

▼ GOALS

- Identify the three requirements of consideration
- Recognize the various forms of consideration

CONSIDERATION

WHAT'S YOUR VERDICT?

John, a writer, gets a call from his editor and, consequently, has to leave immediately on a research trip to Hudson Bay and Newfoundland in Canada. As the trip should take a couple of weeks, he leaves a note offering to pay his neighbor, Jordan, \$100 to watch his house and feed and walk his dog during the absence. John then leaves without ever speaking to Jordan. Jordan gets the note and complies.

*Is there an enforceable contract?
What is the consideration for each party?*

Consideration is what a person demands and generally must receive in order to make her or his promise legally binding. There are three requirements of consideration.

1. Each party must give an act, forbearance, or promise to the other party.
2. Each party must trade what they contribute to the transaction (act, forbearance, or promise) for the other party's contribution.
3. What each party trades must have legal value, that is, it must be worth something in the eyes of the law.

Consideration distinguishes a contractual promise from a promise to make a gift. A **gift** is a transfer of ownership without receiving anything in return. A promise to make a gift is generally not legally enforceable. Only after a **donor** (the person giving the gift) intentionally transfers the gift to the **donee** (the person receiving the gift) and the donee accepts it does the transaction become legally binding.

ACT, FORBEARANCE, OR PROMISE

In *What's Your Verdict?* what Jordan contributed was watching John's house and feeding and walking the dog each day. These acts were consideration for John's consideration, that is, John's promise to pay the \$100. Both the acts and promise have value in the eyes of the law. Therefore, there was consideration and a valid contract.

When looking for consideration, look for legal value in the underlying act that is promised. If someone promises **forbearance**—or, to not do something—look beneath the promise and ask if the forbearance has legal value.

TRADING

In a typical contract, one party in effect says to another, "If you do this for me (pick up my mail and watch the house), I shall do that for you



In *What's Your Verdict?* was Jordan's consideration an act or a forbearance in the contract that was created? Explain.

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(pay you \$100).” A person promising an action or forbearance is the **promisor**. The person to whom the promise is made is the **promisee**. In most contracts, trading arises as one party exchanges a promise for the promise of the party on the other side. There has been a bargaining, or trading, of one promise for the other.

Consideration must be mutual. This means that each party must give consideration, and each must receive consideration. Consideration can be given by conferring, or promising to confer, a benefit. Consideration also can be given by incurring, or promising to incur, a *detriment*, or harm. If either of the parties does not give consideration, the other has no duty to perform as promised.

IN THIS CASE

Tyrone, a ten-year-old boy, attended a mineral show in Dallas, Texas. He bought several different crystal-like stones there. One such stone was purchased from Edwards for the marked price of \$5. Later the stone was identified as a diamond and valued at more than \$50,000. Edwards sued to recover the stone alleging he had not received proper consideration for the purchase. The courts held in Tyrone’s favor as Edwards had received what he had demanded for the stone. (This is based on an actual case. Later, Tyrone did share part of the \$50,000 with Edwards.)

LEGAL VALUE

Legal value means there has been a change in a party’s legal position as a result of the contract. In *What’s Your Verdict?* Jordan performed acts which involved a benefit to his neighbor (feeding and walking the dog and watching the house). There is legal value because this changed (benefited) the neighbor’s legal position. John, as promisor, benefited Jordan’s legal position by promising the \$100. Because both the act and the promise (to pay \$100) have legal value and were traded, consideration is present and there is a contract. Legal value (a change in legal



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Your dad tells you that he will let you stay out until midnight tonight if you clean your room this afternoon. Who is the promisor and who is the promisee in this situation?

position) is most commonly found in this form—in the exchange of two benefits.

Legal value also can be found in the exchange of benefit for a detriment. With regard to legal value, the detriment is the giving up of a legal right. A detriment always arises when you promise forbearance—that is, promise to refrain from doing what you have a right to do. If your uncle said on your eighteenth birthday, “Look, if you refrain from driving until your twenty-first birthday, I’ll give you \$25,000.” You respond, “Yes, I accept.” What you have promised is not a benefit to your uncle, but rather a detriment to yourself—you have given up a legal right. This is a change in your legal position and is thus valid consideration.

Legal value also can arise from the exchange of two detriments. If you say to your neighbor that you will forbear buying a dog if she will forbear building a fence, both parties have changed their legal positions. Therefore, there is consideration.

