it is regarded as one of the crucial requirements that must be satisfied.

Within the concept of contract law, consideration refers to the transfer of something of value – like a promise, deed, and more – between the parties involved in a contract, it is not necessary to be in monetary value (juro.com, n.d.; Eisenberg, 1981). It is the cornerstone of the agreement and proof that each party has contributed in some way to earn benefits and suffer detriment under the contract terms. To better understand consideration, we can refer to the case of *Currie v Misa* [1875]. Consideration was defined by the court in the case as "some right, profit, or benefit accruing to one part, or some forbearance, loss, or detriment suffered by other" in exchange for a word (Ryan, 1963). The case then also emphasized that considerations are not limited to something monetary to create a valid contract. The legal validity of a contract is determined by the reciprocal exchange of value, which satisfies the need for consideration. Without consideration, there is then no contract.

Consideration is classified as either executed or executory under contract law. Executed consideration is the promise that is exchanged right away after the contract is signed. In contrast, executory consideration is the promise that the parties agree to give before the contract is carried out (Anon, n.d.). A common instance of executory consideration is the *Carlill v Carbolic Smoke Ball Company* [1893] case, in which Smoke Ball Company promised the public that using its product may prevent influenza and awarded a price of £100 to the buyer if they were caught in the influenza disease. The case of *Roscorla v Thomas* [1842] concerns a horse buy and sale transaction and is an example of executed consideration. After buying the horse, the buyer made the payment of £30 as agreed right away, which was considered an executed consideration. These examples demonstrate how various considerations in contract law factors influence a contract's validity and performance obligations in various situations.

Considering the validity and invalidity of the consideration is an important step during the contract agreement. To ensure that a contract is presented in a reasonable and fair view, consideration in an agreement must be future or present, not past. In general, contract law does not recognize prior consideration as legitimate. The worth of consideration must be something that the law deems valuable, though it may not always be monetary or easily quantifiable (Anon, n.d.). According to Chen-Wishart (2010), a valid consideration can uphold the contract's legality and conform with regulatory standards. Conversely, immoral factors that go against the law or public policy include contracts for illicit activities like drug trafficking or unethical contracts that take advantage of weaker parties. Such violations may cause the contract to be canceled or annulled, emphasizing how crucial it is to take the legality and fairness of consideration into account. To ascertain if the amended consideration has legal force, we must take into account pertinent legislative provisions as well as fundamental contract law principles while debating the validity and invalidity of consideration.

As mentioned above, consideration is one of the most crucial components in creating a contract, there may be situations during the process that have an immediate impact on the legitimacy and performance of the contract.

First, look into the potential for insufficient reciprocal trade, resulting in the consideration provided by one party being disproportionate to the benefits received by the other. The matter under review pertains to the sufficiency of reciprocal trade between the contracting parties. The

issue of inadequate reciprocal trade specifically arises when one party's contribution is out of proportion to the advantages that the other party obtains. This indicates that one party might have given the agreement more thought than the other, but they might not have reaped the same rewards. This disparity could jeopardize the contract's legitimacy and fairness, as it ought to be founded on an equitable trade between the parties.

Referring to the case of *Chappell & Co Ltd v Nestle Co Ltd* [1960], in the case, Nestle provided free music records in return for chocolate wrappers with a nominal charge. A music publisher named Chappell & Co Ltd questioned whether the packaging gave enough thought. The wraps' sufficient value to support the consideration under the contract was then evaluated by the court.

The concepts of consideration typically entail what is referred to as the "peer-to-peer principle," or the idea of reciprocal trade between both parties (Weitzenböck, 2012; Hall Elis, 2018). Using the *Dunlop Pneumatic Tyre Co Ltd v Selfridge & Co Ltd* [1915] case as an example, this one shows how the peer-to-peer principle works well. In one instance, Selfridge sold out of tyres that were of lower quality at a lower price instead of selling at the normal price. All contracts, however, do not always have to be fully equal in practice and there are instances in which this is not the case. For instance, in some circumstances like charity donation, social obligation, etc, the law acknowledges circumstances in which the consideration provided by one may be less than that provided by another, yet the scenario is still deemed legitimate. As a result, the possibility of inadequate reciprocal trade, as in the example mentioned above, emphasized how crucial adequate consideration is in contracts.

