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The European Law Students' Association

MOSCOW

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**CONSIDERATION  
AND INTENTIONS**

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Contracts under seal

# Requirements for deeds

1. Signed and Delivered as a Deed / Signed, Sealed and Delivered as a Deed
2. Deed must be in writing
3. Deed shall make it clear that it is intended to be a deed
4. Deed signatures require witnessing

# CONSIDERATION

An act or forbearance of one party, or the **promise** thereof, is the price for which the promise of the other is bought, and the promise thus given for value is enforceable.

1. Consideration may be executed or executory but not past.
2. Consideration must move from the promisee but not necessarily to the promisor.
3. Consideration must be sufficient though not necessarily adequate.

Consideration may be executed  
or executory but not past

# Executory and executed



The whole agreement is one which is to take place in the future.



A promises to purchase B 's car on credit, delivery to take place next week.

One of the parties has done all that they are required to do under the contract, that is, they have 'executed' their side of the bargain.

The other party's consideration which is still unperformed remains executory in that it remains to be completed in the future.

Past consideration



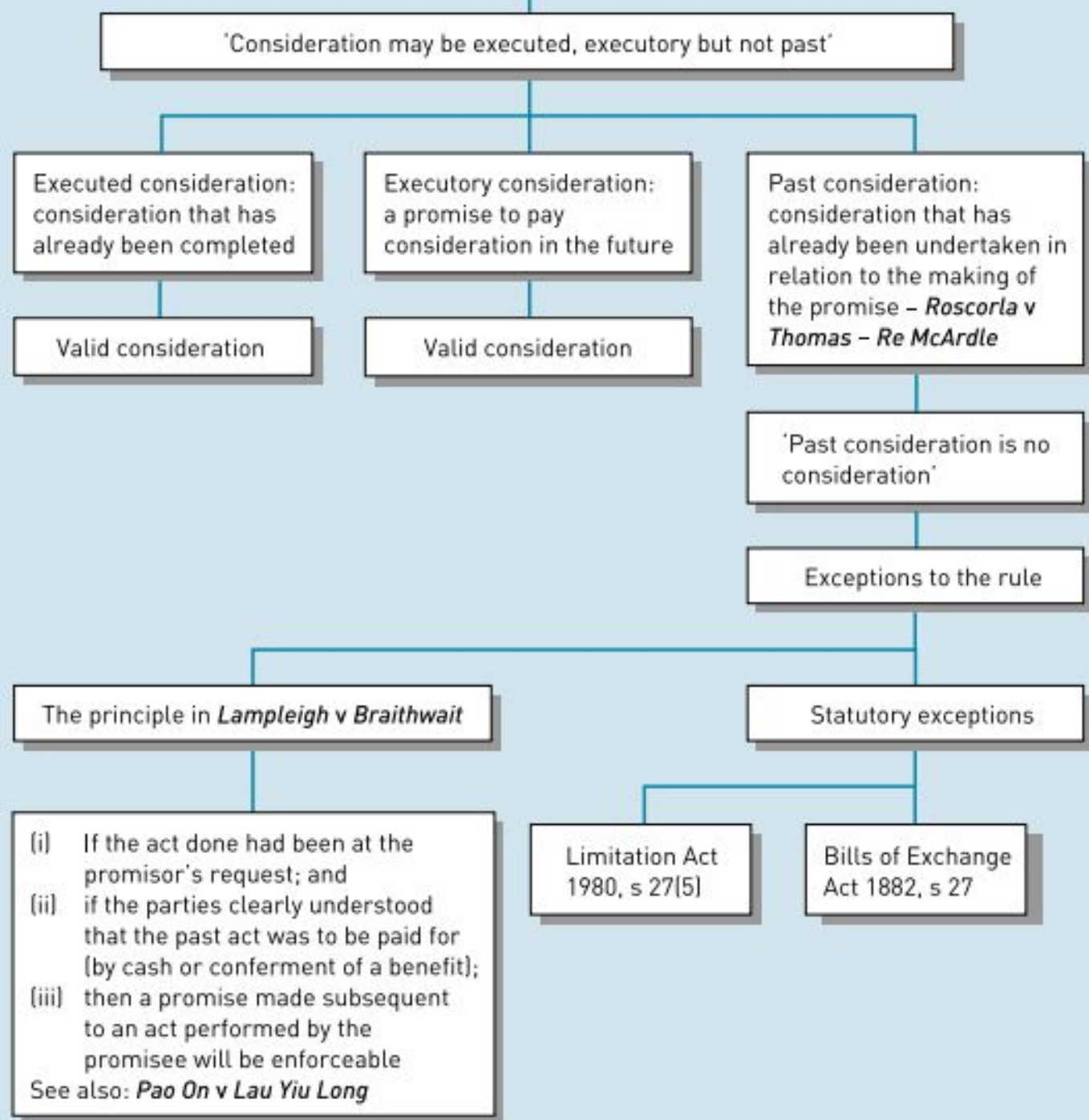
# EXCEPTIONS TO THE RULE

1. The principle which applies that:

- the claimant's services had been rendered at the defendant's request
- it was implicit that both parties must have understood that the claimant's services would have to be paid for

