

Consideration in Contract Variations: Fresh Consideration, Extrinsic Evidence and the Limits of Parties' Intention

KUALA DIMENSI SDN BHD V PORT KELANG AUTHORITY [2025] 3 CLJ 497

28th November 2025

ISSUES

Contracts may require adjustment as circumstances evolve. However, can contracting parties mutually agree to vary the terms of the agreement, specifically the agreement on consideration?

If a variation of the consideration clause is executed with the agreement of contracting parties, can the varied clause nevertheless be rendered null and void under Section 26 of the Contracts Act 1950 (“**CA 1950**”)? Further, where a party alleges that consideration is absent, must consideration be proved solely within the four corners of the written agreement, or may it also be established through extrinsic evidence?

The Federal Court addressed these questions in the case of **Kuala Dimensi Sdn Bhd v Port Kelang Authority [2025] 3 CLJ 497**.

BRIEF FACTS

The brief facts of the case are as follows:-

- (a) Port Kelang Authority (“**PKA**”) appointed Kuala Dimensi Sdn Bhd (“**KD**”) as a turnkey contractor to construct and develop the Port Klang Free Zone Project (“**Project**”).
- (b) Following KD’s appointment, the parties executed various contracts in relation to the Project, amongst others, namely:-
 - (i) development agreement dated 27.02.2003 (“**DA1**”);
 - (ii) supplemental agreement dated 26.05.2003;
 - (iii) supplemental agreement to DA1 dated 27.03.2004;

- (iv) supplemental agreement for the additional development works dated 30.11.2005 (“**ADW1**”);
 - (v) supplemental agreement for additional development works dated 26.04.2006 (“**ADW2**”); and
 - (vi) supplemental agreement for new additional development works to DA1 dated 26.04.2006 (“**NADW**”).
- (c) For the discussion of the current case, the scope and salient key terms of ADW1, ADW2 and NADW are tabulated below:-

AGREEMENT	DATE	PURPOSE / SCOPE	KEY TERMS
ADW1	30.11.2005	KD was appointed as turnkey developer to design, construct, finance and complete additional development works for the Project, including works on junction improvement, construction of electrical infrastructure and construction of a business-class hotel near the proposed exhibition centre.	KD was required to finance and advance the additional development costs for the sum of RM510.38 million, excluding the variation order (if any). PKA would pay KD RM510.38 million with interest at 5% p.a., payable according to the payment schedule in Schedule 1.
ADW2	26.04.2006	Amendment to ADW1 which was entered between the parties in less than 6 months after ADW1 was executed.	Parties agreed to revise the chargeable interest payable under ADW1 from 5% p.a. to 7.5% p.a. at KD’s request, due to the long period of financing for ADW1 from 2001 to 2011 and that the base lending rate for loans at the material time was between 7.25% p.a. to 7.75% p.a. This resulted in PKA incurring an additional payment obligation of RM49.367 million.

AGREEMENT	DATE	PURPOSE / SCOPE	KEY TERMS
			ADW2 contains no indication of any consideration for PKA to agree to pay for the additional RM49.367 million. Nor does ADW2 refer to the purported benefit of alleviating KD's financial strain under ADW1.
NADW	26.04.2006	Executed on the same day as ADW2 for KD to undertake the design, construct, finance and complete new additional development works.	PKA would pay KD RM335.8 million with interest at 7.5% p.a. There was to reference of ADW2 in NADW.

- (d) Although PKA accepted the revised terms in ADW2, PKA claimed that the increase was invalid due to the absence of valuable consideration.

PROCEEDINGS BEFORE THE HIGH COURT

PKA filed an action in the High Court for a declaration that ADW2 was null and void for want of consideration.

The High Court dismissed PKA's action and held that ADW2 was valid and enforceable between parties. The High Court noted that ADW1 and ADW2 should be read together, and that the consideration for ADW2 was the completion of additional works undertaken by KD under ADW1, even though this was never pleaded by KD in its statement of defence.