Several reform recommendations can be made in response to the potential issues that could arise from insufficient reciprocal trade. First, it is thought that the best way to address this issue is to make legislative measures stronger. Legislative authorities are tasked with updating and strengthening contract law laws to explicitly state the principle of reciprocal trade. For instance, to be enforceable both parties must provide equal consideration, according to the applicable rules of the Sales of Goods Act 1979 (Legislation.gov.uk, 2015). This explicit clause contributes to the contract's efficacy and fairness. Second, it is thought that stepping up monitoring is a crucial reform path. To make sure that the consideration in a contract is reasonable and fair to safeguard the interest of the parties to the contract, regulatory bodies might enhance their oversight and review processes. Consumer Protection Law, for instance, checks the

legality and fairness of business enterprises' contract conditions. To further safeguard investors' interests, financial regulatory bodies examine the contract for financial products. These reform initiatives support social stability and economic growth while assisting in ensuring the fairness and legitimacy of contracts.

The second matter that requires attention pertains to the possibility of uncertainty or vagueness concerning the significance assigned to contract elements. The uncertainty or vagueness of consideration may lead to difficulties in understanding and upholding the terms of the contract. The key element of the issue thus lies in the possibility that the contract's consideration clauses lack clarity and unambiguity, or that the term used in them is insufficiently precise, leading to a lack of consistency in the parties' comprehension of the nature and responsibilities of the consideration. In this situation, there may be disagreements on how the contract should be interpreted and carried out.

Drawing from the case of *Foley v Classique Coaches Ltd* [1934], in this case, Foley signed a contract with Classique Coaches to have the sole right to advertise on the buses operated by the business. Regarding the length and scope of the exclusivity, the provisions of the agreement were ambiguous. The indeterminacy of the contract's provisions forced the court to decide whether or not it could be enforced, underscoring the difficulties in interpreting contracts when faced with ambiguous factors.

In the consideration concepts, before signing a contract, both parties should be well aware of the commitments they are taking on as well as the consideration being offered or requested. The clear consideration and obligation can be any form of exchange in value, but having an explicit condition and parties are voluntary to accept it (Anon, n.d.). On the other hand, a certain amount of flexibility in the terms of a contract can accommodate changing circumstances and enable parties to adjust their duties correspondingly when there is doubt about the matter before signing. The consideration clause, for instance, may provide for interpretation that helps both parties in settling disagreements or unforeseen circumstances if it is written broadly. As referring to the case of *Lester Williams Ltd v Great Western Railway Co* (1983), unexpected circumstances caused delays in the delivery of coal to the plaintiff, a coal dealer. The court decided that contract interpretation should be left open-ended. Before signing a contract, it

is crucial to make sure that the consideration requirements are understood because unclear consideration circumstances might cause confusion and disagreement.

Looking at the reform suggestion for this issue, first, we can focus on the strengthening clarity of consideration terms. Legislative bodies ought to reinforce the explicit clauses regarding consideration terms in contracts to guarantee their precision and prevent uncertainty and vagueness. For instance, to comprehend and execute the contract, the consideration clause may need to precisely state the precise amount, services, commodities, or other rights. This may give both parties a clearer view of the consideration given. Moreover, it improves the uniformity of contract interpretation. To ensure consistency and predictability in the interpretation of consideration words across various situations, courts should establish standard guidelines for interpreting contract provisions. To prevent ambiguity and disagreements brought on by subjective interpretations, the “reasonable person” approach, for instance, might be used to interpret consideration phrases based on common sense and the context of the contract (SPBMCC, 2020).

The idea of consideration is crucial to contract law to guarantee validity and fairness. By analyzing its importance, legality, and ramifications, we can make recommendations for reform to deal with new problems. This paper thoroughly examines the significance and implications of consideration in contract law, starting with defining the term and comprehending its necessity, then moving on to assess its legality and reasonableness, focusing on pertinent concerns, and suggesting reforms. We can increase the applicability and efficacy of contract law, supporting the creation and upkeep of equitable and fair contractual relationships, by highlighting the idea of reciprocal trade in contracts and making sure that consideration terms are clear. Clarity in consideration terminology is therefore prioritized when it comes to the issue of consideration in contract law, which supports the system evolution and ability to adjust to societal and economic changes while also fostering equitable contractual partnership.

(1950 words)

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