

Questions Produced by ‘Cross-Relationship’ of Consideration

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Abstract: The contract which has past the limitation is recognized by law, if the debtor give up the effectiveness of the time, it can voluntarily perform with no legal compulsory obligation, that reflects the past consideration concept from Anglo-American Law. However, the debtor can't revoke its action after the performance which is not protected by the law, we still need to work at it constantly to form the our contract system and consider the application of the consideration system rationally in China.

Keywords: Consideration; Offer; Acceptance; Moral Obligation; Reward Offer

1. Introduction

Consideration, which is regarded as the only evidence of the intention of the parties to be bound, one of the effective elements to form a contract, relates to many kinds of statutory rules, like a substitute for consideration -promise estoppel, and causes different perspectives in the field of Anglo-American Law. As a Chinese student who have attendance to work in the field of law, acquiring the knowledge and learning from the mistakes of the application of different legal systems are our necessities. As a result, I wrote a thesis to illustrate "consideration" in Anglo-American Law which consists of outlines, application, the conflict of the studies, the advantages and disadvantages, something worthy of learning and using for reference in continental law system.

2. History of Consideration

The experts of Anglo American legal system generally believed that the British contract system originated from the writ system in the thirteenth century, and the ordinary court recognized the binding force of the promise by expanding the scope of the writ litigation. In addition, the consideration is the limit of whether the promise can be executed. The word which is called consideration has appeared since the fifteenth and sixteenth century, however, it

was used to show the cause and motive of the promise which is said by one side of the party only. In the stage when the action for breach of promise develops to where the promise can be executed, the consideration begins to determine whether the promise is enforced. In addition, the reason why the consideration is used is closely related to the tradition of British and American contract law, is that the reciprocal transactions is the priority to the theory. As a result, the act of unilateral benefit is excluded from the contract category. A promise, such as a gift, is not enforceable. As mentioned above, a contract, if intended to be enforced in court, either has a stamped wax seal. Or the promise must be supported by consideration.^[1]

3. Conceptual Structure

Related concepts(K contract=O offer+A acceptance+C consideration)

Suppose the parties have mutually ascended to form a contract, either you a process of offer and acceptance or some of formal methods of assent. In the case of a bilateral contract, both of the parties will have made promises, while in a unilateral contract, only one of the parties will be a promisor. Is the making of a promise when part of the process of mutual assent sufficient to result in the formation of a contract? Whatever may be the memorable obligations that arise from the making of a promise, in the Anglo American legal system the making of the promise is insufficient by itself to result in the formation of a contract. And additional requirement is necessary-- the presence of consideration.^[2]

3.1 Offer

An offer must be direct and complete, according to case "Leonard v. Pepsico, inc., 88 F. Supp.2d 116", the court found that no contract existed because there wasn't any direct objects in Pepsico's offer.

3.2 Acceptance

Different systems have different restrictions.

Because UCC is focus on sales of goods, both parties can form the contract without any special agreement like the standard, payment method etc. except the number of the subject matter. Unlike to UCC, the rules of acceptance in Common law is much more serious than that in UCC. Firstly, it is said that a good acceptance must be in conformity with the unequivocal and unconditional "mirror image rule". Secondly, it must be timely and give the other party enough and reasonable time to considerate. Thirdly, the offeree must communicate to the offeror.

3.3 Consideration

Consideration is the third element of the contract formula and it's a vital element in the law of contracts, it is often characterize as the price of the promise in the bargain for exchange. Consideration requires , first, that each party incurs or promises to incur a detriment , which means to surround a right or their free will in some meaningful ways. That each detriment is a price of each other .

3.3.1 The Famous and Historical Case Called Hamer v. Sidway.

We can use a cross-relation model and analyse the specific case to understand the meaning and structure of consideration. According to the historical case which is called Hamer v. Sidway . Hamer is nephew and Sidway is uncle. Uncle announces that he will pay nephew \$5, 000 when he turns 21 if, but only if, nephew refrains from drinking, using tobacco, swearing, or playing cards or billiards for money until then. Dreams die hard, but Hamer abides by his uncle's demand for six long, dry years. When the nephew turns 21, his uncle sent letter with the words "nephew had earned the money, but it's not of a appropriate age to have money. "So the uncle states that he will give nephew money at a later day when he is of age and will pay within interests. However, the uncle died twelve years later without having transfer the money to his nephew, so the nephew sues the executor.

The executor argues that there was a gift contract between Hamer and Sidway. In this occasion, Sidway had the legal right to revoke his promise in any time. There was a controversial issue that whether the consideration is valid between both sides of the parties.

To solve the issue clearly, we can use the cross-relation model to analyse it. According to the conditions of consideration, that each party incurs a detriment which is regarded as a price of each other, in other words, if one party has a detriment, another should have the benefit as a price, vice versa.