2. Statutory exceptions

- Limitation Act 1980, s 27(5)
- Bills of Exchange Act 1882, s 27



'Consideration may be executed, executory but not past'

Executed consideration:  
consideration that has  
already been completed

Valid consideration

Executory consideration:  
a promise to pay  
consideration in the future

Valid consideration

Past consideration:  
consideration that has  
already been undertaken in  
relation to the making of  
the promise - *Roscorla v  
Thomas - Re McArdle*

'Past consideration is no  
consideration'

Exceptions to the rule

The principle in *Lampleigh v Braithwait*

- (i) If the act done had been at the promisor's request; and
  - (ii) if the parties clearly understood that the past act was to be paid for (by cash or conferment of a benefit);
  - (iii) then a promise made subsequent to an act performed by the promisee will be enforceable
- See also: *Pao On v Lau Yiu Long*

Statutory exceptions

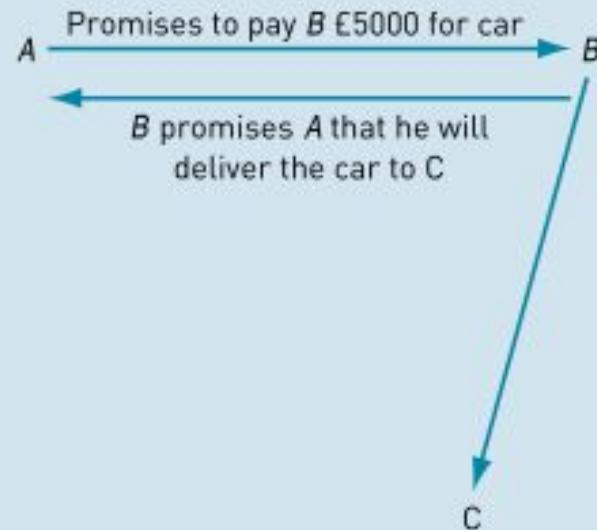
Limitation Act  
1980, s 27(5)

Bills of Exchange  
Act 1882, s 27

Consideration must move from  
the promisee though not  
necessarily to the promisor

A person can only enforce a promise made to them if they can show that they have provided consideration for that promise.

# The operation of the rule



Both A and B have exchanged promises  
∴ A can enforce the contract against B  
if B fails to deliver the car to C. C cannot  
enforce the contract against B as:

- (i) consideration has not moved  
away from him [he has made no promise]
- (ii) C is not a party to the contract between  
A and B, i.e. he is not 'privy' to the contract.

THANK YOU FOR PARTICIPATING!!