ADEQUACY OF CONSIDERATION

Generally, what the parties give and get as consideration need not be of equal economic value. This idea is sometimes expressed as, “The courts do not inquire into the adequacy of consideration.”

The values that different people place on the same property may vary widely. For example, one person might gladly pay \$60,000 for an original and exclusive high-fashion gown by a famous designer. Others would not be interested in owning such a gown for \$60. A person also might place a higher value on a product at one time than at another. For example, when you have been baking for hours on the sunny side of a baseball stadium, you might willingly pay three times the grocery-store price for a cold soft drink.

Economic value is unimportant as long as there is genuine agreement. However, a big difference in economic value of what one gives and receives may be evidence of mutual mistake, duress, undue influence, or fraud. If the consideration received by one of the parties is so grossly inadequate so as to shock the conscience of the court, the contract will be declared *unconscionable* (grossly unfair or oppressive). In such a case, the contract or the unconscionable clause may not be enforceable.

NOMINAL CONSIDERATION

In certain written contracts, such as publicly recorded deeds, consideration from one party may be identified as “one dollar (\$1) and other good and valuable consideration.” In such situations, the actual consideration may be substantially more. However, the parties either cannot state the amount precisely or do not want to publicize it. This token amount is known as **nominal consideration**.

CHECKPOINT

List the three requirements of consideration.



Would you be willing to pay more for a slice of pizza if you were really hungry? If so, why might this be?

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INTERNATIONAL VIEWPOINT

Contracts in Medieval England

Contracts have not always been as important as they are in today's society. The rigid hierarchy of the feudal society in medieval England required very few contracts. Nobles, knights, serfs and peasants all knew their place in society and understood their rights.

Formal contracts, known as “solemn promises,” were more common in England by the fourteenth century. The royal courts required that these promises be written down and sealed. In order to seal the contract, a noble would use the imprint of his signet ring in a wax seal. Today, you can seal a document by writing the word “seal” in parentheses after your name.

THINK ABOUT LEGAL CONCEPTS

1. Forebearance cannot be consideration. **True or False?**
2. The presence or absence of consideration distinguishes a legally enforceable promise from a promise to make a ? .
3. The person who makes a gift is called the donee. **True or False?**
4. Consideration can be found in the exchange of benefits, or in the trading of a benefit for a detriment, but not in the exchange of two detriments. **True or False?**
5. Courts do not consider the ? of consideration.
6. Token amounts given as consideration are referred to as ? consideration. (a) nominal consideration (b) normal consideration (c) insufficient consideration.

THINK CRITICALLY ABOUT EVIDENCE

Study the situation, answer the questions, and then prepare arguments to support your answers.

7. After graduation from high school in June, you and three classmates plan to travel around the United States. The plan is to visit the capital cities of all 48 contiguous states, taking numerous pictures along the way. The Sunnyside Camera Shop offers to give you a dozen rolls of 36-exposure color film for the trip free if you agree to let it develop and print all the rolls you use, for a stated price per roll. You agree. Are both you and the Sunnyside Camera Shop legally bound? What is the consideration for each party?
8. A three-piece high school rock band practiced for at least one hour most days of the week. Its studio was the garage of the drummer's home. The music was so loud that it violated a noise ordinance. Several neighbors offered to pay the rent at a local mini-warehouse as a practice room for a year if the group agreed to stop practicing at the drummer's home. The players agreed. Did the neighbors receive consideration? Did the rock band receive consideration? Did the rock band receive a benefit, endure a detriment, both, or neither? Was the contract enforceable? Would it make a difference if the band's music didn't violate the noise ordinance?
9. Gil found a nearly new engine in his neighbor's garage. He was experienced enough to see that it was in good shape. When he asked the neighbor how much she wanted for it, she said "you can have it if you'll get it out of here by the weekend and clean up the oil and grease around where it was." Gil said, "Okay," even though he knew the engine was worth nearly \$1200. Is this a valid contract?



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▼ GOALS

- Describe situations in which consideration is present only under limited circumstances
- Recognize when what appears to be binding consideration is not

CIRCUMSTANTIAL
CONSIDERATION

WHAT'S YOUR VERDICT?