The High Court also found that the parties' intention in executing ADW2 was to alleviate KD's financial strain to enable KD to carry out additional works under ADW1 and NADW.

PROCEEDINGS BEFORE THE COURT OF APPEAL

The Court of Appeal disagreed with the High Court's finding that the consideration for ADW2 was the completion of additional works under ADW1, as this was not pleaded by KD. The Court referred to section 26 of CA 1950 and held that an agreement made without consideration is void unless it falls within one of the three statutory exceptions, none of which applied in this case.

The Court of Appeal was also not persuaded that the agreements should be read together and found that ADW1 and ADW2 were not executed contemporaneously. Although ADW2 and NADW were executed on the same day, the terms of ADW1 and NADW involved separate and distinct considerations, with contractual obligations to be performed by the parties at different times.

The Court further held that even if ADW2 were considered a variation of ADW1, a variation of an existing agreement had to be supported by consideration. As ADW2 only conferred KD the benefit of extra interest of 2.5% p.a. without any reciprocal benefit to PKA, it was void for want of consideration. The Court of Appeal ordered KD to return all payments received under ADW2.

The Court also held that KD's argument that PKA was estopped or precluded from raising this issue to challenge the validity of ADW2 could not override the clear requirement for consideration under section 26 of CA 1950, as none of the statutory exceptions applied.

QUESTIONS BEFORE THE FEDERAL COURT

KD was granted leave to appeal to the Federal Court premised upon the following questions of law:-

- (i) Question 1: Where it is alleged that there was no consideration for the agreement between the parties, is consideration to be proved only within the four corners of the said agreement or can the same be proved by extrinsic evidence?
- (ii) Question 2: Whether the practical benefit test, as laid down in *Williams v. Roffrey Bros and Nichollas (Contractors) Ltd* [1991] 1 QB 1, is good law?
- (iii) Question 3: Whether parties who had made their intention clear by entering into legal relations, are bound by an agreement to vary their previous agreement when they have acted upon the former, namely the variation agreement?
- (iv) Question 4: Whether the doctrine of estoppel should be invoked against PKA, the respondent when it had agreed to the proposal to increase the interest rate and made payment of the same without reservation?

PROVING CONSIDERATION BEYOND THE FOUR CORNERS OF THE AGREEMENT

At the outset, KD argued that previous cases have established that consideration can be proven with extrinsic evidence beyond just the agreement's text. Notwithstanding the fact that the Federal Court were urged to look for extrinsic evidence by referring to some contemporaneous documents, it was held that if parties were allowed to adduce extrinsic evidence to contradict their intention or obligations other than stated in the contract, it would be in violation of section 92 of Evidence Act 1950:-



*“[69] Secondly, both NADW and ADW2 are distinct and separate agreements with their own set of contractual terms. No reference (impliedly or expressly) was ever made in ADW2 to NADW. **It is trite law that, where the terms of a contract have been reduced to writing, as in this particular agreement, the contract could only be proved by the document itself, and it is not open to the defendant to seek to introduce and for the court to admit evidence that would, inter alia, add new terms to it.** Pursuant to s. 91 of the Evidence Act 1950, no evidence shall be given to prove the terms of the contract, except that it should be gathered from the four corners of the contract itself. **If the parties are allowed to adduce extrinsic evidence to contradict their intention or obligations other than as stated in the contract, it would be in violation of s. 92 of the Evidence Act 1950** (refer to *Tractors Malaysia Bhd v. Kumpulan Pembinaan Malaysia Sdn Bhd* [1978] CLJU 220; [1978] 1 LNS 220; [1979] 1 MLJ 129).*

*[70] Section 92 of the Evidence Act 1950 allows for extrinsic evidence to be adduced, **if it falls under any of the provisos of the said section. The defendant did not plead any of the provisos that should apply to their case, which is fatal as explicitly stated by Lee Hun Hoe CJ (Borneo) in Tindok Besar Estate Sdn Bhd v. Tinjar Co** [1979] CLJU 119; [1979] 1 LNS 119; [1979] 2 MLJ 229:*

