

Fundamentals of Anglo- American and Polish Legal Systems – Contract Law

Dr Jan Halberda
(jan.halberda@uj.edu.pl)

Main Lines of Comparison

- Civil law
(German law, French law, etc.) on the example of Polish law



- Common law
(Anglo-American law) on the example of English law



Structure of private law



„Pandecta”

- General part of civil law
- Property
- Obligations
- Succession
- Family



- Common law vs Equity law
- Structure of law by Peter Birks



Birks' structure of private law

Persons:

Law of persons, incl. law of corporations, family law

Rights:

Proprietary rights (law of property):
property (incl. trusts), securities,
intellectual property, succession

Personal rights (law of obligations):
contracts, wrongs, unjust enrichment,
other events (negotiorum gestio,
maritime salvage, tax, judgment)

Procedure:

Court procedure, private international law, bankruptcy law, judicial remedies

Sources of obligations



- Contracts
- Delicts
- Unjust enrichment
- Others (incl. negotiorum gestio, judgments)



- Contracts (=mutual contracts)
- Torts
- Equitable wrongs
- Restitution (=unjust enrichment)
- Others (incl. unilateral contracts, estoppel, negotiorum gestio, judgments)

Parties to the Obligation/Litigation



Creditor
Plaintiff (Claimant)



Debtor
Defendant

Elements of Contract

- Agreement (meeting of minds)
- Intention to create legal relations
- Definite terms
- Form
- Legality
- **Consideration**



Two meanings of Consideration



time



I. Contract Formation

- Consideration as an equivalent of Roman Causa



II. Contract Performance

- Consideration as a Performance
- Total Failure of Consideration



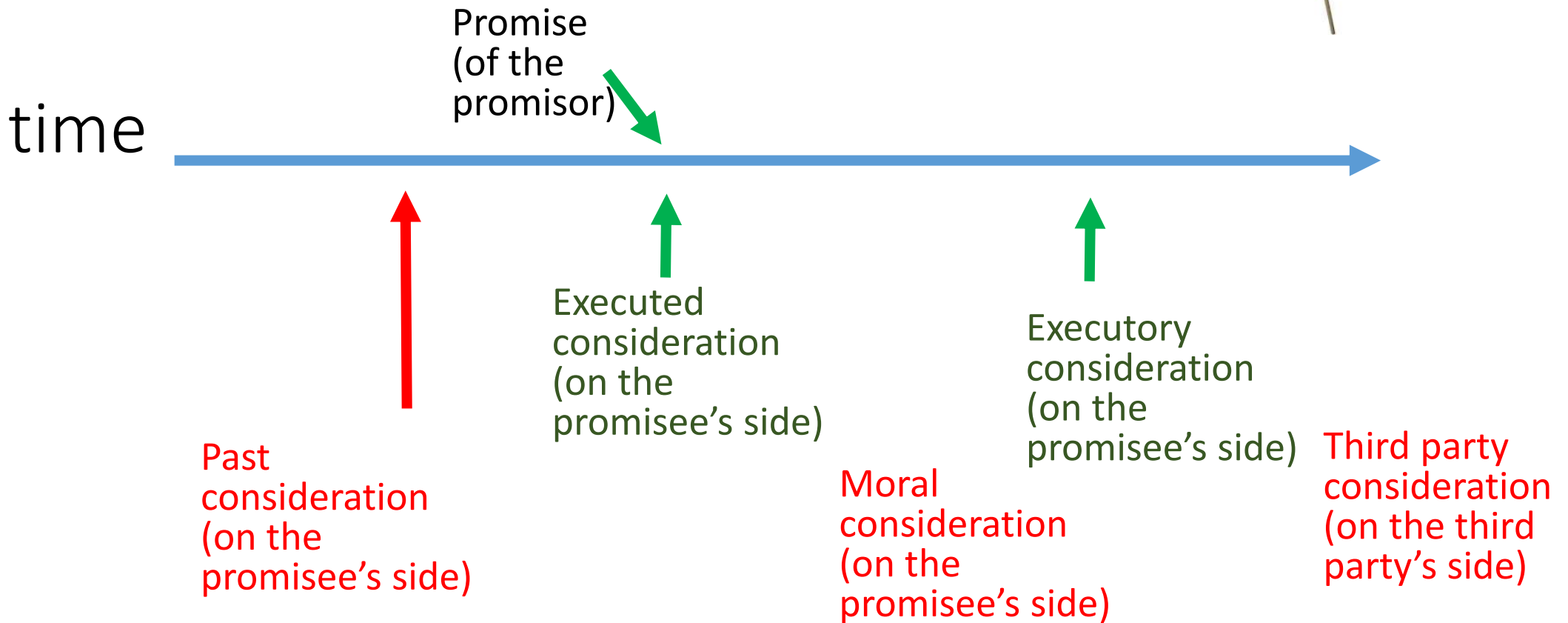


Consideration at contract's formation

- *Consideration* is **something** given by one party in exchange for **something** given by another party.
- *Concept of contract as a two-sided affair / as a bargain*
- *Mutuality / reciprocity of contract*
- *Law of promises vs Law of agreements*
- *Promise* is valid if supported by **consideration**



Consideration at contract's formation



Past consideration (Eastwood v Kenyon (1840))



time



Father dies and leaves his daughter

Eastwood pays for daughter's education etc

Daughter marries Kenyon

Kenyon defaults (does not pay)