Bovine Construction was a company that built custom homes for the very wealthy. Bovine contracted to buy from Greener Grass Inc. all the sod necessary for the yards of every home it constructed in May, June, and July of a particular year. During late May of that year, Bovine discovered it could get a comparable sod at half the price that it was paying Greener Grass. As a consequence, Bovine put off laying the sod on homes it had completed in June and July until August when it could buy the sod more cheaply.

Was Bovine able to do this without breaching its contract with Greener? Why or why not?

Certain forms of consideration are only legally binding in the proper circumstances. If these circumstances, in the form of properly worded contract provisions or patterns of behavior are not present, what would appear to be valid consideration is not.

ILLUSORY PROMISES

To be consideration, a promise must be binding. In other words, the promise must create a duty or impose an obligation. If a contract contains a clause that allows you to escape the legal obligation, the promise is said to be *illusory*. For example, you might have a clause stating that you will “paint the house—if you have time.” This does not increase your legal obligation because you may never have time to paint the house.

TERMINATION CLAUSES Businesses often want the power to withdraw from a contract if business circumstances change. Therefore they include termination clauses in their contracts. If the clause gives one party the power to terminate the contract for any reason, the promise to perform would be illusory.

The promise is not illusory if termination is allowed only after a change in defined circumstances, after the passage of a certain length of time, or after a set period after a notice of termination is given. There is clearly a change in the party's legal obligations.

OUTPUT AND REQUIREMENTS CONTRACTS Buyers sometimes agree to purchase all of a particular producer's production. For instance, a steel company may buy all of the output of a nearby coal mining company. This is an **output contract**. On the other hand, a seller may agree to supply all of the needs of a particular buyer. For instance, a carburetor manufacturer may agree to supply all the carburetors needed for the production of a certain make of vehicle. This is a **requirements contract**.

It may seem that one party could elect to stop production and thereby eliminate the obligation. However, courts recognize these contracts as supported by consideration because they imply a duty of fair dealing.

NETBookmark

Access lawxtra.swlearning.com and click on the link for Chapter 8. Using the online dictionary at Law.com, look up the terms *illusory promise*, *output contract*, and *requirements contract*. Think of an example for each of these concepts, and write your examples down on a sheet of paper. Share your examples in class.

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If a lumber company agrees to supply all of the lumber needs of a builder, what kind of contract would the two parties enter into?

This means that production cannot be stopped arbitrarily. Instead any action terminating the obligation of an output or requirement contract must be taken in a way that constitutes *fair dealings*. By finding an implied duty of fair dealings, the courts have maintained the basis for the presence of consideration. In *What's Your Verdict?* the courts would imply the fair dealings standard against Bovine and find them in breach of their contract with Greener.

EXISTING DUTY

A person sometimes promises to do something that he or she already is obligated to do by law or by prior contract. Such a promise, or act, cannot serve as consideration to bind the other party to the contract.

EXISTING PUBLIC DUTY If on your sixteenth birthday, your aunt promised to pay you \$10,000 if you promised to not purchase alcohol for two years and you said, "Okay," this would not be a contract. There is no consideration because it is illegal for you to purchase alcohol when you are 16 and 17 years old. While the agreement creates a benefit for you (\$10,000), you don't incur a detriment because you are not giving up a legal right.

EXISTING PRIVATE DUTY If a contract creates a duty, this duty cannot be the basis of consideration in a different contract. The same rule holds true when a person demands further compensation for carrying out a contract already made.

SETTLEMENT OF LIQUIDATED DEBTS A **liquidated debt** is one where the parties agree that the debt exists and on the amount of the debt. When a *creditor* (a person to whom a debt is owed) agrees to accept less than the total amount due in full settlement from a *debtor* (a person who owes money to a creditor) there is no consideration if the debt is liquidated.

Assume that Shawver borrows \$1,000 from Reno. The loan is to be paid in one year with interest at 10 percent per year, or a total amount of \$1,100. On the due date, Shawver sends Reno a check for only \$1,000, saying "Sorry, I'm strapped for cash. You will have to accept this in full payment." Reno endorses (signs) and cashes the check. Reno may later sue and recover the unpaid balance of \$100. She has received no consideration for the suggested agreement to reduce the amount due.

A debtor can settle a claim by paying less than the full amount if additional consideration is given. For example payment of less than the full amount before the due date could be consideration. However, there must be mutual agreement between the creditor and debtor to do so.