*It is not the case of the respondent that any of the provisos to section 92, except possibly proviso (a), applies. Its contention therefore for the admission of the parol evidence which won the approval of the learned judge was that not all the terms had been incorporated in the agreement. **If this contention so generally stated and understood had any foundation at law, then it would be open to any party to a litigation concerning an agreement to say that the agreement which is the subject matter of the dispute, did not contain all the terms thereof and to seek to introduce such terms or even terms which might not even have been within the contemplation of the other party. No agreement would then be safe from being re-written by one party in a court of law.** I think and I say so with respect, the fundamental mistake made by the learned judge is to conclude simply and without qualification that section 92 applies only to a case where all the terms of the agreement have been reduced to writing. But that is not what section 92 says. It merely says “where the terms ...” and by referring back to section 91, it means where the terms of a contract have been reduced to writing, as in this particular agreement they had been, the contract could only be proved by the document itself, and it is not open to the respondent to seek to introduce and the judge to admit evidence that would, inter alia, add new terms to it.*



However, section 92 allows, so far as it concerns this particular case, evidence in proviso (b) of “any separate oral agreement, as to any matter on which a document is silent and which is not inconsistent with its terms” and in proviso (c) of “any separate oral agreement constituting a condition precedent to the attaching of any obligation under any such contract. ...” The provisos qualify but do not eliminate the main provisions of the section, so that unless the additional evidence sought to be adduced falls within the scope of any of the provisos, it should not be allowed to be introduced as it would be to contradict, vary, add to or subtract from the terms of the agreement. It will be readily seen that the evidence which the respondent sought to introduce did not fall within either of these two provisos but was evidence adding a new term or terms to the agreement.”

[Emphasis added]

The Court further held that KD has not made out the relevant circumstances under any of the provisos in section 92 of Evidence Act 1950 to enable extrinsic evidence to be admitted in the interpretation of ADW2. Hence, there is no consideration due to PKA for entering into ADW2.

The Court also noted that if parties cannot establish all the element of a valid contract on ADW2, the agreement is void and the parties’ obligations are only confined to the original contract:-

“[90] However, even if ADW2 is to be taken as a variation of ADW1, that does not absolve of the requirement of a valid consideration from the defendant to the plaintiff in ADW2. In this respect we refer to s. 63 of the Contracts Act 1950 which states that if parties agree to alter the said contract, the original contract need not be performed. When the plaintiff and the defendant here altered the rate of interest in the original contract ADW1, essentially, they were altering the original contract. As a result, a new contract is formed, ie, ADW2. If the parties cannot establish all the elements of a valid contract in ADW2, the agreement is void and the parties’ obligations are only confined to the original contract (refer to the FC case of *Yong Mok Hin v. United Malay States Sugar Industries Ltd* [1967] CLJU 220; [1967] 1 LNS 220; [1967] 2 MLJ 9, at p. 16).

[91] It is trite that in contract law, the validity of a variation can be subject to challenge if there is no such consideration. The issue of variation of contract and the requirement of consideration is extensively explained by the Court of Appeal in *555 Film Sdn Bhd & Ors v. Adamancy Construction Sdn Bhd* [2023] CLJU 884; [2023] 1 LNS 884. For a variation to be contractually binding, all of the legal requirements to form a valid contract, including the provision of valuable consideration by each party.



[92] The general rule is that past consideration is not sufficient consideration and traditionally, a promise to perform an existing obligation will not be good consideration (see Wigan v. Edwards [1973] 47 ALJR 586 at 594). In other words, the performance of existing contractual obligations under the original contract is not to be taken as sufficient consideration for any subsequent variation. This means, fresh consideration in addition to that already owing will need to be provided for the variation to be binding...

