
CONTRACT LAW

LARGE GROUP 4 Student Guide

Consideration in the context of contractual variations

Context

Where contracting parties have an on-going relationship, a change of circumstances may mean that one, or other, of them seeks to vary the contract. For example, a contractor who has underestimated his costs may seek to be paid more for what he has agreed to do, or a debtor who suddenly finds himself in financial difficulties may ask his lender to temporarily accept reduced repayments on the loan. These are referred to as upward and downward variations respectively.

For variations of contracts to be binding there must be agreement (offer and acceptance), consideration and an intention to create legal relations (just the same as on formation of contracts). Where a party seeks to enforce a contractual variation, the legal issue will often centre round consideration. What, if anything, did that party promise, or give, in return for the other party's agreement to either pay extra money or to accept less money?

In the absence of consideration a variation will not be enforceable at common law, although in the case of downward variations (i.e. promises to accept less money) a debtor may have an equitable defence to enforcement if he can show that in all the circumstances it would be unfair for the creditor to renege on his promise. This equitable defence is known as promissory estoppel.

So it is important for lawyers to be able to identify some consideration in the context of contractual variations; and in the case of downward variations to advise on the availability of promissory estoppel as a potential defence to enforcement in the absence of consideration.

Outcomes

By the end of this large group you should be able to:

1. Identify and explain consideration in the context of upward and downward variations of contracts.
2. Compare and contrast the legal principles governing upward and downward variations.

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