

## Chapter 12: Consideration

### CONSIDERATION

**Definition** the inducement to enter into a contract

**Elements** legal sufficiency and bargained-for exchange

### LEGAL SUFFICIENCY OF CONSIDERATION

Definition consists of either a benefit to the promisor or a detriment to the promisee

- **Legal Benefit** obtaining something to which one had no prior legal right
- **Legal Detriment** doing an act one is not legally obligated to do or not doing an act that one has a legal right to do

**Adequacy of Consideration** not required where the parties have freely agreed to the exchange

**Illusory Promise** promise that imposes no obligation on the promisor; the following promises are not illusory

- **Output Contract** agreement to sell all of one's production to a single buyer
- **Requirements Contract** agreement to buy all of one's needs from a single producer
- **Exclusive Dealing Contract** grant to a franchisee or licensee by a manufacturer of the sole right to sell goods in a defined market
- **Conditional Contract** a contract in which the obligations are contingent upon the occurrence of a stated event

**Preexisting Public Obligations** public duties such as those imposed by tort or criminal law are neither a legal detriment nor a legal benefit

**Preexisting Contractual Obligation** performance of a preexisting contractual duty is not consideration

- **Modification of a Preexisting Contract** under the common law a modification of a preexisting contract must be supported by mutual consideration; under the Code a contract can be modified without new consideration
- **Substituted Contracts** the parties agree to rescind their original contract and to enter into a new one; rescission and new contract are supported by consideration
- **Settlement of an Undisputed Debt** payment of a lesser sum of money to discharge an undisputed debt (one whose existence and amount are not contested) does not constitute legally sufficient consideration
- **Settlement of a Disputed Debt** payment of a lesser sum of money to discharge a disputed debt (one whose existence or amount is contested) is legally sufficient consideration

### BARGAINED-FOR EXCHANGE

**Definition** a mutually agreed-upon exchange

**Past Consideration** an act done before the contract is made is not consideration

### CONTRACTS WITHOUT CONSIDERATION

**Promises to Perform Prior Unenforceable Obligations**

- **Promise to Pay Debt Barred by the Statute of Limitations** a new promise by the debtor to pay the debt renews the running of the statute of limitations for a second statutory period
- **Promise to Pay Debt Discharged in Bankruptcy** may be enforceable without consideration
- **Voidable Promises** a new promise to perform a voidable obligation that has not been previously avoided is enforceable
- **Moral Obligation** a promise made to satisfy a preexisting moral obligation is generally unenforceable for lack of consideration

**Promissory Estoppel** doctrine that prohibits a party from denying his promise when the promisee takes action or forbearance to his detriment reasonably based upon the promise

**Contracts under Seal** where still recognized, the seal acts as a substitute for consideration

**Promises Made Enforceable by Statute** some gratuitous promises have been made enforceable by statute; the Code makes enforceable (1) contract modifications, (2) renunciations, and (3) firm offers