[94] Therefore, even if ADW2 is a variation of ADW1 as was termed by the defendant, it still requires consideration for it to be valid."

[Emphasis added]

Nevertheless, given that Question 1 is not premised from the decision of the Court of Appeal and there was no extrinsic evidence relied upon by the Court of Appeal, the Federal Court declined to answer this question.

THE PRACTICAL BENEFIT TEST IN WILLIAMS V ROFFREY

For Question 2, the Federal Court analysed the practical benefit test in *Williams v. Roffrey Bros and Nichollas (Contractors) Ltd* [1991] 1 QB 1 and its applicability. In Williams' case, the English Court of Appeal held that a promise to make extra payments under a contract could be supported by a consideration if it provided a practical benefit, even if the party making the promise was already obligated under the original contract.

The Federal Court noted that *Williams v Roffrey* departed from the previously established principle that promises to perform pre-existing contractual obligations could not be good consideration and found that no reported Malaysian cases have accepted the application of the "practical benefit" principle:-

"[103] The decision in Williams v. Roffey Bros is inconsistent with the long-standing rule that consideration, being the price of the promise sued upon, must move from the promisee (refer to Stilk v. Myrick [1809] 2 Camp 317 and Foakes v. Beer [1881-85] All ER Rep 106 which is a House of Lords' decision, which expressly said that a practical benefit was not good consideration in law). It departed from the previously established principle that promises to perform pre-existing contractual obligations could not be good consideration. A different constituted English Court of Appeal in Re Selectmove Ltd [1995] 2 All ER 531 declined to follow Williams v. Roffey. Similarly, the English Commercial Court in South Caribbean Trading Ltd v. Trafigura Beheever BV [2004] All ER 334 (Nov) set out its hesitance on the application of the principle as enunciated in Williams v. Roffey. Even in Australia, in Slipper v. Berry Buddle Wilkins Lawyers [2015] NSWSC 810 affirmed the general rule that to perform an existing duty is not fresh consideration.



[104] There are no reported Malaysian cases that have accepted the application of the “practical benefit” principle as set out by William v. Roffey. Gopal Sri Ram JCA in the Court of Appeal case of Aspac Lubricants (Malaysia) Sdn Bhd v. Ketua Pengarah Dalam Negeri [2007] 5 CLJ 353; [2007] 6 MLJ 65 prefers to exercise caution on its applicability, due to the criticism and the hesitancy of the Commonwealth jurisdiction in accepting the principle enunciated in William v. Roffey...”

[Emphasis added]

To this end, the Federal Court also noted that the principle of Williams v. Roffey was never raised in the courts below and held that there was no practical benefit to KD by entering into ADW2, but only additional monetary benefit. Hence, the Federal Court declined to answer Question 2.

BINDING EFFECT OF VARIATION AGREEMENTS AND WHETHER ESTOPPEL ARISES FROM PAYMENT WITHOUT RESERVATION

Notwithstanding that the parties had intended and agreed to enter into a legal relation and acted upon it, the Court held that this could not render the agreement valid, as such a proposition would contradict section 26 of CA 1950. Accordingly, the Court answered Question 3 in the negative:-

*“[126] Question 3 appears to ignore the clear provision of s. 26 of the Contracts Act 1950. Namely that for s. 26 Contracts Act 1950 to even be applicable, there must first have been an agreement entered into between two parties. **Without the existence of an agreement, s. 26 Contracts Act 1950 need not even be considered.***

[127] Under s. 26 of the CA, for an agreement to be valid, there must be consideration. Section 26 of the CA provides that:

An agreement made without consideration is void.

[128] Therefore, the proposition that, since the parties had intended and agreed to enter into legal relations and acted on the same (for the sole consideration of only one party) all agreements cannot be deemed void, contradicts s. 26 of the CA.

