Mutual Consideration

Lessons

- 9-1 What Is Consideration?
- 9-2 Legal Value and Bargained-For Exchange
- 9-3 When Is Consideration Not Required?

What Is Consideration? GOALS

- Define consideration
- Determine when there is no consideration

H-o-t Debate



- For college graduation wealthy aunt promised Maureen two round-trip tickets for a cruise for her and a friend.
- Promised trip Mexican Riviera (Long Beach, CA to Acapulco, Mexico
- At graduation aunt gives Maureen a kiss and says, "The stock market is down. Sorry, darling!"

2 reasons aunt is legally

 Maureen should be able to recover the value of the trip b/c of basic fairness.

 Maureen may have passed up other opportunities b/c the trip was already on her schedule, such reliance, if reasonably anticipatable, may legally bind the Aunt to her promise.

2 reasons why you think the aunt should not have to pay

aunt should not have to pay make a gift; this was not a binding contract

 The trip would have been a luxury for Maureen. The Aunt would not be harming Maureen by declining to give her a luxury item.



Gifts

- Transfer of ownership without receiving anything in exchange.
- A promise to make a gift is not legally enforceable.
- When the donor transfers the gift to the donee & the donee accepts = transaction becomes legally binding.

- 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.

THREE REQUIREMENTS OF CONSIDERATION

1) Each party must give an act, forbearance, or promise to the other party.

Act – feeding the dog & watching the house (consideration)

Forbearance – refraining from doing what one has a right to do

Right to erect a fence on property

Promise – promise (was the consideration here) to pay \$100 for feeding dog & watching the house (promise made by **promisor**)

- 2) Each party must trade what they contribute to the transaction for the other party's contribution.
- 3) What each party trades must have legal value.

CONSIDERATION

- Act, forbearance, or promise
- Trading one party exchanges a promise for the promise of the party on the other side
- Legal value consideration given and received by the promisor/promisee must have legal value
- Adequacy of consideration -- need not be equal in value
- Nominal consideration

Legal Value

 There has been a change in a party's legal position as a result of the contract.

Example:

- Benefits to neighbor John:
 - Feeding and walking dog
 - Watching house
- Benefit to Jordan:
 - **\$100.**

Adequacy of Consideration

- Eric offered to sell Francis his used lawnmower for \$50.
- Francis agreed and paid Eric the money
- The next day Francis found out that Eric had paid only \$5 for the mower last year. He also found similar used mowers available for less than \$25.
- Is the consideration for the contract from Eric sufficient? adequate?

- The consideration is definitely sufficient.
- Value is determined by bargaining parties.
- What a willing buyer will pay a willing seller determines the selling price.
- The possibility that Francis got a bad bargain does not make the consideration either insufficient or inadequate.

Nominal Consideration

- In some written contracts such as Deeds -- one party may state \$1 as the consideration.
 - Party cannot state specific value
 - Parties do not wish to publicize

Legal Value and Bargained-For Exchange GOALS

- Identify when there is legal value
- Determine when there is a bargained-for exchange

Legal Value – Illusory Promises

- Illusory promises clauses in contracts that allow a party to escape legal obligation
- i.e. I will paint your house if I have time.
- Does it more or less say:

"I will if I want to"

→ Any promise that conveys this meaning cannot be relied on nor enforced in court

 Ms. Miller, a high school government teacher, says to her students:

"All of you have worked hard, and if you continue to perform at this high level, I'll pay for a pizza party for the class at the end of the year—if I think it is warranted."

The students continue to work hard and class grades are high, but no party is given.

Can the students enforce the promise?

- This is an "illusory promise" or no promise at all.
- This performance depends solely on the teacher's decision.
- No bargained-for exchange
- No obligation; no enforcement

 It is unenforceable because the terms express such uncertainty of performance that it is actually no promise at all.

Word contract so it could be enforceable --

 Specify measurable objectives - such as test scores must average 90 or above in order for Ms. Miller to pay for the party.

Vs

I'll pay for a pizza party for the class at the end of the year—if I think it is warranted."

Legal Value – Termination Clauses

Business can give themselves "an out"
 put in a termination clause that gives the right to cancel for any reason.

This promise would be illusory

Legal Value – Termination Clauses

- If the termination clause allows for cancellation only after
- a change in defined circumstances
- after a certain time period
- after a notice of termination is given
- -- it is not illusory!

Example – Option to Cancel Clause

- A contract created to last over time may allow one or both parties to cancel early.
- i.e. Max and Linda negotiated and signed a threeyear lease in which the tenant Linda reserved the right to cancel, with notice, at any time after one year's occupancy.

The uncertainty of performance is that the contract may or may not last for the entire three-year period.

Output and requirements contracts

OUTPUT CONTRACTS

- Buyers can agree to buy all of a producer's production & seller agrees to supply all it produces
- i.e. U.S. Steel agrees to sell to Bowing Aircraft all the I-Beams it produces during the month of March at an agreed-upon price per beam. This contract is a binding nonillusory output contract.

REQUIREMENTS CONTRACTS

A supplier may agree to supply all the needs of a certain buyer.

i.e. Longbow Corp. uses coal to operate and heat its plant. Longbow agrees to purchase from Black Rock Coal Company all the coal that Longbow will require to heat and to run the plant for one year at a set price per ton.

requirements contract

Stated this way --- it's enforceable

 On the other hand, if Longbow promises to buy only if they wish or desire to do so, or

if the buyer reserves the right to buy the goods from someone other than the Longbow,

the promise is ILLUSORY!

- Implied duty of fair dealings any action terminating the obligation of an output or requirement contract must be taken in a way that constitutes fair dealings.
- Implied duty of fair dealings = consideration

Existing Duty — Existing Public Duty

- A person sometimes promises to do something that he or she already is obligated to do by law or by prior contract.
- i.e. On your sixteenth birthday, your aunt promises to pay you \$10,000. if you promise not to purchase alcohol for two years and you say, "Okay".