Eastwood sues Kenyon on promise

Eastwood is nominated as the daughter's guardian

Daughter promises she will pay him (Eastwood) back

Kenyon promises he will pay him (Eastwood) back

Moral consideration (Eastwood v Kenyon (1840))



time



Father dies and leaves his daughter

Eastwood pays for daughter's education etc

Daughter marries Kenyon

Kenyon defaults (does not pay)

Eastwood sues Kenyon on promise

Eastwood is nominated as the daughter's guardian

Daughter promises she will pay him (Eastwood) back

Kenyon promises he will pay him (Eastwood) back

Promise to perform existing obligation



time



Parties conclude a contract



One of the parties performs his side of contract (seller delivers the goods to the buyer)



Buyer does not pay ☹️



Seller promises he will not sue for interest



Buyer promises he will pay later



Buyer pays later



Seller sues for interest

Promise to perform existing obligation (Foakes v Bear (1884))



time



Parties conclude a contract



One of the parties performs his side of contract (seller delivers the goods to the buyer)



Buyer does not pay 😞



Seller promises he will not sue for 10% of the price plus interest



Buyer promises he will pay later 90% of the price



Buyer pays later 90% of the price



Seller sues for remainder

Promise to perform existing obligation (Williams v Roffey (1991))



time



Parties conclude a contract



One of the parties performs his side of contract (Client pays)



Contractor does not deliver 😞



Client promises he will pay 10% more

Contractor promises he will deliver later



Contractor delivers later

Client does not pay



Purchaser sues the Client

Promise to perform existing obligation (Re Selectmove (1993))



time



Parties conclude a contract



One of the parties performs his side of contract (seller delivers the goods to the buyer)



Buyer does not pay ☹️



Seller promises he will not sue for 10% of the price plus interest



Buyer promises he will pay later 90% of the price



Buyer does not pay



Seller sues for remainder

Re Selectmove Ltd (1993)



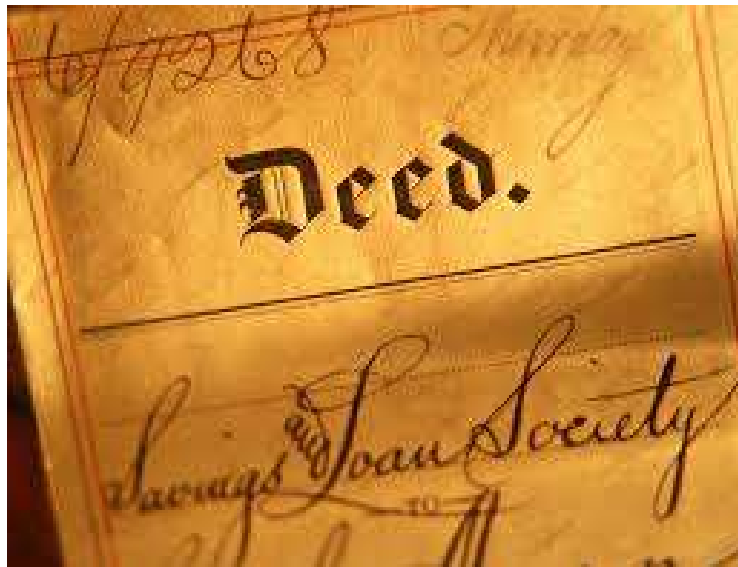
- if the principle of [Williams v Roffey Bros Ltd](#) is to be extended to an obligation to make payment, it would in effect leave the principle in [Foakes v Beer](#) without any application. When a creditor and a debtor who are **at arm's length** reach agreement on the payment of the debt by **instalments** to accommodate the debtor, the creditor will no doubt always see a **practical benefit** to himself in so doing. In the absence of authority there would be much to be said for the enforceability of such a contract. But that was a matter expressly considered in *Foakes v Beer* yet held **not to constitute good consideration in law**. *Foakes v Beer* was not even referred to in *Williams v Roffey Bros Ltd*, and it is in my judgment impossible, consistently with the **doctrine of precedent**, for this court to extend the principle of Williams's case to any circumstances governed by the principle of *Foakes v Beer*. If that extension is to be made, it must be by the **House of Lords** or, perhaps even more appropriately, by **Parliament** after consideration by the Law Commission.

Inadequacy of consideration

- *Sturlyn v. Albany* (1587): „for when a thing is to be done by the plaintiff, be it never so small, this is a sufficient consideration to ground an action”



Consideration and Deed



- *Sharlington v. Strotton* (1565): “So, where it is by deed, the cause or consideration is not enquirable... For every deed imports in itself a consideration, namely the will of the maker of the deed. Therefore it shall never be said nudum pactum where the agreement is by deed...”

Privity of Contract

- Consideration must move from the promisee



Central London Property Trust Ltd. v. High Trees House Ltd. (1947)



time



Parties conclude a lease

Subtenants does not pay / leave the premises (because of war)

Landlord promises he will not sue for 40% of the rent

Landlord claims full payment of rent (for which period???)

One of the parties performs his side of contract (landlord delivers the premises to the tenant)

Tenant does not pay (because of war)

Tenant promises he will pay 60% of the rent

Tenant pays

Sub-tenants come back

Promissory Estoppel



Central London Property Trust Ltd.
v. High Trees House Ltd. (1947)

- **Promise** must be clear and unequivocal
- Promise must be intended to be **relied** on
- Promisee's reliance must result in **detriment**
- Estoppel only suspends rights - Combe v. Combe (1951)
- Estoppel is only a shield and not a sword

Abuse of right clause



- Article 5.
- One cannot exercise a right in a manner which would contradict its socioeconomic purpose or the principles of community life. Such act or omission on the part of the person entitled shall not be considered the exercise of that right and shall not be protected.