Key point one "what is the detriment to Hamer? ":Back to the conditions of the consideration , the detriment incurred by the parties, means to surround a right or their free will in some meaningful ways. Before turning eighteen years old, Hamer didn't have the capacity to drinking, using tobacco, swearing, or playing cards or billiards owing to the legal provisions. Strictly complying with the law was Hamer's duty. Thus nephew didn't have any detriment until he turned eighteen years old. However, It was not until the nephew turn to eighteen that he had his legal rights to do the things mentioned above. As a result, Hamer forswore his legal rights. Moreover, he has had a detriment which means to surround his free will to do those sorts of things during eighteen to twenty-one years ago.In conclusion, nephew does have his detriment. To be exact, the detriment to nephew was refraining from sinful but legal activities.

Key point two "what is the benefit of Sidway? ":It was the controversy that what the Court of First Instance and appellate court argued about. The Court of First Instance decided that if one has a detriment but other party doesn't have the benefit, there are no diagonal lines and the relations of cross existing in the table below, the contract between both parties shall not come into effect. Defendant has the legal rights to not perform its promise. As shown in Figure 1.

	Party A :Hamer	Party B:Sidway
benefit	promise to pay 5000 dollars	The legal rights from Hamer
detriment	Part of his legal rights	5000 dollars

Figure 1. The Judgement of Court of First Instance

Unlike to the judgement from trial court, the appellate court had the disparate opinions. According to the consideration of bargain The court said that the purpose of spending 5000 dollars was to purchase the legal rights that

belong to nephew for period of three years, and that was the uncle's benefit. As a consequence, cross-relationship has arisen. Additionally, there were both consideration and contract in this case.

The administrator must pay Hamer 5000 dollars and interests.

because I want you to do your things. As shown in Figure 2.

It also raised a crucial point to define the detriment and benefit, that is, I will do my things,

	Party A :Hamer	Party B:Sidway
benefit	promise to pay 5000 dollars	The legal rights from Hamer
detriment	Part of his legal rights	5000 dollars

Figure 2. The Judgement of the Court of Appeal

3.3.2 Variation of the Case Above

Based on the first case, let's modify the conditions. Suppose a modern day Hamer case in which the uncle concerned about the effect of drug abuse, promises his fifteen-year-old nephew "if you refrain from using such drugs until the age of twenty-one, I will give you 5000 dollars. "In this occasion, does Hamer have the legal capacity to ask his uncle or his uncle's executor for 5000 dollars within interests?

Key point one "what is the detriment to the nephew? ":Drug abuse is prohibited by law, It's Hamer's duty to obey the law. Obeying the law shouldn't be defined as the detriment which means to surround a right or free will. In this occasion, nephew doesn't have detriment and uncle doesn't have benefit. There is no cross-relationship between both parties, so there is no consideration and contractual relationship between them. As shown in Figure 3.

Go back to the third element, the important links of contract formation, consideration.

	Party A :Hamer	Party B:Sidway
benefit	5000 dollars	has no
detriment	has no	5000 dollars

Figure 3. The Structure of Consideration in the Variant of the Case.

3.3.3 The Situation Which Called "Buy A House for One Yuan"

Think further, if the gift behaviour often makes the consideration untenable, it will reduce the scope of legal protection even increase the unease of both sides of the parties. To solve that problem, we can relate the consideration to the situation between parents and children in Hong Kong which called "buy a house for one yuan". The one yuan which paid by children is regarded as the consideration to establish the contract, or create the consideration artificially.

4.1 The Reward Offer

Let's introduce the content with a case:What if party A said to party B : "if you go get my wallet, i will give you 100 dollars. "In such kinds of cases, there are two important points in it, firstly, a sentence "I will do my things because i want you to do your things. " Secondly, the coercive force of the offer depends on whether the parties know the matter in advance or know the reward offer in advance.

Situation one:If party A knew that "if he helps party B to find his wallet, he will receive 100 dollars from party B in return. " As shown in Figure 4.

4. The Application Of Consideration

	Party A	Party B
benefit	100 dollars	find out the wallet
detriment	know the matter in advance and pay the price	100 dollars

Figure 4. The Cross-Relationship of Situation One

Situation two:If part A doesn't know the matter mentioned above in advance, party A will not have the detriment, the cross-relationship won't be established, there will not be consideration and contract between party A and party B. Whether to pay party A 100 dollars or not depends on party B's mind. He can decide to pay party A or not. If party A insists on what

party B has promised, party A has the legal rights to sue party B for unjust enrichment. As shown in Figure 5.

4.2 Past Consideration--Another Interesting Consideration

The introduction of the case:Because of the progress and good report the eight-year-old boy

has made, it is said that he would receive 3000 dollars from his aunt when he turned to eighteen years old. However, when the nephew was

eighteen years old, his aunt refused to pay 3000 dollars which she had promised. As shown in Figure 6.