Valid consideration exists because the creditor receives the benefit of early payment. If something extra is given by the debtor, the new consideration supports a voluntary release by the creditor.

SETTLEMENT OF UNLIQUIDATED DEBTS When there is a genuine dispute between the parties about how much is owed, the debt is referred to as unliquidated. In such case, a payment offered in full settlement by the debtor and accepted by a creditor settles the claim. This process is called an **accord and satisfaction**. For example, a debtor may in good faith claim that a certain debt is \$500. The creditor in good faith contends that it is \$1,000. If the parties compromise on \$750, their new agreement on that sum is referred to as the *accord*. Consideration for the accord is found in their mutual forbearance from litigating over the amount owed. When the subsequent agreement is performed, in this case the amount of \$750 is paid, the act is referred to as the *satisfaction*.

RELEASE At the time most torts occur, the liability is unliquidated because the extent of damages is uncertain. If a party settles a claim at this point, this is called a **release**. The payment of money is sufficient consideration for the promise not to sue. Many people are hurt financially by signing releases too soon.

IN THIS CASE

Fillmore loaned Grant his riding lawnmower. While mowing a sloping piece of ground, the right rear wheel came off and the lawnmower rolled over Grant causing severe injuries. Fillmore knew that the wheel had been wobbling but hadn't warned Grant. When Grant threatened to sue Fillmore and the lawnmower company, Fillmore offered Grant \$5,000 for a release from the unliquidated claim. Grant, owing for his hospital stay, accepted and gave the release knowing she could still pursue suit against the lawnmower company. The question only remains as to whether or not it would be successful.

COMPOSITION OF CREDITORS Occasionally a group of creditors will cooperatively agree to accept less than what they are entitled to, in full satisfaction of their claims against a debtor. In return, the debtor agrees not to file for bankruptcy. This is called a **composition of creditors**. Consideration for the promise of each creditor to release the debtor from full payment is found in the reciprocal promises of the other creditors to refrain from suing for the entire amounts due them. If the creditors did not agree to this arrangement, the debtor could file for bankruptcy, and the creditors might receive much less.

CHECKPOINT

Why is consideration not binding in illusory contracts?

FALSE CONSIDERATION

WHAT'S YOUR VERDICT?

Francis, a pedestrian, saw a car pulled over by the side of the road with a flat tire. He came to the driver's aid, replacing the flat with the spare tire. Then he accompanied the driver to the nearest gas station where her flat was repaired. She thanked Francis and said she would give him \$20 on her next payday. Later she changed her mind, and Francis sued.

Can Francis win the \$20?

Unlike forms of consideration that are only legally binding in certain circumstances, certain acts or promises are falsely identified as consideration but can never be.

MUTUAL GIFTS

When something of value is given by one party to another without demanding anything in return, the something of value is not consideration for anything later promised or provided. For example, in *What's Your Verdict?* Francis' service of changing the tire was not consideration for the promise of a

payment of \$20 made afterward by the driver. Neither party sought to exchange one thing for the other. Francis' service was a completed gift. The promised transfer of \$20 was merely a stated intent to make a gift. It was unsupported by consideration and therefore unenforceable in court.

PAST PERFORMANCE

Contractual bargaining takes place in the present, for immediate or future performance by both parties. Therefore, an act that has already been performed cannot serve as consideration. Such act is called **past consideration**.

CHECKPOINT

What distinguishes a gift from a valid contract?

A QUESTION OF ETHICS

A motorist and her two young children are stranded in the parking lot of a shopping mall with a dead car battery. Having just completed your driver's education course, you know how to jump-start a dead battery. You connect the batteries of the two vehicles with your jumper cables. With your engine running, she turns her ignition key and her engine starts smoothly. Grateful, she asks for your address and promises to send you \$25. Is she legally bound to keep her promise? Is she ethically bound to do so?

8-2

Assessment

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THINK ABOUT LEGAL CONCEPTS

1. If a contractual obligation can be negated by a particular action, the contractual promise is said to be **?**
2. Termination clauses always make a contract invalid for lack of consideration. **True or False?**
3. Output clauses make contracts invalid. **True or False?**
4. If you already owe a duty, that duty cannot be used as consideration. **True or False?**
5. Legal value means a change in one's legal position as a result of the contract. **True or False?**
6. When there is a dispute over the amount owed, a subsequent agreement stipulating that amount and promising its payment is referred to as a(n) (a) accord (b) satisfaction (c) output contract

THINK CRITICALLY ABOUT EVIDENCE

Study the situation, answer the questions, and then prepare arguments to support your answers.