[Emphasis added]

With regards to Question 4, the Federal Court held that the doctrine of estoppel was not applicable to defeat PKA’s claims (for a declaration that ADW2 was void pursuant to section 26 of CA 1950), as the void ADW2 cannot be legitimised due to the conduct of parties and/or the doctrine of estoppel:-



*"[145] Accordingly, there can be no application of the doctrine of estoppel here in order to defeat the plaintiff's claim for a declaration that ADW2 is void pursuant to s. 26 of the Contracts Act 1950. **The void ADW2 cannot be legitimised due to the conduct of parties and/or by the doctrine of estoppel. It is automatically void due to a lack of consideration.***

*[146] The inapplicability of the doctrine of estoppel in the present appeal **is further fortified by the defendant's failure to adduce any evidence to show that they had relied in any form or manner on the final payment made by the plaintiff, after the commencement of these proceedings.** The defendant had not established a case of estoppel, namely, that the defendant had altered his position or acted in such a manner in reliance on the representation that it would be inequitable or unconscionable in all the circumstances of the case for the plaintiff to go back on its promise/representation."*

[Emphasis added]

The Court also rejected KD's claims that the conduct of PKA in paying additional payment of RM49.367 million amounts to waiver of PKA's rights under section 26 of CA 1950 as the payment was made, amongst others, on a without prejudice basis, after PKA filed the present action to challenge the validity of ADW2 as well as to avoid imposition of interest under ADW2, in case ADW2 is held to be valid:-

"[150] On the assertion that when the plaintiff made the payment RM49.367 million under ADW2, that amounts to a conduct on the part of the plaintiff which amounts to a waiver of the plaintiff's rights under s. 26 of the Contracts Act 1950, we agree with the submissions of the plaintiff that the final payment that was made by the plaintiff to VVB, on 1 August 2011, cannot amount to a waiver of the plaintiff's right due to the following reasons:

- (i) the plaintiff had already filed the originating summons herein for a declaration that ADW2 was void for want of consideration, more than two years before the payment by the plaintiff was made to VVB. By then, **the defendant was already aware that the plaintiff was actively pursuing to challenge the validity of ADW2 when it made the said payment to the defendant;***
- (ii) **the only reason the plaintiff made payment to VVB was due to the letter of demand dated 27 June 2011 issued by the defendant to the plaintiff.** The plaintiff made the said payment, upon receipt of the demand. Despite the commencement of these proceedings, the plaintiff was concerned that it would be penalised heavily with an additional 3% interest rate if the payment was not made and, in the event, the originating summons were subsequently*

dismissed. Being a prudent statutory body and in the exercise of caution, the plaintiff had made payment of the same first, with a reservation of rights.

- (iii) the imposition of this penalty was admitted by Stephen Abok, witness for the defendant; and*
- (iv) in fact, the contemporaneous board meeting minutes on 26 July 2011 clearly indicated that **the plaintiff's payment was to be made on a without prejudice basis**. The payment was only made after the said plaintiff's Board of Directors meeting."*

[Emphasis added]

Consequently, Question 4 was answered in the negative and PKA is not estopped from proceeding with its claim to have ADW2 declared void pursuant to section 26 of CA 1950.

In light of the above, the Federal Court dismissed the appeal and affirmed the decision of the Court of Appeal.

KEY TAKEAWAY

Following the decision, it is important to note that:-

- (a) **Consideration must be evident from the written agreement itself.** Where parties have reduced their agreement into writing, consideration must be apparent from the document itself. Extrinsic evidence to establish consideration is inadmissible unless it falls within an exception under section 92 of the Evidence Act 1950.
- (b) **Any variation of the original agreement requires fresh consideration.** A subsequent agreement varying an earlier contract is a separate contract on its own. Performing an existing obligation under the original contract does not amount to fresh consideration. In the absence of such consideration, the variation is void and the parties remain bound by the original terms.
- (c) **Intention and conduct alone cannot cure a lack of consideration.** Parties' intention to be bound or their conduct in acting upon the variation cannot invalidate an agreement that is void under section 26 of the Contracts Act 1950.

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