	Party A		Party B
benefit	100 dollars		find out the wallet
detriment	has no		100 dollars

Figure 5. The Consideration of Missing Conditions of Situation two.

	Party A :nephew		Party B:aunt
benefit	3000 dollars		has no
detriment	has no future consideration		3000 dollars

Figure 6. The Cross-Relationship between Nephew and Aunt.

Past consideration is common especially in the conditional contract. The biggest difference between this case and Hamer and Sidway’s case is the type of consideration, past consideration and future consideration. Future consideration is protected by the law but past consideration is not.

her lives to terminate the labour contract with the employee mentioned above, if the employee comes to the refinery to get the cash personally. Many years past, the refinery refused to pay employee money because they said that there was a gift relationship between them and the manager can withdraw the offer they promised. Key point one "what is the detriment of the employee":

4.3 Moral Obligation - An Exception of Consideration

The brief case one:In 1930s, the employer of refinery promise to pay the employee who suffered from a robbery and become disable her fundamental and minimum wages for the rest of

(1). the disability of the employee which caused by the accident during work time:The disability occurred before forming the contract, past consideration isn’t protected by the law. As shown in Figure 7.

	Party A :employee		Party B:employer
benefit	receive fundamental wages monthly		has no
detriment	(1) , Past consideration → X		pay wages for employee monthly

Figure 7. The Cross-Relationship of Assumption One

(2). losing the right to work:The company’s benefit wasn’t employee’s right to work. As

shown in Figure 8.

	Party A :employee		Party B:employer
benefit	receive fundamental wages monthly		has no
detriment	(2) ,		pay wages for employee monthly

Figure 8. The Cross-Relationship of Assumption Two

(3). walking to the company every month by herself:The company’s benefit wasn’t her right

to work. As shown in Figure 9.

	Party A :employee		Party B:employer
benefit	receive fundamental wages monthly		has no
detriment	(3) ,		pay wages for employee monthly

Figure 9. The Cross-Relationship of Assumption Three.

In conclusion, the court said : "there aren’t any detriment to the employee, thus the cross-relationship won’t establish, there isn’t any consideration and contract between both sides of the parties. Moreover, there isn’t coercive force between them."

reasonable person makes a reasonable decision in a reasonable environment from UCC, to think this issue radically. An employee who injured in the process of labour and accepted the promise made by the employer, ended of losing the source of living because of the instability of the consideration and sinfulness of the employer. More than one person thought the mentioned

Look at different aspects, we can use the objective theory of contracts, which means a

above was so very unfair. As a result, moral obligation which called the exception of consideration was set up by the court in order to adjust the unfair relationship like a weight. From a universal point of view, moral obligation is a good method to solve the unfair issue from the case.

The Brief Case Two:Mills V. Wyman

Wyman is father. His son is Levi. Mills is a friend of Levi. Levi was coming back from journey and got sick. Mills took care of Levi until he died. Wyman apparently learned about this, and later wrote to P saying that he'd pay him for taking care of Levi. Consequently, Wyman refuse to pay money for there was a gift relationship instead of contract between Mills

and him. As a result, moral obligation occurred in the written judgement.

Cases like Mills v. Wyman are often referred to as involving enforcement of a "moral obligation." It is useful, however, to refine this point. The court in Mills clearly holds a promise seriously made. In starting the general rule, the court notes that "there are great interests of society which justify withholding the coercive arm of the law from these duties of imperfect obligation." "What interests do you suppose the court had in mind? Charles Fried, a noted philosopher and contract scholar, argues that this view is wrong and that the law should follow morality, enforcing a promise seriously made.[3] As shown in Figure 10.

	Party A : Mills	Party B:Wyman
benefit	money paid by Wyman	somebody help to took care of his son
detriment	take care of L past	pay money to Mills

past consideration

	Party A : Mills	Party B:Wyman
benefit	money paid by Wyman	somebody help to took care of his son
detriment	take care of L past	pay money to Mills

moral obligation

Figure 10. The Applicable Situation of Moral Standard

The misleading so-called "moral obligation" exception to the past consideration doctrine said:

- (1)Promise to pay a debt that is barred by the statute of limitations.
- (2)Promise to pay a debt that is incurred by an infant.
- (3)Promise by a bankrupt person to pay a debt after she's gone through bankrupt and is free and clear of her debts.

