Consideration: Executed and Executory Consideration

Shreya
Assistant Professor, Department of Law, Presidency University, Bangalore, India,
Email Id-shreya@presidencyuniversity.in

ABSTRACT:

Consideration is a key term in contract law that describes the exchange of anything of value between the parties to a contract. It is an essential component that separates a legally-binding agreement from a simple promise. Executed consideration and executory consideration are the two categories under which consideration may be divided. At the moment of contract creation, executed consideration is defined as consideration that has been completely fulfilled or executed. In other words, before the contract is created, the act or promise that constitutes the consideration has already been fulfilled. In situations where products or services have been supplied in return for money, executed consideration is often encountered. Contrarily, executory consideration is defined as consideration that is anticipated to be carried out in the future. It entails a promise or deed that has not yet been carried out or put into action when the contract was formed. In this instance, both parties are required to keep their pledges and to carry out their respective obligations under the contract when the time comes. In contract law, the difference between executed and executory consideration is crucial since it has an impact on the contract's capacity to be enforced and its potential legal ramifications. Contracts containing executed consideration are deemed legally binding and enforceable since the performance of the consideration has already occurred.

KEYWORDS:

Contractual Commitments, Equitable Trades, Executed Consideration, Executory Consideration.

I. INTRODUCTION

Consideration is a key term in contract law that describes the exchange of anything of value between the parties to a contract. It is a crucial component that separates a legally-binding agreement from a simple promise or unforced agreement. Consideration may come in many different ways, such as cash, products, services, assurances, or forbearance. Executed consideration and executory consideration are the two types of consideration. These clauses specify the sequence in which the parties to a contract give and receive consideration. Consideration that has already been provided and finished at the time of contract creation is referred to as executed consideration. To put it another way, the act or payment that constitutes the consideration has already been made. Both parties have in this instance complied with their respective contract requirements, and the consideration has been properly completed [1], [2].

Executory consideration, on the other hand, is defined as consideration that will be granted or done in the future. It stands for a pledge or commitment to make a valuable contribution in the future. An executory contract nevertheless requires the parties to execute or exchange the consideration at a later time. knowing the nature and enforceability of contractual commitments requires knowing the difference between executed and executory consideration. Contracts with executed consideration often call for prompt performance since both parties have already paid their respective obligations under the agreement and are thus obligated by its provisions. Any breach of the terms of the contract is completely enforceable, and there are available legal remedies [3], [4].

Contrarily, contracts involving executory consideration entail future performance or unfulfilled promises. The agreement binds the parties, but only to the extent that the promised act or payment will be carried out in the future before the complete execution of the consideration may be executed. The contract remains enforceable and the parties may have continuous duties and obligations to perform until the consideration is completely performed [5], [6]. In order to evaluate the enforceability and fulfilment of contractual commitments, it is essential to comprehend the difference between performed and executory consideration. It assists in determining when the exchange of consideration is complete and when parties are obligated legally by their commitments. This difference is crucial to the creation, interpretation, and resolution of any issues that could develop throughout the term of the contract [7], [8].

II. DISCUSSION

Executed and Executory Consideration

Consideration may be in the form of an act or a promise, and is referred to as either executory or executed, depending on whether the promise has still to be fulfilled or the act of transferring the goods has been completed. The consideration from both parties in the aforementioned case is executory since both A and B have not yet carried out their obligations as of the date the contract was executed. If C gives £20 for the return of her stolen diamond ring and D agrees to do so, then D's consideration will have been fulfilled since his end of the contract has been met. It makes no difference to the legitimacy of the consideration whether it takes the form of delivered goods or a promise to carry out an action and is thus executory. A promise-based contract is just as legally binding as one that calls for immediate fulfilment. Thought must be given; it need not be adequate.

Although sufficient and adequate have very similar connotations in ordinary English, they have quite distinct meanings when used to consideration, hence it is important to grasp the differences between the two. Even a little or inconsequential amount of consideration must be of some value to the other person in order for it to be deemed adequate. Even though it seems implausible, if a pen is given in exchange for a brand-new Porsche automobile, if it is intended honestly, it is sufficient in the eyes of the law. The courts are not concerned with the market price or sufficiency of the deal since there is something of value on both side of the agreement. This is in line with the notion of the freedom to contract, allowing parties to strike deals that are advantageous to them or not [9], [10].

