

PART-PAYMENT OF DEBTS

THE GENERAL RULE

If one person owes a sum of money to another and agrees to pay part of this in full settlement, the rule at common law (the rule in *Pinnel's Case* (1602) 5 CoRep 117a) is that part-payment of a debt is not good consideration for a promise to forgo the balance. Thus, if A owes B £50 and B accepts £25 in full satisfaction on the due date, there is nothing to prevent B from claiming the balance at a later date, since there is no consideration proceeding from A to enforce the promise of B to accept part-payment. This is because he is already bound to pay the full amount, an agreement based on the same principle as *Stilk v Myrick* (1809). It also protects a creditor from the economic duress of his debtor.

In *Pinnel's Case* (1602), Cole owed Pinnel £8-10s-0d (£8.50) which was due on 11 November. At Pinnel's request, Cole paid £5-2s-2d (£5.11) on 1 October, which Pinnel accepted in full settlement of the debt. Pinnel sued Cole for the amount owed. It was held that part-payment in itself was not consideration. However, it was held that the agreement to accept part-payment would be binding if the debtor, at the creditor's request, provided some fresh consideration. Consideration might be provided if the creditor agrees to accept:

- * part-payment on an earlier date than the due date (ie, as in *Pinnel's Case* itself); or
- * chattel instead of money (a "horse, hawk or robe" may be more beneficial than money); or
- * part-payment in a different place to that originally specified.

Despite its harshness the rule in *Pinnel's Case* was affirmed by the House of Lords and still represents the law:

In *Foakes v Beer* (1884) 9 App Cas 605, Mrs Beer had obtained judgment for a debt against Dr Foakes, who subsequently asked for time to pay. She agreed that she would take no further action in the matter provided that Foakes paid £500 immediately and the rest by half-yearly instalments of £150. Foakes duly kept to his side of the agreement. Judgment debts, however, carry interest. The House of Lords held that Mrs Beer was entitled to the £360 interest which had accrued. Foakes had not "bought" her promise to take no further action on the judgment. He had not provided any consideration.

The rule was recently applied by the Court of Appeal:

In *Re Selectmove* [1995] 2 All ER 531, Selectmove owed arrears of tax to the Inland Revenue. The IR was in a position to put Selectmove into liquidation because it was unable to meet its liabilities. There was a meeting at which Selectmove proposed to pay all future tax as and when it fell due and that it would pay off the arrears at the rate of £1,000 a month commencing the following February. The Collector of Taxes informed Selectmove that this proposal would need approval of his superiors; and that he would get back to them if it was not acceptable. Sometime later the IR commenced liquidation proceedings which Selectmove resisted, relying upon the agreement made at the meeting in July.

The Court of Appeal held, dismissing the defence (1) that a promise to pay a sum which the debtor was already bound to pay was not good consideration; (2) any promise made by the Collector of Taxes was made without actual or ostensible authority. Selectmove's attempt to use the notion in *Williams v Roffey Bros* (1990) failed as it was held that it was applicable only where the existing obligation which is pre-promised is one to supply goods or services, not where it is an obligation to pay money.

More recent cases include:

Ferguson v Davies (1996) The Independent December 12th 1996
Re C (a Debtor) [1996] BPLR 535

EXCEPTIONS TO THE RULE

Apart from the exceptions to the rule mentioned in *Pinnel's Case* itself, there are two others at common law and one exception in equity.

A) PART-PAYMENT OF THE DEBT BY A THIRD PARTY

A promise to accept a smaller sum in full satisfaction will be binding on a creditor where the part-payment is made by a third party on condition that the debtor is released from the obligation to pay the full amount. See:

Hirachand Punamchand v Temple [1911] 2 KB 330 - A father paid a smaller sum to a money lender to pay his son's debts, which the money lender accepted in full settlement. Later the money lender sued for the balance. It was held that the part payment was valid consideration, and that to allow the moneylender's claim would be a fraud on the father.

