

CONSIDERATION

- To Enforce a Promise, must pay a Price: Consideration.
- Elements
 - THE PRICE MUST BE WHAT THE PARTIES BARGAINED FOR IN EXCHANGE FOR THE PROMISE
 - Contrary Examples: Gifts, Past Consideration
 - THE PRICE MUST BE A LEGAL PRICE – SOMETHING THE LAW RECOGNIZES AS LEGITIMATE CONSIDERATION (LEGAL DETRIMENT)
 - Contrary Examples: Illusory Promises, Pre-existing Duty
- Promissory Estoppel: check if no Consideration

LEGAL DETRIMENT versus PRE-EXISTING DUTY

LEGAL DETRIMENT	PRE-EXISTING DUTY
PROMISE TO DO SOMETHING OR DOING SOMETHING THAT THE PERSON IS NOT LEGALLY OBLIGATED TO DO	PROMISE TO DO SOMETHING THAT ONE IS LEGALLY REQUIRED TO DO
PROMISE TO REFRAIN OR REFRAINING FROM DOING SOMETHING THAT THE PERSON IS LEGALLY PRIVILEGED TO DO (GIVING UP A LEGAL RIGHT)	PROMISE TO REFRAIN FROM DOING SOMETHING THAT A PERSON IS NOT LEGALLY PRIVILEGED TO DO

SUFFICIENCY V. ADEQUACY OF CONSIDERATION

- CONSIDERATION NEED NOT BE FAIR OR EQUIVALENT – ADEQUATE CONSIDERATION IS NOT REQUIRED
- HOWEVER, INADEQUATE CONSIDERATION MAY BE EVIDENCE OF A CONTRACT DEFENSE (E.G., FRAUD, INSANITY)

MODIFICATION OF CONTRACTS

- MODIFICATION OF A CONTRACT REQUIRES “NEW” OR “ADDITIONAL” CONSIDERATION TO BE BINDING
- A PARTY IS UNDER A PRE-EXISTING OBLIGATION TO PROVIDE THE CONSIDERATION UNDER THE ORIGINAL CONTRACT (THE “OLD” CONSIDERATION)
- EXCEPTIONS:
 - Restatement: New Consideration not Required if “Fair & Equitable” due to Unanticipated Facts
 - Sales – New Consideration not Required for Modification of Goods Contracts – Good Faith is Required

DEBTS

- PART PAYMENT OF A LIQUIDATED DEBT IS NOT CONSIDERATION FOR A PROMISE TO DISCHARGE THE DEBT
 - NEED NEW OR ADDITIONAL CONSIDERATION, E.G., PAYING DEBT BEFORE IT BECOMES DUE
- PART PAYMENT OF AN UNLIQUIDATED DEBT OR CLAIM IS CONSIDERATION FOR A PROMISE TO DISCHARGE THE DEBT OR CLAIM