Support Materials

Law of Contract Special Study (G146)

These materials should be read alongside the approved specimen question paper and mark schemes and specification.

Question:

1) Discuss the extent to which the precedent in *Chappell & Co Ltd v Nestle* [Source 2 and 3 page 2 Special Study Materials] represents a development of the law on sufficiency of consideration.

[12]

Example Grade A Answer:

Consideration was defined in Dunlop v Selfridge, the promise of one thing is the price for which the promise of another thing is bought. As it says in source 2 in lines 1 to 2 'the courts will not enquire into the "adequacy" of consideration'. This means that it is possible to contract to pay a price which looks well below the actual value of the thing bought, as was the case in Thomas v Thomas.

However, consideration must be sufficient, a legal term meaning that the consideration must be real and tangible and have some economic value. In Chappell v Nestle the issue was whether chocolate bar wrappers that would be thrown away could count as consideration. The case represents a development because the House of Lords said that they could. Even though they were going to be thrown away the chocolate bar wrappers were consideration because the offer of the record for the price of postage plus the three wrappers was aimed at selling more chocolate bars so this was of real economic value to Nestle. Lord Somervell's famous quote on what amounts to sufficient consideration is in lines 5 to 7 of source 3 and shows why things that will be thrown away like the chocolate bar wrappers can be consideration.

Examiner's commentary

The candidate here has first of all defined consideration using an appropriate case, gaining credit and has put the answer also in the context of adequacy using the linked case of Thomas v Thomas to show contrast. Possibly another case on sufficiency could have been used to show development and gain extra marks, although sufficiency is itself defined.

Nevertheless the candidate has explained why the case represents a development and has not laboured on the facts of the case, only using those that are essential for showing the development.

The candidate has also made a number of comments for AO2, including that something that would be thrown away can still be consideration, and why this is the case, because there is an economic value to be gained. The candidate also includes in a sensible way by citing precise lines two points made by Lord Somervell in the case and easily achieves a grade A mark.

Example Grade E Answer:

Consideration does not have to be adequate but it must be sufficient. In Chappell v Nestle the plaintiffs owned the copyright in a dance tune. Nestle offered records of the tune to the public for 1s 6d but required, in addition to the money, three wrappers from chocolate bars. When they received the wrappers they threw them away. Their main object was to advertise the chocolate but they also made a profit on the sale of the records. The plaintiffs sued the defendants for infringement of copyright. The defendants offered royalty based on the price of the record. The plaintiffs refused the offer, contending that the money price was only part of the consideration and that the balance was represented by the three wrappers. The House of Lords by a majority gave judgment for the plaintiffs. It was unrealistic to hold that the wrappers were not part of the consideration. The offer was to supply a record in return, not simply for money, but for wrappers as well.

Examiner's commentary

The candidate here has fallen into the trap of merely copying verbatim from the Source (lines 14–24) which is not good exam technique. If a candidate feels that specific parts of the source are particularly relevant to their answer they would do better to cite those lines, but must remember to also use them to develop a point. In any case where the source is repeated in answer then the part copied should be put in inverted commas, as should any quoted material.

Fortunately for the candidate they have prefixed the part copied from the Source with a basic point about consideration that is relevant to the examination of the case. Also they have selected some material from the Source which is relevant to the development made by the case, that something that will be thrown away can still be good consideration. Taken together these represent sufficient marks for a grade E but the candidate would have gained much greater marks for carefully analysing the case in their own words.

Question:

2) According to Major and Taylor [Source 11 page 8 lines 1-3 Special Study Materials] *"If a party performs an act which is merely a discharge of a pre-existing obligation, there is no consideration, but where a party does more than he was already bound to do, there may be consideration."*

Consider the extent to which the development of the rules on performance of an existing duty mean that, for there to be consideration for a fresh promise, a party must do *'more than he was already bound to do'* under the existing duty.

[30]

Example Grade A Answer:

Consideration is the second requirement to show that a contract has been properly formed, the other two being offer and acceptance and intention to create legal relations. Consideration was first defined in Currie v Misa as a benefit gained by one party and a detriment suffered by the other. In the twentieth century judges moved more towards the idea of an exchange of promises and in Dunlop v Selfridge the court defined consideration as the promise of one thing is the price for which the promise of another thing is bought.

Consideration has a number of different rules. One rule is that a party cannot use what he is already bound to give under an existing contract as consideration for a fresh promise. This was established in the case of Stilk v Myrick. In Stilk v Myrick two sailors had deserted and the captain of the ship promised the remaining nine crew members that they could share the two deserter's wages if they sailed the ship safely back to port. The ship owner then refused to pay the men and they sued. The court held that the crew were only doing what they were bound to do anyway. It was part of their contract to deal with all the different emergencies and the two men deserting was just one of these. This actually seems quite unfair in the circumstances.