5. The Speculation Of Consideration

5.1 The Criticism of Consideration

Consideration was a requirement for the enforcement of a promise, well established by precedent in all American jurisdictions. It had a precise definition: a legal detriment to the promisee, bargained for or given in exchange for that promise. The logical manipulation of the definition appeared to resolve a number of quite concrete, sometimes practically significant, and sometimes ethically controversial questions.[4]

- (1).Consideration makes the relations of contract become unstable.
- (2).Consideration has become extremely technical. Scholars have assumed that when parties utilize a formalism-such as nominal consideration-to make their promises legally

binding, they necessarily desire to be bound. Using a game theory model based on asymmetric information, we dispute the conventional wisdom that the law should honor parties' expressed intentions may not conform to their underlying desires.[5] A promisor may render her promise legally enforceable-even though she does not want to-in order to signal her sincerity to promisee. As a result, in a cycle of inefficient signaling, other promisors may feel forced to do the same. Thus, the mere fact that parties take advantage of a legally binding form does not imply that they desire the existence of that opinion. Having the opinion to legally enforce a promise may harm both promisors and promisees.

(3).Consideration is separate from business reality. In the perspective of civil law, small business used its house as a security to borrow the money to the bank in the business society. However, in Anglo-American law system, there is no consideration and contract between the business and corporate borrower, furthermore, no legal force, no protections. Nowadays, it is the turnover of funds of the business that promotes the business progress . So there is a huge gap between the business reality and the world of consideration.

(4).The civil and commercial law is based on the promises from both sides of party and the autonomy of will. The effective scope of the contract is limited by the objective consideration. In other words, It is the consideration that makes the valid contract become invalid. Substantive accounts argue that unilateral-or "gratuitous" -promises are less socially valuable than promises made as part of a bilateral exchange. The substantive approach cares not for the parties' intentions or what steps they take to communicate a desire to be bound; only "true" exchange promises are deemed worthy of legal enforcement.[6]

"Buy the house for one yuan"which was the situation in Hong Kong, the parents do have the willingness to give away the house as a gift to their child, in order to make the contract legally protected. In the perspective of the civil law, parents have the legal capacity to make wills to give a house to their children.

5.2 The Recognition of Consideration - The Instability of Consideration

The frailty of consideration does not means the death of consideration. Compare the consideration with doctrine of estoppel. The doctrine of "estoppel" and consideration are both based on the damage and trust of the parties, and the value orientation of the two is more consistent, both in order to realize the fairness and justice between the parties.However, the "estoppel" is the supplement or expansion of the traditional consideration principle when it meets the interpretation dilemma in the new period. It is complementary to the consideration in the scope of application and does not have the original intention and explanatory power to replace the consideration.

5.3 The Speculation and Opinions of A Recent Law School Graduate

The most familiar of these were:

- (1)Should courts enforce promises in situations of half-completed exchange (unilateral or bilateral)? -yes, there was consideration.
- (2)Should courts enforce the promises in an executory bilateral contract situation? -yes, there was consideration, though it was possible to argue that finding it involved circular reasoning.
- (3)Should courts enforce promises to make gifts? -no, no consideration (except sometimes promissory estoppel would substitute).

(4)Should courts enforce promises to compensate for previously conferred benefits (moral consideration)? -no, no consideration.

(5)Should courts enforce modifications of contracts unilaterally beneficial to one party at the expense of the other (pre-existing duty rule)? -no, no consideration (except where there was novation).

(6)Should courts enforce "firm offers" or offers in unilateral contract situations, as in the famous "flagpole" hypothetical? -no, no consideration (except possibly in case of reliance).

(7) Should courts enforce a gratuitous promise of guarantee of another's debt? -no, no consideration.

(8) Should courts enforce gratuitous promises not to sue on acknowledged debts (Foakes v.Beer)?-no, no consideration, unless it was possible to construe the release as an executed gift of personalty.

5.4 Prospect of Chinese Contract Law

The principle of fairness and good faith, and the right of defense, and system of arbitrary cancellation right in the performance of the contract, which have played a similar function of the principle of consideration from the contract law of China , providing the soil for the principle of absorbing consideration in Chinese law.

Related to the thing occurred to my life on January third 2023 precisely, as my grandpa has a serious disease and is in critical condition, my father brings our families including my grandpa to the local estate trading center to transfer ownership of my grandpa's house. The center gives two approaches:give the house to my father and pay inheritance taxes which costs twenty percent of the house if we sell this house;or prove the existence of parent-child relationship and form a housing sale contract in extreme low price , even one yuan, between my father and my grandpa. We choose the plan B which means that my father will buy a house from my grandpa for one yuan. Through this experience, under the tax policy and current situations, I found that the lack of the legal enforcement and the increasing instability of the bestowal contract is the common problem in Anglo-American law system and Civil law system.

In conclusion, the contract which has past the limitation is recognized by law, if the debtor give up the effectiveness of the time, it can

voluntarily perform voluntarily with no legal compulsory obligation, that reflects the concept which is called the past consideration from Anglo-American Law. However, the debtor can't revoke its action after the performance which isn't protected by the law, we still need to work at it constantly to form the our contract system and consider the application of the consideration system rationally in China.

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