

LW2903 Business and Law

Lecture 2

Formation of a Contract:

Consideration & Intention

Vitiating Factors: Misrepresentation

Lecture one reminder

A

1) offer / I.T.T

B

2) acceptance

accept
(reject)
(Counter offer)

(reject first)
negotiation then
accept it / still
reject

give a
pen?

give you
money?

3)

"consideration"
"exchange"

come after
accept the offer only

step ⓧ
reverse /
change

when do exchange,
★ consideration itself ✓ value

Consideration

- **Consideration** is something of **value**
- **Value:** Consideration must be **real and genuine** and it must have **some value, usually measurable in monetary terms**.
 - if 要求你 clean the house 给你 你, then ✓ consideration
- **Thomas v. Thomas (1842)**, a dying husband promised to let his widow live in the house until her death in return for a rent of £ 1 per year. An annual rent of £ 1 was held to be **sufficient valuable consideration** for the promise. (**freedom of contract**)
 - just a gift then must be exchange (if 送, agreement not form)
 - deal is between siblings and wife they may say £1 not enough
 - only valid when siblings agree!
 - no ppl will intervene, can accept/reject/counter the contract
 - but need not match mkt value
- **Currie v Misa (1875)** defined consideration as "...**either** a **benefit** [right, interest or profit] accruing to one party, **or** a **burden** [forbearance (debt), detriment, loss or responsibility] **suffered or undertaken** by the other. (benefit + burden)
 - two party must have proper exchange
 - Lush J said