B) COMPOSITION AGREEMENTS

The rule does not apply to composition agreements. This is an agreement between a debtor and a group of creditors, under which the creditors agree to accept a percentage of their debts (eg, 50p in the pound) in full settlement. Despite the absence of consideration, the courts will not allow an individual creditor to sue the debtor for the balance: *Wood v Roberts* (1818). The reason usually advanced for this rule is that to allow an individual creditor to claim the balance would amount to a fraud on the other creditors who had all agreed to the percentage.

C) PROMISSORY ESTOPPEL

This is the name that has been given to the equitable doctrine which has as its principal source the *obiter dicta* of Denning J in *High Trees House Ltd* [1947] (see below)

PROMISSORY ESTOPPEL

A further exception to the rule in *Pinnel's Case* is to be found in the equitable doctrine of promissory estoppel. The doctrine provides a means of making a promise binding, in certain circumstances, in the absence of consideration. The principle is that if someone (the promisor) makes a promise, which another person acts on, the promisor is stopped (or estopped) from going back on the promise, even though the other person did not provide consideration (in so far as it is inequitable to do so).

DEVELOPMENT

The modern doctrine is largely based on *dicta* of Denning J in *Central London Property Trust Ltd v High Trees House Ltd* [1947] 1 KB 130 and on the decision of the House of Lords in *Tool Metal Manufacturing Co Ltd v Tungsten Electric Co Ltd* [1955] 1 WLR 761 and can be traced to *Hughes v Metropolitan Railway* (1877) 2 App Cas 439.

(a) *Hughes Case* (1877) - In October a landlord gave his tenant six months notice to repair and in the event of a failure to repair, the lease would be forfeited. In November the landlord opened negotiations for the sale of the premises, but these ended in December without agreement. Meanwhile the tenant had not done the repairs and when the six months period was up, the landlord sought possession.

The House of Lords held that the landlord could not do so. The landlord had, by his conduct, led the tenant to suppose that as long as negotiations went on, the landlord would not enforce the notice. He could not subsequently take advantage of the tenant relying on this. Therefore, the notice did not run during the period of negotiations. However, the six month period would begin to run again from the date of the breakdown of negotiations.

(b) *High Trees* (1947) - In 1937 the Ps granted a 99 year lease on a block of flats in London to the Ds at an annual rent of £2500. Because of the outbreak of war in 1939, the Ds could not get enough tenants and in 1940 the Ps agreed in writing to reduce the rent to £1250. After the war in 1945 all the flats were occupied and the Ps

sued to recover the arrears of rent as fixed by the 1937 agreement for the last two quarters of 1945.

Denning J held that they were entitled to recover this money as their promise to accept only half was intended to apply during war conditions. This is the *ratio decidendi* of the case. He stated *obiter*, that if the Ps sued for the arrears from 1940-45, the 1940 agreement would have defeated their claim. Even though the Ds did not provide consideration for the Ps' promise to accept half rent, this promise was intended to be binding and was acted on by the Ds. Therefore the Ps were estopped from going back on their promise and could not claim the full rent for 1940-45.

(c) *Tool Metal Case* (1955) - see below.

Thus it seems that if a person promises that he will not insist on his strict legal rights, and the promise is acted upon, then the law will require the promise to be honoured even though it is not supported by consideration.

REQUIREMENTS

The exact scope of the doctrine of promissory estoppel is a matter of debate but it is clear that certain requirements must be satisfied before the doctrine can come into play:

(A) CONTRACTUAL/LEGAL RELATIONSHIP

All the cases relied on by Denning J in *High Trees House* were cases of contract. However, in *Durham Fancy Goods v Michael Jackson (Fancy Goods)* [1968] 2 QB 839, Donaldson J said that an existing contractual relationship was not necessary providing there was "a pre existing legal relationship which could, in certain circumstances, give rise to liabilities and penalties".

