

## ■ Contract Law: Formation & Key Doctrines

### 1. Offer and Acceptance

Overview: • What is the price you pay for someone's promise that the contract isn't possible.

Key Definitions:

What is the exception to general principle

Who is the presentation group for, oh yes, you

Who is the week five presentation group

Is the price you pay for someone's promise that the contract isn't possible

What is the difference

Rules & Principles:

- What is the impact of not selling shares of a company for one year what is the promise you have to enforce, Bianca.
- Why is the public price attached to the music?
- The definition for what is a valid offer, the definition contains two things
- One is an intent to be bound, the other is
- No, those are other elements
- I'm talking about offer
- Yes, you need to say, intend to be bound, provided specific terms are stated
- if there's no specific terms, is it offer
- Because the contractual terms is not even there, right
- How about an invitation to treat
- What are examples of invitation to treat
- -Display of goods in the supermarket, sure, excellent

Exceptions & Special Cases:

- The general rule is silence no, unless there is a statement, for instance, to construe silence as an acceptance by the author
- But yes, that's right
- But it doesn't mean that there was no contract formula
- can the presumption be rebutted
- Yes, in what circumstances do we look at, what things do we look at to tell us whether a presumption is rebutted

Case Examples:

- For instance, Kit tells me though, I promise that we'll go out to get supper after class
- So, say for example, the wife got pregnant with someone else's baby
- for instance, if Nigel buys a car for \$5,000 from Stanley
- For example, say I promised you that if you buy me the lottery ticket from your money and if you win, we'll split it halfway
- National service, for example

Study Tip: Always distinguish between an offer and an invitation to treat. Remember the postal rule requirements.

### 2. Consideration

Overview: • What is the point of consideration under the benefit and detriment analysis, in return for my promise, B's consideration, Ethan's consideration.

Key Definitions:

what is the point of consideration

under the benefit and detriment analysis, in return for my promise, B's consideration, Ethan's consideration, is either a benefit conferred on me, which is the ownership of the dog, he's giving me the dog and he's giving me ownership of the dog, he's conferring a benefit on me, or a detriment, which is his suffering by losing the dog

What is the benefit of detriment from my side

in return for Ethan's promise to give me the dog, what is the benefit that I am giving

what is the detriment I'm incurring

Rules & Principles:

- The general rule is that a promise is only impossible if it is supported by consideration The difference is that there is some consideration What is SMU paying as consideration for my time and my willingness to come here and teach.
- today we are the last element for formation of contract, and that's consideration
- can someone tell me what do they remember by consideration
- What do you understand by consideration
- There might be some benefit occurring to one party or a detriment or loss suffered by another
- The general rule is that a promise is only impossible if it is supported by consideration
- The difference is that there is some consideration
- What is SMU paying as consideration for my time and my willingness to come here and teach
- that's the entire essence of what consideration is
- And whether, as you mentioned, is it sufficient or is it going beyond it
- Is that consideration

Exceptions & Special Cases:

- But was there any consideration given by Nigel
- It must be sufficient but does not need to be adequate
- But do you consider that as something that has value in the eyes, that one should consider it as consideration in a contract
- Which goes back a little bit to the idea of certainty of terms, but not, because here what we are concerned with is whether the law sees value sufficient to say it's consideration
- Got the benefit of my dog but I, as a person, got the detriment of losing my dog without gaining the benefit

Case Examples:

- What happened in the case of lack of evidence to showcase-for example, you will not always have the liberty of signing a written contract to showcase a consideration

Study Tip: Always identify which promise is being enforced and what consideration was given for it. Use the benefit-detriment analysis.

### 3. Promissory Estoppel

Overview: • Promissory estoppel is a doctrine that may come in after the initial argument on whether there's prostitution or not such that it is inequitable for the promisor to go back on his promise.

Key Definitions:

The final point I have to deal with before I let you go for today is the concept of promissory estoppel

Can someone tell me what is the three requirements of promissory estoppel

You need to show me you understand what is the doctrine of promissory estoppel

what is the effect of promissory estoppel

Rules & Principles:

- The overarching principle is that the doctrine has consistently been helped to apply in circumstances where it was inequitable.
- Then if B declared bankrupt, he could rely on promissory estoppel instead, right
- Because A made a clear promise that accepted less, and because B was already bankrupt, it would be inequitable for A to go back on that promise and change his mind and demand for the rest when B was already bankrupt
- we'll talk about promissory estoppel later as a doctrine that may come in after the initial argument on whether there's prostitution or not
- such that it is inequitable for the promisor to go back on his promise and the doctrine is invoked as a shield not sword
- is it unequitable for the promisor to go back on his promise
- Some other parts of the class may argue they think it's not inequitable
- The overarching principle is that the doctrine has consistently been helped to apply in circumstances where it was inequitable, either in the narrow or broader sense of detriment, for the promisor to resound on their promise and enforce a strict legal right
- The court held it was not inequitable for the plaintiffs to resound on their promise because the defendant improperly procured their agreement by relying and taking advantage of their weak financial position and threatening bankruptcy, essentially
- The wife sought to recover the payment of \$100 on the grounds of promissory estoppel, saying that she clearly promised to pay \$100
- The court said no, you cannot rely on the court, you cannot sue him for \$100 on the basis of promissory estoppel, only as a shame

Exceptions & Special Cases:

- But if the promise is not supported by consideration, the equitable doctrine of promissory estoppel may prevent a person from going back on his promise

Study Tip: Remember: estoppel is a shield, not a sword. Focus on reliance and inequity.