The state of consideration in a contract is referred to as executed or executory consideration. Consideration, which is often necessary for a contract to be legal and enforceable, refers to anything of value that is transferred between the parties to the agreement. A description of executed and executory consideration is provided below:

1. **Executed Consideration:** At the time a contract is created, executed consideration is defined as that which both parties have completely accomplished or exchanged. It is thus already being provided and receiving attention. Once consideration has been given, it cannot be cancelled or reversed. As an instance, if Party a Pays Party B a certain amount of money in return for goods, the consideration (money) is regarded as performed after it has been paid and the items have been delivered to Party A.
2. **Executory Consideration:** On the other hand, executory consideration is defined as compensation that is promised but not yet fulfilled or traded at the time a contract is created. This is a consideration that is still being carried out or accomplished. The parties have pledged to provide valuable future benefits. For instance, the consideration (money) is executory until the service is completely completed and Party A makes the payment if Party A agrees to pay Party B a certain amount of money after completion of the service.

The difference between executed and executory consideration impacts the parties' rights and responsibilities under the contract, hence it is crucial to understand. Both parties have completed their responsibilities in a contract with executed consideration, therefore usually no more action is required. However, both parties are still obligated to fulfil their commitments in a contract including executory consideration. Noting that consideration is a vital component of a contract, it is crucial to note that the precise laws governing executed and executory consideration might differ depending on the jurisdiction and the kind of contract. In other instances, such as in some unilateral contracts or transactions performed under seal, consideration may also not be necessary. To comprehend the precise laws and rules that apply to your particular contract, it is important to consult with legal experts.

Consideration Must Move from The Promise

A deal must have been struck and consideration given by the two parties in order for it to be enforceable. In other words, they had to have made the offer, accepted it, and given the consideration. Therefore, C cannot sue A If a Pays B £50 and B agrees to mow C's grass. C has not offered any thought. It will become clear in the next sections how closely this theory relates to the conventional idea of privity of contract only those who are parties to a contract may sue on it. The Contracts (Rights of Third Parties) Act of 1999 may have changed this situation, and it implies that a party who has given no consideration at all may now be able to enforce the benefit of a contract if it is made crystal clear that the benefit was intended for them specifically.

Past consideration

A promise must be related to the compensation given in exchange for it. In other words, it must be a promise or act made in direct exchange for the other party's pledge and not something that has already been done. If the action that is to be considered has already been done before the promise is made, it will not be considered at all in the eyes of the law. Therefore, there is no enforceable contract if the sole act or promise that may be considered consideration is made after the other party has carried out their commitment, since previous consideration cannot establish a contract.

However, if an act is performed at the request of the promisor and it has always been agreed that payment would be paid at some point in the future, or if there was a reasonable assumption that payment would follow, then the consideration that has seemingly already passed will be acceptable. The following example from the seventeenth century serves as a good illustration of this.

Performance of an Existing Contractual Duty

In general, if someone has once agreed to perform something, they cannot utilise that same obligation as payment to that same person again. Owners (carpenters) of the Roffey Williams building Figure 1.

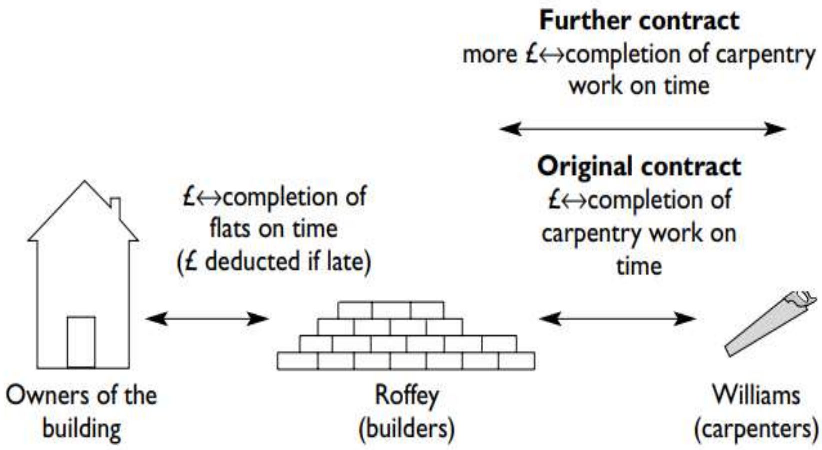

Figure 1: Illustrate the Ownership and Contracts.

The Williams v. Roffey case has generated a great deal of debate in the legal community, primarily because it at least partially deviates from the customary standard of consideration. In their initial agreement with the builders, the carpenters were required to finish the apartments by a certain date. They further agreed with the builders that if additional money was given, they would finish by that date. As a result, it seemed that the carpenters were just doing their first task and using that as an excuse to demand further compensation. On the other side, it might be claimed that the builders had made a deliberate decision to pay the carpenters, and thus sparing them from making the additional payment to the owners was advantageous to them both practically and financially. The case is unquestionably an illustration of the courts' sincere efforts to take into account the parties' business realities about the challenges they experienced during the financial crisis and in the context of their industry's slump. As seen by the court's refusal to apply Roffey's justifications to partial payment of a debt in Re Selectmove (1995), there has been a definite reluctance to extend the concept any further at the moment.