7. If a contract contains a clause stating that all the buyer's obligations could be extinguished by giving 30-days' notice, would this make the buyer's obligations under the contract illusory?
8. Georgia's neighbors approached her right after she received her driver's license and said they felt that she drove too fast on the roads where their kids often played. They struck a deal with her that if she stayed within the speed limit for the next three months they would pay her \$200. Georgia agreed. Is there a benefit to the neighbors? Is there a benefit to Georgia? Is there an enforceable contract?
9. Kamiar owed Rubio \$5,000, which was due in one year. There was no dispute as to the amount. However, Rubio needed money immediately, so Kamiar offered to pay \$4,000 early in full settlement of the debt. If Kamiar pays the \$4,000 early, will Rubio be able to successfully sue and collect the \$1,000 later.

▼ GOALS

- Distinguish situations in which consideration is not needed
- Recognize when the doctrine of promissory estoppel can be applied

EXCEPTIONS TO THE REQUIREMENT OF CONSIDERATION

WHAT'S YOUR VERDICT?

The Constantine children, in memory of their father who had died of cancer, promised to pay for the local hospital's purchase of new cancer-fighting equipment. As a consequence, the board of directors of the facility entered into a contract for more than \$450,000 worth of advanced devices. When presented with the bill, the Constantine children, reacting to a downturn in the stock market, refused to pay saying they weren't contractually obligated.

Can they be held to their pledge?

There are important exceptions to the general rule that, under contract law, consideration is necessary to bind someone to their promise. These exceptions include promises made to a charitable organization, promises covered by the UCC, promises to renew a debt barred from collection by certain statutes, and promises enforceable under the doctrine of promissory estoppel.

PROMISES TO CHARITABLE ORGANIZATIONS

Individuals and business firms often contribute to charitable organizations, such as churches, schools, and hospitals not operated for profit. The contributions may be completed gifts or promises (pledges) to pay in the future. Because the party who makes the pledge receives nothing in return, one might assume that the pledge is unenforceable.

Courts generally enforce such promises provided the charity states a specific use for the money and actually acts in reliance on the

pledge. For example, a hospital may have contracted for new facilities, as in *What's Your Verdict?* As it would be unjust to deprive the hospital of the promised support it reasonably relied on, the Constantine children are legally obligated to make good on their pledge.

PROMISES COVERED BY THE UCC

FIRM OFFERS Under the UCC, a merchant who makes an offer in a signed writing to buy or sell goods and promises to leave the offer open is bound for up to three months even when no payment or other consideration has been given for the promise. This is called a *firm offer*.

MODIFICATIONS At common law modification of a contract needs consideration. Under the UCC, however, a good-faith agreement that modifies an



A store owner promises to fund the building of an addition to her church. Then the economy takes a downturn, and the store's business decreases. Is she legally obligated to fulfill her promise to the church?

existing contract for the sale of goods needs no new consideration. For example, after a sale has been made, a seller could agree to give the buyers a valid warranty without further charge. This modification is enforceable though not supported by consideration.

PROMISES BARRED FROM COLLECTION BY STATUTE

STATUTE OF LIMITATIONS A state's **statute of limitations** specifies a time limit for bringing a lawsuit. Once you become aware of a legal claim, you must sue before the statute of limitations passes or you lose the right to sue. In many states, the statute of limitations for breach of contract or torts is three years. If there is a breach of contract or a tort, you must bring suit within three years after the claim arises.

Some states will enforce a promise to pay a claim after the passage of the statute of limitations even though there is no consideration for the promise. These states do require that the promise be in writing.

DEBTS DISCHARGED IN BANKRUPTCY Sometimes, even after a debt has been discharged as a result of the debtor declaring bankruptcy, the obligation may be reaffirmed or (reinstated) by a promise of the debtor. This is often done when someone close to the debtor cosigned or guaranteed payment on the debt. Such a promise does not have to be supported by additional consideration to be legally binding. To avoid taking advantage of other creditors, however, the debts to be reaffirmed have to be listed with the bankruptcy court during the proceeding.



