

CONSIDERATION

- **Consideration:** Legally sufficient value that an offeror bargains for and an offeree gives in exchange for the offeror's offer.

- **Legally sufficient** consideration may take the form of:
 - (1) **promising** to do something that the promisee has no prior legal duty to do (*e.g.*, promising to pay money for the offeror's goods);
 - (2) **performing** an action that the promisee is not otherwise obligated to undertake (*e.g.*, painting the offeror's house); or
 - (3) **refraining** from exercising a legal right that the promisee is otherwise entitled to exercise (*e.g.*, dismissing a viable lawsuit against the offeror).

- Consideration is **bargained for** if offeror sought it in exchange for his promise or commitment and the offeree gave it in exchange for the offeror's promise or commitment.

- Courts generally do not inquire into the **value** of bargained-for consideration – although some courts will make an exception for ***grossly inadequate*** consideration.

AGREEMENTS LACKING CONSIDERATION

- **Preexisting Duty:** A promise to do (or refrain from doing) what one already has a legal duty to do (or refrain from doing) generally **does not** constitute legally sufficient consideration.
 - However, under the “**unforeseen difficulties**” doctrine, an existing contract may be modified to account for unforeseen difficulties that arise during the course of performance. In such a case, the promisee’s obligation under the modified contract is new consideration.
 - Likewise, if the parties agree to replace an existing contract with a **new, superseding contract**, the promise to perform the new contract is a new promise; and, thus, not a promise to perform a pre-existing legal duty.
- **Past Consideration:** Promises made in return for acts or events that have already taken place are unenforceable for lack of consideration.

UNCERTAIN OBLIGATIONS

- **Illusory Promise:** If the terms of a contract call for performance in such uncertain terms that the promisor **has not definitely promised to do** (or refrain from doing) **anything**, the contract is unenforceable for lack of sufficient consideration.
- **Options to Cancel:** If the terms of a contract give one party the option to cancel at any time (including before the other party begins to perform), for any reason, without prior notice, the contract is unenforceable for lack of sufficient consideration.
- **Requirements Contract:** A contract whereby the buyer agrees to purchase all of the goods of a designated type she needs from the seller. Requirements contracts are not illusory, despite the uncertainty whether the buyer will actually require any of the designated goods (and, if so, how many).
- **Output Contract:** A contract whereby the seller agrees to sell all of the goods of a designated type it produces to the buyer. Output contracts are not illusory, despite the uncertainty whether the seller will actually produce any of the designated goods (and, if so, how many).

ACCORD AND SATISFACTION

- **Accord and Satisfaction:** An agreement between an obligor (debtor) and obligee (creditor), by which the obligor agrees to pay the obligee some amount owed under the contract (generally less than the amount in dispute) in exchange for a discharge of all obligations owed by the obligor to the obligee.

- For accord and satisfaction to occur, the amount of the obligor's debt to the obligee must be **in dispute**, or **unliquidated**.

- **Liquidated Debt:** A debt the amount of which the parties have ascertained, fixed, agreed on, settled, or exactly determined the amount.

- **Unliquidated Debt:** A debt the amount of which reasonable persons might disagree.

RELEASES AND COVENANTS NOT TO SUE

- **Release:** An agreement whereby one party forfeits its rights to pursue a legal claim against another party.
 - Releases are generally binding if they are:
 - (1) given in **good faith**,
 - (2) **written**, and
 - (3) accompanied by **consideration**.
- **Covenant Not to Sue:** An agreement to substitute a contractual obligation for some other type of legal action based on a valid claim.

PROMISSORY ESTOPPEL

- **Promissory Estoppel:** If a promisor makes a clear and definite promise on which the promisee **justifiably relies**, the promisor may be bound by the promise, even if it was insufficient to form the basis of a binding contract.

- Promissory estoppel requires the following elements:
 - (1) the promise was **clear and definite**;
 - (2) the promisor should have expected the promisee to **rely** on the promise;
 - (3) the promisee **reasonably relied** on the promise;
 - (4) the promisee's reliance was **substantial** and of a **definite character**; and
 - (5) only enforcing the promise will avoid **injustice**.

- **Charitable Subscriptions:** A promise to a charity on which the charity detrimentally relies – particularly by undertaking a project for which it specifically solicited the promise – *may* bind the promisor, even if it was insufficient to form the basis of a binding contract.