A claim was made that interest should not be paid after an agreement to pay the Inland Revenue in installments since the Inland Revenue had the practical benefit of not having to go to any further work to retrieve the debt. Since it required payment to the Inland Revenue and not an individual, this may be seen, at least in part, as a policy choice. Following the ruling in Roffey, the case of Simon Container Machinery v. Emba Machinery (1998) considered the practical advantage of preventing the issues that would have resulted from the other party's withdrawal from the contract.

Part-payment of a debt

In terms of contract law, "part-payment of a debt" is a circumstance in which a creditor accepts a debtor's offer to make a payment that is less than the whole amount due. A debtor's partial payment creates significant questions and possible repercussions for both parties. Here are some essential ideas to remember: Part-payment of a debt has the ability to result in agreements and satisfaction. When the creditor accepts the partial payment as complete settlement of the obligation, the remaining amount is effectively discharged. However, there must be a clear understanding between the parties that accepting the partial payment will completely settle the debt for an accord and satisfaction to be acceptable. A creditor typically has the right to pursue the unpaid amount if they accept a partial payment without expressly requesting that the whole obligation be discharged. Instead of being a complete satisfaction, the part-payment might be seen as a contribution towards the whole debt.

After receiving a partial payment, a creditor may, in certain circumstances, decide to waive their right to pursue the full amount owed. This could happen if the creditor determines that it would be pointless, expensive, or time-consuming to pursue the outstanding debt. This waiver must be made explicit, however, and it must be made known to the debtor. In accordance with the law of promissory estoppel, a creditor may be barred from pursuing the unpaid balance if the debtor relies on the creditor's promise to accept a partial payment as complete settlement of the obligation. With the help of this philosophy, injustice will be avoided and commitments made in connection with debt settlement will be kept.

Keeping precise records of any partial payments received and any agreements made on the remaining debt is crucial for both parties. Future problems or misunderstandings may be prevented with clear documentation of the agreement. It is advised that both debtors and creditors get legal counsel when contemplating or negotiating part-payment agreements due to the intricacies and possible ramifications involved. Legal experts may advise on the particular laws and rules that apply to the circumstance and assist in defending the rights of both parties. It is important to remember that different jurisdictions may have different rules and legislation governing partial payment of debts. For detailed advice and direction about part-payment agreements under contract law, legal counsel versed with the applicable laws in your country is advised.

The current state of the doctrine

Recent instances demonstrate that the conventional need of thought is still relevant. The emergence of promissory estoppel, which is intriguing in and of itself since it is founded on a number of obiter dicta that are obviously not legally enforceable, cast some doubt on it, and the Williams v. Roffey decision gave it still further blow. But in this instance, the existence of the theory is not so much called into question as its measurement or discovery. Comparison between Ward v. Byham and White v. Bluett demonstrates the fact that there is considerable disagreement in earlier case law. Aren't they both too ambiguous to be taken into account if the court genuinely wants anything recognisable? Yet one contract was legitimate while the other was not.

There are further oddities, and the concept has faced much criticism throughout time. Jessel MR said in Couldery v. Bartrum (1881) that under English Common Law, a creditor may take anything as payment for a debt, with the exception of a smaller sum of money. He may take a horse, a canary, or a tom-tit if he so desired, and that was in agreement and satisfaction; nevertheless, due to an extraordinarily odd aspect of English Common Law, he was not permitted to accept 19s 6d in the pound, which was nudum pactum.

Professor Atiyah concurs, arguing that there is no requirement for careful analysis if there is an offer and acceptance and there is legal purpose. Others, like Professor Hamson, would argue just as vehemently that the theory is a component of the "indivisible trinity" of contract, together with offer and acceptance. If by consideration we mean a two-sided deal, then maybe the courts are now recognising the necessity for it, but perhaps they are also adding to that argument the type of business reality seen in Williams v. Roffey. We watch for new information.

III. CONCLUSION

In contract law, the idea of consideration fulfils a number of crucial roles. First of all, it sets a contract apart from a simple gift or unpaid promise. The fact that there is consideration shows that the parties have negotiated for their rights and duties and entered into the agreement with the intention of exchanging value. Consideration is another proof of the parties' desire to be bound by the terms of the agreement. It proves that the parties freely agreed to the terms of the contract and that they are obligated to uphold their end of the bargain. Additionally, consideration improves a contract's capacity to be enforced. In order for a contract to be enforceable by law, there must often be consideration. It serves as a precaution against agreements that might be made in a hasty or careless manner. In conclusion, consideration whether actual or constructive is a fundamental component of contract law that certifies a contract's capacity to be enforced and its fairness. It confirms that value has been transferred and that the parties have consented to be bound by their respective commitments. Consideration strengthens the idea of fairness in contractual agreements, encourages equitable trades, and upholds the integrity of contracts.

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