Law Brief

If you cosign a loan for a friend or family member, you may have to pay that debt. This is true even if the person you cosigned for takes bankruptcy. In such a situation, you can ask the bankrupt [person] to reaffirm the debt and thereby prevent your having to pay it instead.



LEGAL RESEARCH

Determine the statute of limitations periods for contracts, torts, and crimes in your state codes. Locate a copy of your state statutes in your local library or online at [www.\(insert your state name\).gov](http://www.(insert your state name).gov) (for example, www.florida.gov). Using the Word Index in the statutes, locate the "statute of limitations" or "limitation of actions" for contracts, torts, and crimes for your state. If searching online, put these same terms in the search engine.

PROMISSORY ESTOPPEL

At times a rigid adherence to the letter of the law can produce injustice. As a consequence, the law allows courts to counteract this effect by taking certain actions in the name of equity, or basic fairness. One such action that the courts can take is the use of the doctrine of **promissory estoppel**. When brought into use—or "invoked"—by the courts, promissory estoppel prevents promisors from stating in court that they did not receive consideration for their promises. Under the doctrine of consideration, if a person cannot claim they did not get what they demanded in return for being bound to their promises, then those promises can be enforced against them.

For the courts to invoke promissory estoppel, the following conditions must be met:

- The promisor should reasonably foresee that the promisee will rely on the promise.
- The promisee does, in fact, act in reliance on the promise.
- The promisee would suffer a substantial economic loss if the promise is not enforced.
- Injustice can be avoided only by enforcement of the promise.

CHECKPOINT

Name four exceptions to the requirement of consideration.


THINK ABOUT LEGAL CONCEPTS

1. Promissory estoppel can only be invoked if the only way to avoid injustice is by enforcing the promise. **True or False?**
2. At common law, changes to a contract must be supported by consideration. **True or False?**
3. There is no time limit under a typical statute of limitations for lawsuits based on breaches of contract. **True or False?**
4. Promises to charities are generally enforceable in court. **True or False?**
5. Under the UCC a merchant's signed, written offer to buy or sell goods is binding for a limited time without consideration. **True or False?**
6. Debts discharged in bankruptcy can still be reaffirmed by the debtor. **True or False?**

THINK CRITICALLY ABOUT EVIDENCE

Study the situation, answer the questions, and then prepare arguments to support your answers.

7. Laura wanted to go to graduate school after college and she knew it would be very expensive. Her dad told her that if she would major in math instead of history, he would pay tuition in graduate school for a master's degree. Laura majored in math but her dad refused to pay for her graduate school tuition. Can Laura compel her father to pay?
8. Welt entered into a contract with Carbonaro, Inc. for the purchase of two dozen ultralight bike frames that he planned to resell from his retail bike shop. The price was \$600 each. The parties wrote out all the terms of their contract and each signed. Later Welt learned that he could acquire similar frames for \$525 each. Welt told Carbonaro that if it wanted to maintain Welt's goodwill it would reduce the price to \$525. Carbonaro agreed. What is the consideration in the original contract? Is the price of \$525 enforceable? Explain.
9. When they were both freshmen in college, Steiner borrowed \$200 from Faber so he could attend a big game in Chicago. Steiner never repaid the debt, and after five years it was barred by the statute of limitations. Then Steiner sent Faber a Christmas card on which he added this note: "I haven't forgotten those four 50's I borrowed from you for the big game. Now that I am working, I'll pay you. In addition, I'll take you to this year's big game at my expense." Is Steiner legally obligated to repay the \$200?
10. Lemke's son bought a videocassette recorder from Dyer on an installment plan. When her son was unable to keep up the payments, Dyer came to repossess the recorder. Lemke promised in writing to make the payments if Dyer would allow her son to keep the recorder. If Dyer agreed, could Lemke hold him to his promise?



PREVENT LEGAL DIFFICULTIES

Remember that under contract law...

1. Generally both parties must give and receive consideration if their agreement is to be enforceable as a contract.
2. Adequacy of consideration generally is immaterial to whether or not a contractual promise is enforceable.
3. Accepting money in exchange for giving up a legal right constitutes consideration and is binding. Consult a lawyer before making such an agreement in any major dispute.
4. A pledge to a charitable institution is generally binding without consideration and should not be made unless you intend to fulfill it.
5. Generally, however, promises to make gifts cannot be enforced by the intended donee.
6. You should use care and good judgment in making contracts. Courts generally will not rescue you from "bad bargains" or unfavorable deals voluntarily made.