(B) PROMISE

There must be a clear and unambiguous statement by the promisor that his strict legal rights will not be enforced, ie one party must make a promise which is intended to be binding: *The Scaptrade* [1983] QB 529. However, it can be implied or made by conduct as in the *Hughes Case* (1877).

(C) RELIANCE

The promisee must have acted in reliance on the promise. There is some uncertainty as to whether the promisee (i) should have relied on the promise by changing his position to their detriment (ie, so that he is put in a worse position if the promise is revoked): *Ajayi v Briscoe* [1964] 1 WLR 1326, or (ii) whether they should have merely altered their position in some way, not necessarily for the worse.

In *Alan Co Ltd v El Nasr Export & Import Co* [1972] 2 QB 189, Lord Denning disclaimed detriment as an element of promissory estoppel, saying it was sufficient if the debtor acted on the promise by paying the lower sum. He said that "he must have been led to act differently from what he otherwise would have done".

(D) INEQUITABLE TO REVERT

It must be inequitable for the promisor to go back on his promise and revert to his strict legal rights. If the promisor's promise has been extracted by improper pressure it will not be inequitable for the promisor to go back on his promise. See:

D & C Builders v Rees [1965] 2 QB 617 - The Ps, a small building company, had completed some work for Mr Rees for which he owed the company £482. For months the company, which was in severe financial difficulties, pressed for payment. Eventually, Mrs Rees, who had become aware of the company's problems, contacted the company and offered £300 in full settlement. She added that if the company refused this offer they would get nothing. The company reluctantly accepted a cheque for £300 "in completion of the account" and later sued for the balance. The Court of Appeal held that the company was entitled to succeed. Lord Denning was of the view

that it was not inequitable for the creditors to go back on their word and claim the balance as the debtor had acted inequitably by exerting improper pressure.

(E) *A SHIELD OR A SWORD?*

At one point it was said in *Coombe v Coombe* [1951] 2 KB 215 that the doctrine may only be raised as a defence: "as a shield and not a sword". It was held that the doctrine cannot be raised as a cause of action. This means that the doctrine only operates as a defence to a claim and cannot be used as the basis for a case. However, this was doubted in *Re Wyven Developments* [1974] 1 WLR 1097 by Templeman J, who appeared to think that this was no longer the case and that it could create rights. Lord Denning in *Evenden v Guildford City AFC* [1975] QB 917 also adopted this approach.

(F) *EXTINCTIVE OR SUSPENSIVE OF RIGHTS?*

Another question raised by this doctrine is whether it extinguishes rights or merely suspends them. The prevalent authorities are in favour of it merely suspending rights, which can be revived by giving reasonable notice or by conditions changing.

(a) Where the debtor's contractual obligation is to make periodic payments, the creditor's right to receive payments during the period of suspension may be permanently extinguished, but the creditor may revert to their strict contractual rights either upon giving reasonable notice, or where the circumstances which gave rise to the promise have changed as in *High Trees*. See:

Tool Metal Case (1955) - Patent owners promised to suspend periodic payments of compensation due to them from manufacturers from the outbreak of war. It was held by the House of Lords that the promise was binding during the period of suspension, but the owners could, on giving reasonable notice to the other party revert to their legal entitlement to receive the compensation payments.

(b) It is not settled law that there can be no such resumption of payments in relation to a promise to forgo a single sum. In *D & C Builders*, which concerned liability for a single lump sum, Lord Denning expressed *obiter* that the court would not permit the promisor to revert to his strict legal right and that the estoppel would be final and permanent if the promise was intended and understood to be permanent in effect.

The preferred approach is to look at the nature of the promise: if as in *High Trees* and *Tool Metal*, it is intended to be temporary in application and to reserve to the promisor the right subsequently to reassert his strict legal rights, the effect will be suspensive only; and if on the other hand, it is intended to be permanent (as envisaged in *D & C Builders*), then there is no reason why in principle or authority the promise should not be given its full effect so as to extinguish the promisor's right.