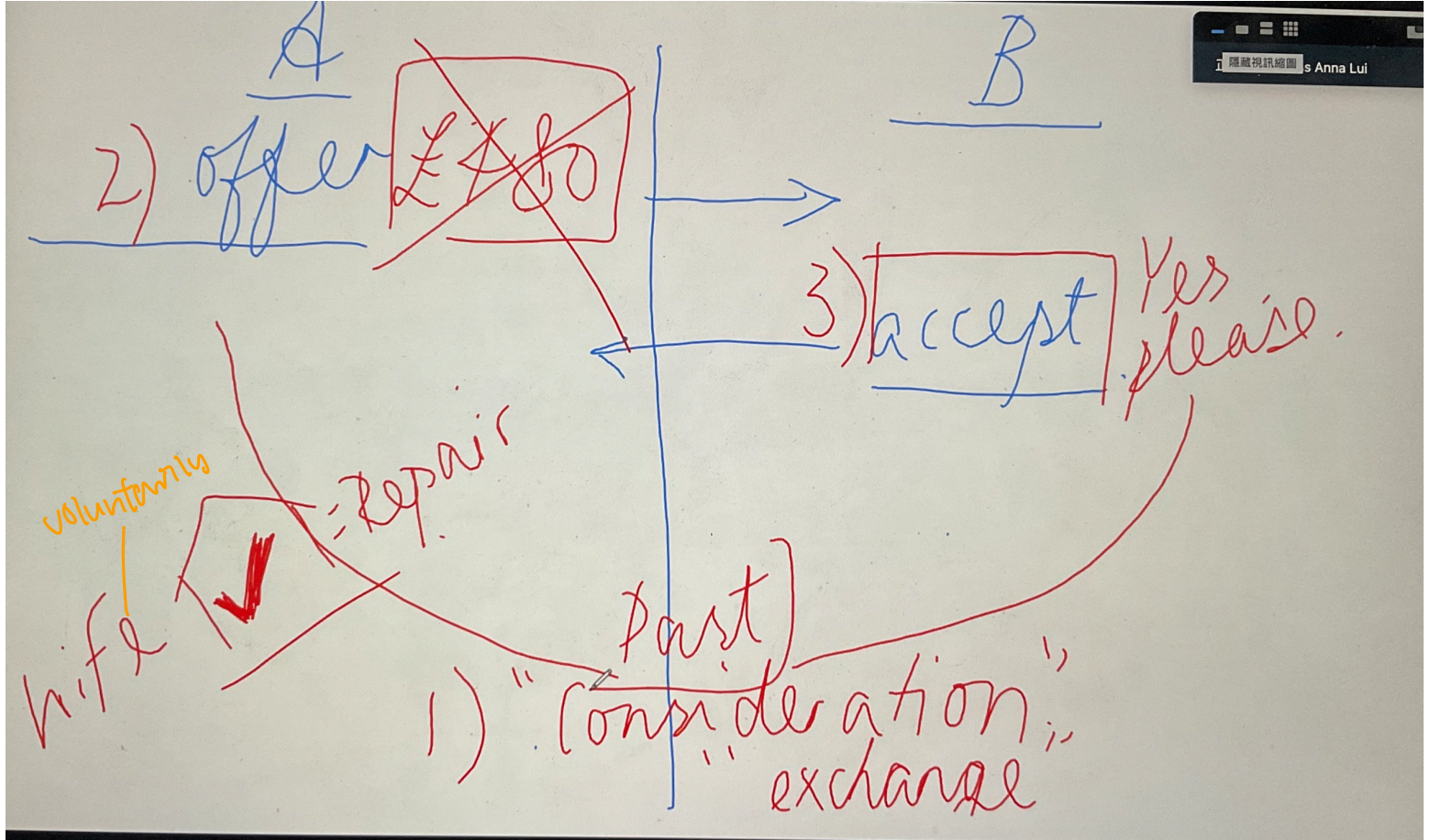
Adequacy of Consideration

Form agreement

- Consideration need not be adequate
trash tissue → can be adequate consideration
- *~ how worthless the item is 都有所謂*
The peppercorn rule - Chappell & Co. v. Nestle Co (1960) Peppercorn - House
<https://www.youtube.com/watch?v=gBmsSVnbSK8>
send chocolate rapper → give you full song version
effective exchange
- *= one sided, all done*
Executed: unilateral contract 1 sided ✓
- *→ require acceptance*
Executory: bilateral contract ✓ 2 sided
- ☆ **Past consideration X** *← not good consideration*
 - **Re McArdle [1951] NO consideration**
 - **Re Casey's Patents [1892] YES consideration***Not a valid contract*
eg. repair already → offer → accept
 *the court said NO
you cannot get back the money*

→ eg. 你覺得垃圾
人地覺得有價值

eg. poster have phone
→ u find the phone
urself



exception of past consideration

if 2 parties doing repairing work → invite Casey → finally complete the work →

∴ past consideration

Casey thinks she will be paid! & it is work-related

∴ court exceptionally said it is valid

① invited

② work-related

✓ valid

no. 2 } eg. mindset to give the wife money eg. parents promise give you sportcar if u get A+
contract

Intention to create legal relations

1. Commercial agreements ☒ intention ✓

2. *not decided by the court*

Domestic agreements: **Balfour v Balfour [1919]** X

eg. Husband promise if he goes to Sudan, give £10 a month

} not tested in the course
∴ business law

3. Social agreements X
eg. between friends for social occasion

for full picture only

number 2) if they divorce and make new exchange, it is valid

^{defect} Vitiating Factors

- A contract with defects (**vitiating factors**) can be **set aside**
- *swib: I didn't accept it*
Non est factum – not my deed *契據 (Lie)*
- **Misrepresentation – false statement of fact that induce a person to enter into a contract.**

Misrepresentation

- A **statement** of fact made by one party to the other **that is false, and it induced the other party to enter into the contract.**

1. representation of **fact**

2. **false**

3. **related to material fact**

4. such representation **induced** the representee to **enter into the contract.**

Misrepresentation

eg. saying sb will happen in the future (eg. you must even from this stock!)

1. Representation of Fact



- ^{not true} A misrepresentation must relate to **existing facts or past events**. In Gordon v. Selico (1986), the ^{dry rot} deliberate concealment of a serious defect in the house was a fraud ^{absorb info wood → will break the house} on the part of the seller, and hence it is a **misrepresentation**.

- eg. 日出東城 (build on landfill) still a lie (eg. 話可以睇海景) 点知只可以 take a glimpse
- A **half-truth?** Dimmock v. Hallett (1886), land described as “fertile and improvable” – farms ^{被租用} “were let” was true - but ^{租客} tenants had already given a **notice to quit** was not disclosed.

- eg. 租客 think I used for sheep farmer but cannot (the land never used for raising sheep!)
- It cannot be a **statement of law** or a **statement of opinion** (Bissett v. Wilkinson (1927)) ∴ Must be factual !!

cannot sue for misrep
∴ you know the law!

(if you committed murder, even prof tells a
so that, you are still be sued!)

Misrepresentation

2. Representation was false

defendant is responsible for another side

cannot clarify

• For a statement to constitute a misrepresentation, it must have been a **false statement of fact**. Whether a statement is false or not is **determined by an objective test – reasonable person in D's position**. eg. I didn't know there is dry rot!

if only
tiny part
you didn't
mention → x misrep

• **Smith v Land House Property Corp (1885)**: hotel for sale to “a most desirable tenant” – in fact the tenant had not paid rent for a significant period of time.

• A **failure to provide information** may not be a **misrepresentation**.

☆ root of contract
↳ underlying purpose of contract

eg. knowing the 租客 will pay rent or not

Misrepresentation

= important fact

3. Representation related to material fact

- To constitute a misrepresentation, a false statement of fact must relate to a **material fact that affects a reasonable person's judgment** on whether to **enter into the contract**.
- ***Green Park Properties Ltd v Dorku Ltd [2000]:***
Sale of land - whether the yard form part of the property – affected the overall size and value of the property.

Misrepresentation

4. Representation induced the contract

- To constitute a misrepresentation, a false statement of fact must have **induced** the representee to **enter into the contract**.

Types of Misrepresentation

There are 3 types of misrepresentation:

- ① **Fraudulent** – A **false statement** made by a person with a dishonest intent - if it was made **knowingly** or **without belief in its truth**, or **recklessly, not caring whether it is true or not.** *eg. only care abt commission*
most serious
- ② **Negligent** – A **false statement** made in **belief that it is true** but was made **without reasonable grounds for that belief.** *careless not deliberate 故意*
- ③ **Innocent** – When a person makes a **false statement** believing it to be **true** and has **reasonable grounds to believe** that it is true up to the time when the contract is concluded.
least serious

Remedies for Misrepresentation

Two remedies for misrepresentation

擱置

1. (SET ASIDE) Rescission: to restore the innocent party to the position as if no contract was ever made;
2. Damages: monetary compensation