Chapter 8 Assessment

CONCEPTS IN BRIEF

8-1 Definition and Types of Consideration

1. Consideration is what a person demands and generally must receive in order to make her or his contractual promise legally binding.
2. Consideration may consist of a promise, an act, or a forbearance.
3. The adequacy, equality, or fairness of the consideration given and received is immaterial as long as the consideration has some value and is voluntarily agreed to by both parties.

8-2 Questionable Consideration

4. Performing or promising to perform an existing obligation is not consideration.
5. Past performance is not consideration for a promise given now or in the future.

8-3 When Consideration Is Not Required

6. Pledges to pay money to charitable organizations are usually enforceable even though no consideration was given in return.
7. Agreements between merchants modifying contracts for the sale of goods need no consideration to be binding.
8. Promises barred by statute may be enforceable if reaffirmed.
9. If basic fairness demands it, the courts may invoke the doctrine of promissory estoppel to prevent promisors from stating that they did not receive consideration for their promises.

YOUR LEGAL VOCABULARY

Match each statement with the term that it best defines. Some terms may not be used.

1. Agreement by all creditors to accept something less than the total amount of their claims in full satisfaction of a debtor's obligations
2. Token consideration, which bears no relation to the real value of the contract
3. What a person demands and generally must receive in order to make her or his promise legally binding
4. Refraining from doing what one has a right to do
5. Voluntary transfer of ownership of property without consideration
6. Change in the legal position of a party as a result of the contract
7. Act that has already been performed and thus cannot be consideration for a promise in the present
8. Enforcement of a promise to avoid injustice, even though no consideration is given for it
9. Person who makes a promise
10. Person to whom a promise is made
11. Contractual situation in which a seller agrees to supply all the needs of a particular buyer

- a. accord and satisfaction
- b. composition of creditors
- c. consideration
- d. donee
- e. donor
- f. forbearance
- g. gift
- h. legal value
- i. liquidated debt
- j. nominal consideration
- k. output contract
- l. past consideration
- m. promisee
- n. promisor
- o. promissory estoppel
- p. requirements contract
- q. release
- r. statute of limitations

REVIEW LEGAL CONCEPTS

12. Give an example of an output contract associated with school.
13. Give an example of a requirements contract associated with school.
14. Think of three promises you've made to your family or friends today. Might they be enforceable in court? Why or why not?

WRITE ABOUT LEGAL CONCEPTS

15. Write an analysis of why a deputy sheriff should not be able to collect a standing reward for capturing a criminal.
16. **HOT DEBATE** Write a paragraph about whether or not the doctrine of promissory estoppel should be applied to the situation involving Maureen's promised graduation trip. Who would win if the doctrine was applied?

MAKE ACADEMIC CONNECTIONS

17. **PSYCHOLOGY** Contact a charity and ask about how people are about fulfilling their pledges. Ask if the charity relies on the pledges or waits to get the money before budgeting expenditures and what steps, including lawsuits, the charity takes to enhance the receipt of the promised money.

THINK CRITICALLY ABOUT EVIDENCE

Study the situation, answer the questions, and then prepare arguments to support your answers.

18. Glenn contracted to provide the labor for an addition to Reid's home for \$10,000. When Glenn was partially through, he realized that the job was more time-consuming than anticipated. Therefore he refused to continue until Reid promised to pay an additional \$2,000. Reid did so. Is Glenn legally entitled to the extra \$2,000?
19. Kari promised to deed ten acres of land to the Ezlers. In reliance on the promise, they took possession of the land, cleared it, installed an irrigation system over a one-acre section, and planted 50 young fruit trees. Then Kari, seeing the improved property, changed her mind. Will a court compel the transfer to the Ezlers even though they gave Kari no consideration?
20. Mary received a diamond lapel pin from the estate of her maternal grandmother. It was appraised at \$7,500. Because it did not fit in with her sports-oriented lifestyle, Mary sold the pin to a jeweler who told her, "The setting is old-fashioned, but the diamond is forever the same. I'll give you \$3,500 cash." Later Mary wondered whether she received legally sufficient consideration. Did she? Can she rescind the transaction if she can prove that she received much less than the pin was worth?
21. When Bob began college at age 21, his godmother promised to give him \$1,000 at the end of each of the following four years if he remained in school and refrained from smoking and/or chewing tobacco. She also promised a bonus of \$1,000 if and when he received his bachelor of science degree. Are the godmother's promises legally enforceable? What are the ethical implications of her promises?