In contrast with this in Hartley v Ponsonby only nineteen members of a crew of thirty six was left when the captain made the same promise to the remaining sailors. The court in this case enforced the promise to pay the men extra wages because the journey was much more dangerous with a much smaller crew and therefore the court felt that they had dome much more than they were already bound to do. In this respect Major and Taylor are correct. The promise to pay is only upheld by the court because the men have gone beyond what they were bound to do under their contract and done extra. However, it could be said that the difference between the two cases is only in the numbers of men in the two cases that were left to sail the ships.

The principle also applies not just to contracts but when a person is carrying out a legal duty. In Collins v Godefroy a police officer was a witness in a trial. The defendant wanted to make sure that the police officer did attend and give evidence so he promised him a sum of money for doing so but then he failed to pay him. The court would not enforce the payment by the defendant because the police officer was already under a duty to attend the trial so he wasn't doing anything more than he would have already had to do by law.

On the other hand in Glassbrook Brothers v Glamorgan County Council there was a strike by

miners and the colliery owner asked the police to supply him with extra policemen for protection. Because the police would have only normally used a small number of policemen to patrol they said that they would only provide the extra men for a payment. The colliery owner agreed but then failed to pay. The court held that the police force were doing more than they would normally have done and therefore the colliery owners were bound to pay the money they had agreed to pay. This again shows that the quote is accurate. Shadwell v Shadwell is a different type of case but it makes the same point. At one time if a person was engaged to be married this was legally binding. As a result of this an uncle promised to pay his nephew a regular sum of money till he qualified for the bar. The nephew was able to sue when the uncle failed to pay because getting married was seen as extra consideration so the quote is accurate in a sense because by getting married the nephew is doing more than he was bound to do by qualifying for the bar.

However, sometimes courts will enforce agreements when the claimant doesn't seem to be doing anything more than they were already bound to do under their contract. In Williams v Roffey a carpenter under quoted in a contract for sub-contract work on flats and then ran into difficulties trying to complete the work on time. Because the main contractors would have to pay penalties in their contract for late completion of the work they offered to pay Williams another £10,000 if he agreed to complete the carpentry on time. He did so but then the main contractors did not pay him the extra money they had promised. On the surface it seems as though the carpenter's claim would fail because he was only doing what he was already bound to do, complete the work by the agreed date in his contract. However, the court distinguished from Stilk v Myrick and said that there was consideration for the later agreement and this was the extra benefit gained by the main contractors in not having to pay penalties if they completed the work late. Consideration must be real, tangible and have economic value. In Williams v Roffey there is nothing extra being done as there was in Hartley or in Glassbrook so it seems as if the case contradicts the quote. However, the court was satisfied that the extra benefit did have economic value. Pao On v Lau Yiu Long is another case where the claimant only appeared to be doing what he was already bound to do under his existing contract but the court enforced the second agreement.

In conclusion the quote is generally true but there are some cases that don't seem to fit absolutely to the rule despite the justifications given by the judges.

Examiner’s commentary

The candidate has written at reasonable length and detail and there is also some creditable comment for AO2. Although in general the AO1 is more extensive and developed than the AO2.

For AO1 the candidate has included a wide range of cases, not just the obvious ones on performing existing contractual duties but a range on performing public duties also. As is often the case with Contract answers the candidate gives a great deal of detail on the facts of cases but has also been careful to examine the legal principles carefully as well. Besides this the candidate has provided definitions of consideration and used two appropriate cases in doing so. The candidate has in any case used most of the main cases associated with the area and scores high AO1 marks.

The critical comment is possibly not always as developed as the AO1 but the candidate has tried to include comment throughout. The candidate contrasts cases where the rule has applied rigidly with those where something extra has been provided, and has shown the very different approach in Williams v Roffey and has tried to link back to the question and reach conclusions.

Example Grade E Answer:

The basic rule from Stilk v Myrick is that doing something that you are already bound to do under an existing contract won't be classed as consideration for any new agreement that you reach. You must do something more than you were already bound to do for it to be consideration. Stilk v Myrick was about sailors who were promised extra money to do the work of other sailors who had deserted but they already had to sail the ship anyway so the court would not let them have the extra money because they hadn't done anything extra.

Hartley is another case where sailors were promised money when there was only half the crew left to sail the ship. The court let the sailors have the money in this case because it was much more dangerous to sail the ship when they were so short handed. However, there doesn't seem to be a lot of difference between the two cases other than the number of sailors in each case. The court did the same thing in the case where the miners were on strike and the pit owner had to pay for more policemen.

