

Peppercorn (Legal)

Subjects: Others

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In legal parlance, a peppercorn is a metaphor for a very small cash payment or other nominal consideration, used to satisfy the requirements for the creation of a legal contract. It is featured in *Chappell & Co Ltd v Nestle Co Ltd* (AC 87), which stated that "a peppercorn does not cease to be good consideration if it is established that the promisee does not like pepper and will throw away the corn". What is unusual about the term is that it came into the language when peppercorns were extremely expensive; coming, as they exclusively did, from the Dutch Moluccas. Yet today, the term is more-or-less synonymous with "a pittance" — something of minimal value.

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1. Function in Contract Law

In English law, and other countries with similar common law systems, a legal contract requires that each side must provide consideration. In other words, each party will give something of value to the other party for the contract to be considered binding.^[1] The situation is different under contracts within civil law jurisdictions because such nominal consideration can be categorised as a disguised gift.^[2]

However, courts will not generally inquire into the adequacy or relative value of the consideration provided by each party.^[3] So, if a contract calls for one party to give up something of great value, while the other party gives up something of much lesser value, then it will generally still be considered a valid contract, even though the exchange of value greatly favors one side. Courts, however, will reject "consideration" that was not truly bargained for. For example, in the 1904 case *Fischer v. Union Trust Co.*, the Michigan Supreme Court held that the one dollar paid for the sale of real property did not constitute valuable consideration since the transaction had not been bargained for—a dollar was handed to a mentally incompetent "buyer" who then dutifully handed it to the "seller". The dollar was not considered real consideration, not because the dollar was too small an amount, but because it did not induce the seller to part with the property. Such promises that are motivated by love and affection are insufficient to constitute consideration.^[4]

So, in order for an essentially one-sided contract (such as a gift) to still be valid and binding, the contract will generally be written so that one side gives up something of value, while the other side gives a token sum—one pound, dollar, or literally one peppercorn. Peppercorn payments are sometimes used when selling a struggling company whose net worth may be negative. If some party agrees to take it over and assume its liabilities as well as its assets, the seller may actually agree to make a large payment to the buyer. But the buyer must still make some payment, however small, for the company in order to establish that both sides have given consideration.^[5]

1.1. Concealing the Value of Consideration

A peppercorn is also used in more balanced contracts, where one side wishes to conceal the nature of their payment. For example, since real estate contracts are generally matters of public record, the purchaser of a house may not wish to list the exact amount of the payment on the contract. But there must be *some* specific payment listed in the contract, or the contract will be considered void for lack of consideration. So the contract may be written to reflect that the house is being sold in return for "ten dollars and other good and valuable consideration". The ten dollars is the "peppercorn" that provides concrete consideration and ensures that the contract is valid, while the actual amount paid for the house is hidden and referred to only as the "other good and valuable consideration."^[6]

1.2. In Leases for Real Property

Another common example is the English practice of "peppercorn rent", the nominal rental sum for property, land or buildings. Where a rental contract is put in place and the owner of the property wishes it to be rent-free, it is normal to charge a small sum as "peppercorn rent", because if the owner wants to lease the property, he must charge some rent so that consideration exists for both parties. Furthermore, a peppercorn rent is often used as a form of nominal ground rent

where a (potentially substantial) premium has also been paid on commencement of a long lease of, say, 99 or 125 years (a "virtual freehold").^[7] The notional collection of the annual peppercorn rent helps to maintain a formal landlord–tenant relationship between the two parties, precluding the risk of a claim for adverse possession from the tenant arising, were no consideration to be paid for an extended period.^[8]

The land on which the Ontario Legislative Building resides was leased by the University of Toronto for a peppercorn lease of 999 years.^[9]

It is not uncommon, even in the modern day, for a peppercorn rent to be denominated in (sometimes whimsical) physical goods rather than currency. For example, many of the buildings in London's Covent Garden are leased at a peppercorn rent of "one red apple and a posy of flowers",^[10] the National Coastwatch station at St Albans Head occupies buildings owned by the Encombe Estate in exchange for "one crab per annum if demanded"^[11] while the Isles of Scilly Wildlife Trust leases untenanted land on the Isles of Scilly from the Duchy of Cornwall for one daffodil per year.^[12]

2. Transactions Involving Actual Peppercorns

The Masonic Lodge of St. George's, Bermuda, rents the Old State House as its lodge for the annual sum of a single peppercorn, presented to the Governor of Bermuda on a velvet cushion atop a silver platter, in an annual ceremony performed since 1816 on or about 23 April.^[13]

The Sevenoaks Vine Cricket Club in Sevenoaks, *England*, rents the Vine Cricket Ground from Sevenoaks Town Council at a yearly rent of one peppercorn. It is many years since the club paid only one peppercorn for the rent of the pavilion. The council, in return, gives a new cricket ball to Baron Sackville every year if requested.^{[14][15]}

The University of Bath's main campus is on a 999-year lease from the then Bath City Council. Each year a peppercorn is presented by the Treasurer of the University to the Chairman of the Bath and North East Somerset Council as rent (but also to further the relationships between "town and gown").^[16]

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