ANALYZE REAL CASES

22. Marine Contractors Company, Inc., did various kinds of marine repair work within a 100-mile radius of Boston, Massachusetts. The company maintained a trust fund for the benefit of retired employees. The trust agreement provided that employees who resigned could withdraw their share of the fund after waiting five years. Hurley, general manager of the company, had accumulated \$12,000 in the trust fund. When Hurley resigned, the president of Marine offered to pay his \$12,000 immediately if he would agree not to compete with Marine directly or indirectly within 100 miles of Boston for five years. The parties made a written contract which set forth a "consideration of One Dollar and other good and valuable consideration." The contract also stated that the parties have "set their hands and seals" to the contract. Within four months after leaving Marine's employ, Hurley began doing repair work similar to that of Marine. Soon after, he organized his own company, hiring two supervisors of Marine. Marine sued to stop Hurley from breaking his contract. Hurley defended with a plea of no consideration. Was there consideration, and was Hurley therefore bound to the agreement not to compete? Why or why not? (*Marine Contractors Company, Inc. v. Hurley*, 310 N.E.2d 915)
23. Under a written contract with the Robert Chuckrow Construction Company, Gough agreed to do the carpentry work on a commercial building. Gough was to supply all necessary labor, materials, and other requirements to complete the work "in accordance with the drawings and specifications." After Gough's employees had erected 38 trusses, 32 of them fell off the building. Gough did not claim that the plans or specifications were defective or that Chuckrow was to blame for the collapse. Gough was told by a Chuckrow representative to remove the fallen trusses and to rebuild and erect them. Gough also was told to submit an additional bill for this work. He completed the job and submitted the additional bill. However, Chuckrow paid only the amount promised under the original written contract. Therefore Gough sued Chuckrow for the extra costs of reconstruction. Is he entitled to the added money? (*Robert Chuckrow Construction Company v. Gough*, 159 S.E.2d 469, Ga.)
24. Hoffman and his wife owned a bakery in Wautoma, Wisconsin. Lukowitz, an agent for Red Owl Stores, Inc., represented to and agreed with Hoffman that Red Owl would erect a grocery store building for them in Chilton and stock it with merchandise. In return, the Hoffmans were to invest \$18,000 and Hoffman was to operate the store as a Red Owl franchise. In reliance on Red Owl's assurances and advice, the Hoffmans sold their bakery, paid \$1,000 down on a lot in Chilton, and rented a residence there. In negotiations over some seventeen months, Red Owl boosted the required investment to \$24,100; then to \$26,000; and finally to \$34,000, which was to include \$13,000 from Hoffman's father-in-law. Red Owl insisted the \$13,000 must either be a gift or a loan that would be inferior in claim to all general creditors. Hoffman balked and sued for damages. Should the Hoffmans win? If so, on what grounds? (*Hoffman v. Red Owl Stores*, 133 N.W.2d 267, 26 Wis. 2d 683)
25. Petty, a general contractor, made a series of purchases from Field Lumber Company. Field's records showed a total price of \$1,752.21. Petty admitted he owed \$1,091.96, but denied liability for the difference of \$660.25. He claimed the difference was a result of an unauthorized \$292.60 purchase by an employee, plus related finance charges. Petty sent a check for \$500 along with a letter stating that the check must be accepted in full settlement of the total claim or returned. Field phoned to say the lumber company required full payment, but nevertheless Field cashed the check and sued for the full balance it claimed was due. Can Field Lumber Company now recover the full amount? (*Field Lumber Company v. Petty*, 512 P.2d 764, Wash.)
26. Burt made two pledges of \$50,000 each to the Mt. Sinai Hospital of Greater Miami. He made the pledges "in consideration of and to induce the subscriptions of others." Nothing was said as to how the funds were to be used. Mt. Sinai Hospital did not use his pledge to induce others to subscribe. Nor did the hospital undertake any work in reliance on Burt's pledge. Burt died in the following year. Up to the time of his death, he had paid \$20,000 on his pledge. The executors of his estate now refuse to pay the balance. Must they do so? (*Mount Sinai Hospital of Greater Miami, Inc., v. Jordan*, 290 So. 2d 484, Fla.)