- This would NOT be a contract.
- →No consideration b/c it's illegal for minors to purchase alcohol.
- No detriment you're not giving up a legal right

Existing Public Duty

- A city council offered a reward to anyone who gave information that led to the conviction of the person who had been setting fires. In addition, the city hired a night watchman to be on the lookout for anyone setting fires.
- The night watchman caught the person setting fires and sought the reward.

• The court held that he was not entitled to the reward because he was under a legal duty to do what he did and thus did not furnish consideration to the city for its promise to pay the reward.

Existing Private Duty

- Lemsky employed Vork under a three-year contract. The contract called for Vork to manage a motel for Lemsky at \$25,000 a year, as well as receive a free apartment.
- After six months, Flemming offered Vork \$30,000 a year to manage a larger motel. Upon learning of the offer, Lemsky said to Vork, "You're competent, You're honest. I need you. I'll meet any offer you get from anyone else." Vork remains on the job.

- Must Lemsky pay her the higher salary?
- Vork was still bound for 30 more months under the original contract
- Lemsky's promise to pay more money is unenforceable
- To hold Lemsky to the new promise, Vork would have to provide new, additional consideration.

Settlement of Liquidated Debts

- A debt in which the parties agree that the debt exists and on the amount of the debt.
- Sue owes Sam \$2000. at the end of the year. On the due date, Sue pays back \$1500. and says she cannot pay any more so the debt is settled.
- Sam accepts the \$1500, and then takes

- Sue to court for the remainder.
- Can Sam recover?
- Yes there was no consideration given to Sam for the revised payoff.

 If Sue gave Sam her coin collection and the \$1500, and he agreed to accept it

Settlement of unliquidated debts

- Customer claims a debt is \$1,000.
- Creditor claims the debt is \$2,000.
- Parties compromise on \$1,500. this agreement is binding.
- Consideration = mutual forbearance from litigating the amount owed
 Accord and Satisfaction

- Accord parties compromised on the \$1,500.
- Satisfaction new agreement to the new amount (\$1,500)
 - -- hence the term "accord and satisfaction

Release

- In a tort damages uncertain
- Party settles claim before an amount is determined – release
- Payment of money = consideration for the promise not to sue

Composition of creditors

- Group of creditors cooperatively agree to accept less than the full amount owed as full payment.
- In return, the debtor agrees not to file for bankruptcy.

- Existing duty
 - Existing public duty
 - Existing private duty
 - Settlement of liquidated debts
 - Settlement of unliquidated debts
 - Release
 - Composition of creditors

Illusory promises

- For valid consideration promise must be binding
- Promise must create duty or impose obligation
- Clauses that allow you to escape the legal obligation → Illusory

BARGAINED-FOR EXCHANGE

- Mutual gifts
- Past performance

Mutual Gifts

- Example where Francis (pedestrian) fixes ladies flat tire
- At repair shop she says she will give him
 \$20 next payday later changes mind
- Francis performed a gift of fixing tire
- Money offered after tire was fixed
- No exchange / not bargained-for exchange

Past Performance

- Motorist stranded with a dead battery
- Good neighbor comes by and offers to jump start the battery
- Gets car running
- Grateful says she will send \$25
- Is she legally bound to keep her promise?

- Motorist is not bound because her promise to pay occurred after neighbor jumped her battery.
- Bargaining for consideration must be made in the present, for immediate or future performance by both parties

When Is Consideration Not Required?

GOALS

- Identify when promissory estoppel applies
- Discuss situations in which consideration is not needed

Promissory Estoppel

- A doctrine allowing enforcement of a promise otherwise unsupported by consideration.
- Applies when a person makes an important promise upon which another reasonably relies to his or her detriment.

PROMISSORY ESTOPPEL

The following conditions must be met for promissory estoppel to apply:

- 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.

- Bill Smith, knowing that his niece, Jill, wishes to go to college and has not money to do so, promises to give her \$40,000 when she graduates.
- Jill quits her job, borrows money, goes into a great deal of debt, and graduates from college.
- Bill then notifies Jill that he has changed his mind about the \$40,000 gift.

To prevent injustice, the court may "estop" Bill from claiming that Jill gave no consideration for his promise, so he will be order to make good on his promise.

EXCEPTIONS TO THE CONSIDERATION REQUIREMENT

- Promises to charitable organizations
- Statute of limitations
- Uniform Commercial Code
 - Firm offers
 - Modifications

Charitable Organizations

- The Constantine children, in memory of their father who had died of cancer, promised to pay for the local hospital's purchase of a 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

 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?

- Unjust to deprive hospital of promised support (they relied on and contracted for new facilities)
- Constantine children are legally obligated to pay

UCC - Firm Offers

- Merchant who makes an offer in a signed writing to buy/sell goods and promises to leave the offer open
- Bound for up to three months
- No consideration necessary

UCC - Modifications

- Common law needs consideration
- UCC good-faith agreement that modifies an existing contract for the sale of goods – no new consideration
- i.e. purchase dish washer later seller offers to give warranty at no additional cost - enforceable

Statute of Limitations - NJ

 Negligence / Products Liability / Medical Malpractice – 2 years

Intentional Torts – 1 year

- Municipal Liability / Sovereign Immunity
 - 90 days

Statute of Limitations

- Book mentions 3 years as the time frame, however, NJ differs.
- Must check state-to-state

Bankruptcy - Debts

- After bankruptcy discharge reaffirm or reinstate by promise of the debtor
- Cosign loan for family member
- -- files bankruptcy you are still liable
- can ask family member to reaffirm the debt so you don't have to pay it