

Business Law

Text & Exercises *6th Ed.*

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Chapter 10: Consideration

Learning Outcomes

LO1

- **List the elements of consideration.**

LO2

- **State the preexisting duty rule.**

LO3

- **Identify the exceptions to the preexisting duty rule.**

LO4

- **Understand the concept of**

- **Distinguishes contracts from gifts.**
- **Two parts:**
 1. Something of legal value must be given in exchange for the promise.
 2. There must be a bargained-for exchange.
- **Forbearance:**
 - The act of refraining from an action that one has a legal right to undertake.

Legal Sufficiency and Adequacy of Consideration

- **Binding contracts must have consideration and also be legally sufficient.**
- **Legal sufficiency:**
 - Consideration must be something of value in the eyes of the law.
- **Adequacy of consideration:**
 - The fairness of the bargain.

Preexisting Duty

- A promise made after what one already has a legal duty to do is not legally sufficient consideration, because no legal detriment or benefit has been incurred.
- Exceptions. →

Exceptions to the Preexisting Duty Rule

LO3

- 1. Unforeseen difficulties.**
- 2. Rescission and new contract:**
 - The unmaking of a contract so as to return the parties to the positions they occupied before the contract was made.

Past Consideration

- **Promises made in return for actions or events that have already taken place are unenforceable.**
- **One cannot bargain for something that has already taken place.**

Problems Concerning Consideration

- **Uncertain Performance:** promises exchanged when total performance by the parties is uncertain. Promise is illusory.
- **Settlement of Claims: Release.** →
- **Promissory Estoppel:** certain promises enforceable without consideration. →

Problems Concerning Consideration

- **Settlement of Claims.**
 - Accord and Satisfaction.
 - Release: The relinquishment, concession, or giving up of a right, claim, or privilege, by the person in whom it exists or to whom it accrues, to the person against whom it might have been enforced or demanded.
 - Covenant Not to Sue: agreement to substitute a contractual obligation for some other type of action. Does not bar further recovery.

Promissory Estoppel

- **Also called detrimental reliance.**
- **When this doctrine is applied, the promisor is estopped from revoking the promise.**
- **Four Requirements. →**

Four requirements:

1. There must be a promise.
2. The promisee must justifiably rely on the promise.
3. The reliance normally must be of a substantial and definite character.
4. Justice will be better served by the enforcement of the promise.