Williams v Roffey is another case where the court took a different approach. Williams was sub-contracted to Roffey but couldn't do his work by the set date. So Roffey offered him more money if he promised to do the work on time because if the work wasn't done on time they would be paid less. They didn't pay him when he did the work so he sued. The judge said that he should be paid the extra money because Roffey gained a commercial benefit from not getting paid less for the work not being finished on time. The judge said it was different to Stilk v Myrick even though Williams wasn't doing anything more than what he was already supposed to do.

Examiner's commentary

This is a fairly limited answer which would have benefited from more explanation and certainly more development. It is also fairly narrative in style with little real critical comment which is typical of a grade E answer.

For AO1 the candidate gains credit for explanations of Stilk, Hartley and Williams v Roffey and also for the reference to Glassbrook although without naming it. There is some understanding of the principles of these cases and how they are different.

There is not much in the way of AO2. However, the candidate does gain credit for pointing out the contrast between Stilk and Hartley and for the brief comment that on the facts there does not appear to be too much difference between the cases and for the undeveloped comment on Williams v Roffey.

Question:

3) Clare, Maureen and Pauline all work in the law school where Chris is a lecturer.

Consider whether or not each of them could enforce the following agreements.

a) Chris asks Clare if she will type out the manuscript for his latest Contract Law text book. No mention is made of payment but after the work is completed Chris says that he will pay Clare £300. [10]

b) Maureen, who has previous experience as a proof reader, volunteers to proof read the manuscript. Chris gratefully accepts. After the work is done Chris promises to pay Maureen £100. [10]

c) When the typed manuscript is completed and proof read Chris has lectures all day and cannot get to the post. He promises Pauline that in future he will try to stop moaning about his workload if she will take the manuscript to the post and send it to the publishers for him. [10]

[30]

Example Grade A Answer:

(a)

Past consideration is no consideration.

Here consideration is past because Chris's promise to pay £300 comes after Clare does the work.

However this is like the exception in Lampleigh v Braithwaite because Chris has requested the service so there is an implied promise that he will pay.

Clare can claim the money.

(b)

Here consideration is past and past consideration.

Maureen cannot claim the £100 which Chris only promises to pay after the work is already done.

(c)

Here Chris's promise is made before Pauline agrees to go to the post for him so it is not past consideration.

However the situation is like White v Bluett where the son also promised to stop complaining.

The consideration is too vague and there is nothing for Pauline to claim.

Examiner's commentary

The candidate here has answered in a brief note form but is perfectly acceptable for a question 3 answer. The key issue is whether the candidate correctly identifies and applies the principles of law.

The candidate secures sufficient marks for grade A because appropriate principles are applied to all three scenarios and because most marks for question 3 are given for AO2. The candidate has given a reasoned application for each situation. For both (a) and (c) the candidate has applied the correct law with some detailed application and appropriate case law.

The answer to part (b), although correct as far as it goes, lacks a case for AO1 and the candidate could also have secured higher marks for spotting the possibility of Re Casey's Patents applying. Part (c) also might have included explanation that consideration must be real, tangible and of economic value. However, there is still enough here for a grade A mark.

Example Grade E Answer:

(a)

Chris offers to pay Clare £300 after she has already typed out his manuscript. Therefore consideration is past and past consideration is no consideration. In Re McArdle a woman was not able to claim for improvements that she had done to her mother in law's house because these were already done before the family promised to pay her for them.

(b)

Chris offers to pay Maureen £100 after she has already proof read his manuscript. Therefore consideration is past and past consideration is no consideration Re McArdle.

(c)

This is like the case where the son promised his father that he would stop moaning in return for the father letting him off his debts on an IOU that the father had. Stopping moaning wasn't consideration in that case and it wouldn't be here either.

Examiner’s commentary

The candidate shows some understanding of the past consideration rule and also some implicit understanding of the rule that consideration must not be too vague.

The application lacks detail and also conclusions. For (a) the candidate has also omitted to apply the exception to the past consideration rule in Lampleigh v Braithwaite. The answer to (b) is also quite thin and again the possibility of applying Re Casey’s Patents is ignored. For (c) the candidate does not actually get as far as identifying that consideration must not be too vague, although this is hinted at with the use of White v Bluett, although the cased is not named. The candidate would have clearly gained much higher marks for inclusion of any of these.

The candidate does gain limited credit for recognising the relevance of the past consideration rule to (a) and (b) and the use of the case, and for (c) again for recognising the similarity to White v Bluett.