

PROBLEM QUESTION ON CONSIDERATION (2)

Another complex area falling under the topic of consideration in contract law is whether or not a promise to perform something that a person is already contractually obliged to do can ever amount to good consideration. Certainly if one has a legal obligation to do something, then that person cannot enforce payment for carrying out the duty. You will remember cases such as **Collins v Godefroy**. Payment can however be enforced where the party has entered into an agreement that has extended beyond their legal or public duty.

In the optimise contract law textbook we saw the example of Donna's hairdresser Sarah, who agreed to put extensions in Donna's hair for £150 using a new technique. The consideration here was clear. However, we were also told that the work was taking far longer than Sarah had anticipated and she promised to finish the extensions, only if Donna agreed to pay an extra £75. You will hopefully have concluded that Sarah would not be able to enforce the additional payment as she was already contractually obliged to complete the hairdressing task. This is a basic principle and can be related back to the landmark case of *Stilk v Myrick*.

However, you will appreciate that the situation in this area of law has become trickier since the case of *Williams v Roffey*. You will recall that the case concerned a contract to refurbish some flats. The contractor, Roffey subcontracted the carpentry work to Williams at an agreed price. However, owing to financial difficulties, it appeared that Williams would be unable to complete the work in time. There was a penalty clause in the main contract for late completion and to avoid this, Roffey agreed to pay an additional amount to Williams per flat completed. Roffey later refused to pay the additional sum for the completed flats. The issue for the COA hinged upon whether there had been consideration for the promise of additional payments, on the basis that the subcontractor already owed an obligation to the contractor to complete the flats. The COA held that there was a contract and consideration had been provided. But here is the interesting point: The court found that the new benefit achieved by the contractors was that they would avoid the detriment of being sued under the penalty clause for late completion and that they would not have to find new sub-contractors at short notice. Glidewell, LJ, said, with reference to the giving of a promise to the provider of the goods or services that if "as a result of giving his promise B obtains in practice a benefit, or obviates a disbenefit, and B's promise is not given as a result of economic duress or fraud...then the benefit to B is capable of being consideration for B's promise":

Put simply, Where party A and B have a contract for the provision of goods and services and it becomes apparent that the provider of the goods/service is unable to satisfy their commitment, an extra payment to complete the contract will be enforceable where the promise has not been gained through fraud or economic

duress and secondly where an extra benefit will be received by the recipient of the goods and services, or a detriment will be avoided as a result of the contract being completed.

Let's consider this area of law in relation to the aim higher exercise in your optimise contract law textbook, you may recall the question:

Ellie owned a 1926 Barker Salamanca Rolls Royce and, in order to raise a deposit for her new house, she decided to sell the Rolls Royce to Sam, a mechanic, for £50,000. As part of the deal, Ellie agreed to have it restored for Sam. Ellie asked Richard, a vintage car restorer, to carry out the work within eight weeks for £8000. A month later, Ellie was worried that Richard would not meet the deadline and, eventually offered him an extra £2000 if the restoration was completed on time. Sam was anxious to have the car on time as he was going to sell it on and had a purchaser for it, so he offered to give Richard £500 for doing the work. Richard completed the restoration on time but Ellie has refused to pay him the extra £2000, arguing that Richard was already obliged to complete the work for £8000. Furthermore, Sam has told Richard that he can only give him £100, which Richard has reluctantly agreed to accept.

Can Richard insist on the full payments promised by Ellie and Sam?

Let us work through the problem.

You will note initially that Ellie has a contract with Richard to restore the Rolls Royce within eight weeks for £8000. A contract in its simplest form. A clear offer and acceptance. The consideration is Ellie's promise to pay £8000 and Richard's promise to restore the car within the stated period. No problem so far. The difficulties arise when we consider the two further sums of money that have been offered to Richard.

We will consider Ellie first. Worried that Richard would not meet the deadline for completion she offered him an extra £2000 if the restoration was completed on time. She was anxious to meet her agreement with Sam and to get the car to him on time.

We need to initially state the rule that a promise to perform something that a person is already contractually obliged to do cannot amount to good consideration. You would cite the leading precedent from *Stilk and Myrick* to support your statement here.

However it would be insufficient to conclude at this point. You need to take the analysis further and consider whether a promise to perform a task that a person is already contractually obliged to do can ever amount to good consideration. At this juncture you would be expected to discuss the principles established in *Williams v*

Roffey that were mentioned earlier in this recording. Then apply the rules to the scenario by asking the questions

- Was the promise gained through fraud or economic duress, and
- Was an extra benefit received by the recipient of the goods and services, or a detriment will be avoided as a result of the contract being completed?

There appears to be no fraud or economic duress here. It is at least arguable that Ellie secured a benefit and avoided a detriment as a result of the contract being completed on time. The benefit was that she had the car ready in time for Sam who had a customer lined up to buy it. It could be that the customer would be lost and her deal with Sam may collapse if she did not deliver on time. Sam would be within his rights to terminate his contract with her if time had been of the essence in their agreement. The avoidance of a detriment goes hand in hand with the benefit, in that she avoided the possibility of losing Sam's if his order was not ready on time.

Thus you may conclude that the additional payment of £2000 was recoverable.

With regard to Sam's offer of payment to complete the work, it is unlikely that it could be enforced as Richard already had a contractual duty to complete the work for Ellie (you could again refer back to *Stilk v Myrick*).