



Miles and Dowler, *A Guide to Business Law 21st edition*

Study Aid – Chapter summaries

Chapter summary – ch 11 - consideration

1. Consideration has been defined as “the price for which the promise of the other [party] is bought”. Put simply, it is “something of value” that both parties are generally required to put into their agreement.
2. The most common example of consideration is “money” but it can take a variety of forms including:
 - an act for an act;
 - an act for a promise;
 - a promise for a promise; or
 - a promise for an act.
3. There is no requirement for consideration in a formal contract. The most common type of formal contract is a deed. A deed is a document signed, sealed and delivered.
4. Consideration is normally required to support a simple contract.
5. There have developed a series of rules at common law about consideration.
6. In every simple contract each party must usually provide consideration.
7. Only the party who provides consideration will obtain legal rights to enforce the contract, ie will be allowed to sue.
8. Consideration must be sufficient (have some legal value) but it does not have to be adequate: see *Chappell & Co v Nestlé Co Ltd* [1960] AC 87.
9. The consideration must not be vague or uncertain.
10. Consideration must be legal.
11. A promise not to take legal action can be consideration.
12. Consideration can be present or future, but not “past”: see *Roscorla v Thomas* (1842) 3 QB 234.
13. Consideration must be capable of performance. A promise that cannot be performed has no value.
14. If consideration is not sufficient then there is no contract.



15. Situations where consideration has been held to be insufficient include:
- a promise to perform “moral obligations or duties”
 - a promise to perform an existing public duty (see *Collins v Godefroy* [1831] 1 BAd 950 and *Glasbrook Bros v Glamorgan County Council* [1925] AC 270); and
 - a promise to perform an existing contractual obligation: compare *Stilk v Myrick* (1809) 170 ER 1168 and *Hartley v Ponsonby* (1857) 119 ER 1471.
16. **Part-payment of a debt.** The payment of a lesser sum to discharge an existing debt does not generally discharge that debt. This is called the rule in *Foakes v Beer*. However, as this rule could lead to unfair results various exceptions developed including:
- where payment takes place earlier than promised;
 - where payment is made at a place different from that promised;
 - where payment is made by another person;
 - where payment is made together with the promise to do something else;
 - where the new arrangements are incorporated into a deed; and
 - where there is an estoppel created by law.
17. The courts have developed the principle of estoppel to overcome the difficulties often presented by the rules of consideration. See *Waltons v Maher* (1988) 164 CLR 387 and other cases in Chapter 15.
18. Up until 2010 even though consideration may be absent and there is no valid contract at common law, the conduct of one party, if misleading or deceptive, was a possible breach of s 52 of the *Trade Practices Act 1974* (Cth) or a similar section in the State and Territory Fair Trading laws. *Roscorla v Thomas* (1842) 3 QB 234 would be decided differently today under those laws. The defendant might also be liable after 2011 under the new Competition and Consumer laws that were introduced in 2011.