#### 4. Intention to Create Legal Relations

Overview: • Time may have come for the common law to shed the pretense of searching for consideration to uphold commercial contracts.

Key Definitions:

the inadequacy argument here, right, \$5,000 for Maserati, it may be sufficient consideration, but you must ask yourself, in such an uncommercial terms, is there duress

Rules & Principles:

- The marrow of contractual relationships should be parties' intention to create legal relations.
- The academic position is that where other things intention to create legal relations is clear, there are strong arguments that we don't need consideration.
- The intention to create legal relations, what did we learn last week
- certainty of terms or intention to create legal relations, any of that

- subject to parties' intention the term purports to confer a benefit to the third party
- You can also deal with it under intention to create legal relations argument
- If there was an intention to claw back the whole \$125, it would have been phrased differently and you would have had an extra time frame and maybe smaller payments to get back the whole \$125
- There's an intention to accept \$95 in total only
- Indeed, the time may have come for the common law to shed the pretense of searching for consideration to uphold commercial contracts, and the marrow of contractual relationships should be parties' intention to create legal relations
- Summary, consideration is good evidence of the contracting parties intention to create legal relations
- The academic position is that where other things intention to create legal relations is clear, there are strong arguments that we don't need consideration
- We've done intention to create regular relations thankfully last week that we don't have to drag on today

Exceptions & Special Cases:

- Generally not enforceable as a promise, but if I have the intention to give you a gift and I deliver you the gift, then that is valid

Study Tip: Look at the relationship between parties and the context to determine intention.

## 5. Certainty of Terms

Overview: • Move, certainty of terms, what is the rule there Is there certainty in terms of enforcing the obligations There shouldn't be any uncertainty in Maya deciding on the terms that you are deciding on.

Key Definitions:

move, certainty of terms, what is the rule there

Is there certainty in terms of enforcing the obligations

Rules & Principles:

- There must be enough certainty that we know when a contract is being breached.
- There shouldn't be any uncertainty in Maya deciding on the terms that you are deciding on
- That's not the certainty of terms rule
- there must be enough certainty that we know when a contract is being breached in terms of the obligations
- We went through some examples of when a contract might be void for this requirement, certainty of terms, right
- approximately creates a certainty issue, right
- Because the term must be material enough that its uncertainty affects the execution of the contract
- In some other cases, you might have some other clauses that it's if it's a bit vague, it might be severed from the contract,
- certainty of terms or intention to create legal relations, any of that

Exceptions & Special Cases:

- Which goes back a little bit to the idea of certainty of terms, but not, because here what we are concerned with is whether the law sees value sufficient to say it's consideration

Study Tip: Ask: "Is the term material? Can a court determine what was agreed?"

## 6. Capacity

Overview: • At the back of the minor part, Yeah, thinking

Rules & Principles:

- At the back of the minor part, Yeah, thinking

Study Tip: Capacity is rarely a central issue—but know the exceptions for minors and intoxicated persons.

## 7. Privity of Contract

Overview: • At third party, I'm not sure that means it owing to a third party is the more straightforward one.

Key Definitions:

Yes, at third party, I'm not sure that means it  
owing to a third party is the more straightforward one

Rules & Principles:

- A third party who is not parties to a contract may enforce a term of the contract if A the contract expressly provides that the third party may or B subject to parties' intention.
- In Section 2 of the Contracts White of Third Parties Act, It provides that a third party who is not parties to a contract may enforce a term of the contract if A
- the contract expressly provides that the third party may or B
- subject to parties' intention the term purports to confer a benefit to the third party
- existing contractual duty owed to a third party, owed to the promisor, two different situations, right
- the performance or the promise to perform an existing contractual promise owed to a third party is sufficient consideration for a promise given in exchange

Study Tip: Remember the common law rule and the statutory exception for third parties.

### ■ Overall Study Tips

Start each analysis by identifying the offer, acceptance, consideration, and intention.

Use the benefit-detriment framework for consideration questions.

For promissory estoppel, check all four requirements.

Always consider certainty and intention if terms are vague or context is non-commercial.

In problem questions, discuss both sides—law often balances competing principles.