

Chapter 12

Consideration

Chapter Objectives

By the end of this chapter, you should be able to:

- Define consideration.
- Describe the concept of sufficiency of consideration.
- Identify the ideal conditions for achieving accord and satisfaction by use of an instrument.
- Describe the good-faith requirement for contracts.
- Define promissory estoppel.

Why Does Consideration Matter?

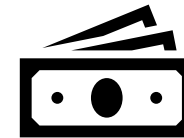


Elements of Consideration

- Legally Sufficient Value
- Bargained for Exchange
- Adequacy of Consideration

Legally Sufficient Value

- Promise to do something with no legal duty.
- Performance of action with no obligation.
- Legal right to refrain from an action.
- **Landmark in the Law Case: Hamer v. Sidway (1891)**



Knowledge Check 1

The elements of consideration consist of:

- A. Legally sufficient value
- B. Bargained for exchange
- C. Adequacy of consideration
- D. All of the above

Bargained-for Exchange

- Value item must be provided by promisor in return for promisee's promise or performance.
- **Case Example 12.1 Cincinnati Reds, LLC v. Testa**
 - Reds purchase promotional items to give away to fans only at games, in order to increase ticket purchase and attendance.
 - Ohio state board of tax (BTA) denies team's request for sales tax exemption on promotional items purchased to give away to fans.
 - Reds appealed to the Ohio Supreme Court, and the BTA's decision got reversed.



Cincinnati Reds, LLC v. Testa

Polling Question

Fans sometimes catch and keep baseballs that hit into the stands. Do these actions differ from the situation described in this case, in which fans were promised and received promotional items for attending games?

Yes

No

Explain your reasoning to another person or classmate.

Adequacy of Consideration

The General Rule

- Doctrine of Freedom of Contract
- Frivolous lawsuits would abound, if people sued for every unwise contract.

When Voluntary Consent May Be Lacking

- Large disparities in amount or value that may involve fraud, duress, or undue influence of the consideration exchanged, may raise a red flag for a court to look more closely at the bargain.
- **Example 12.3 Spencer's iPhone**

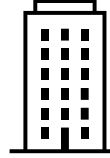


Agreements That Lack Consideration

- Preexisting Duty
- Past Consideration
- Illusory Promises

Preexisting Duty

- **Example 12.4 Bauman-Bache, Inc.**



Unforeseen Difficulties

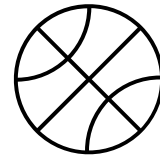
- Courts may allow exception to rule, if extraordinary unforeseen difficulties arise at the time of forming the contract.

Rescission and New Contract

- Two parties can mutually agree to rescind, cancel, or renew a contract.

Past Consideration

- Past consideration is no consideration
- **Case Example 12.2 Baugh v. Columbia Heart Clinic, P.A.**
- **Case Example 12.5 Jamil Blackmon**



Baugh v. Columbia Heart Clinic, P.A.

Polling Question

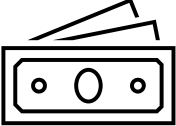

When a noncompete agreement is entered into after employment has begun, is continued employment sufficient consideration for the agreement?

Yes

No

Explain your reasoning to another person or classmate.

Illusory Promises

- Have no consideration and are unenforceable
- **Example 12.6 Tuscan Corporation** 
- **Example 12.7 Abe** 

Settlement of Claims

- Accord and satisfaction
- Release
- Covenant not to sue

Accord and Satisfaction

Liquidated Debts

- Accord and satisfaction cannot take place
- **Example 12.8 Barbara Kwan**



Unliquidated Debts

- Payments are satisfied with valid consideration

Release

- Is binding when:
 1. Agreement made in good faith
 2. Contract is in signed writing
 3. Consideration accompanies contract

- **Case Example 12.9 Kara v. Raoul**



Knowledge Check 2

Releases are binding when the contract is signed in writing, consideration accompanies the contract, and the agreement is made in good faith.

True

False

Covenant Not to Sue

Substituting a contractual obligation for another type of legal action, based on a valid claim.

Case Example 12.3: Already, LLC v. Nike, Inc.

- Nike files a trademark infringement suit against Already.
- Already files a counterclaim, and Nike issues covenant not to sue.
- Nike files motion to dismiss own claims, and Already's counterclaim.
- Already opposes dismissal, but courts grant Nike's motion.



Already, LLC v. Nike, Inc.

Polling Question

Should any party agree to a covenant not to sue?

Yes

No

Explain your reasoning to another person or classmate.

Promissory Estoppel


- Requirements to Establish Promissory Estoppel
- Application of Promissory Estoppel

Requirements to Establish Promissory Estoppel

1. Promise must be clear and definite.
2. Promisor expects promisee to rely on promise.
3. Promisee reasonably relies on promise by acting, or refraining from some act.
4. Promisee's definite reliance resulted in a substantial detriment.
5. To avoid injustice, enforcement of promise is necessary.



Application of Promissory Estoppel

- Can be applied to situations involving:
 - Gifts
 - Donations
 - Business transactions
 - Employment relationships
 - Family member disputes
- **Case Example 12.10 BH 329 NB, LLC v. CBRE, Inc.** 

Knowledge Check Video: Promissory Estoppel



Promissory
Estoppel



Knowledge Check Video Question

Which of the following is true about a promissory estoppel?

- A. The promise does not have to be enforced
- B. There is consideration in the claim
- C. Defendant cannot claim promise never existed
- D. None of the above

Video Debrief: Promissory Estoppel

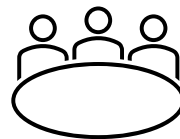
Do you think it's fair that a man continues to pay child support for a child he later discovers isn't biologically his?

Discuss your opinions regarding this scenario applying the doctrine of promissory estoppel.

Discussion

Review the Hamer v. Sidway (1891) case described in the [Landmark in the Law](#) feature.

1. Why do you think Sidway contended that the contract to pay William Story II's nephew was invalid due to insufficient consideration?
2. How can the principles enunciated by the courts in this case be applied to online contracts?



Group Breakout: Consideration Contracts

Under common law, a primary basis for the enforcement of promises is consideration.

1. Beyond the cases discussed in this chapter, name some contracts that contain the elements of consideration.
2. Also, name some contracts that did not contain the elements of consideration.
3. Provide at least two examples for each question.

Self-Assessment

1. What concepts did you find difficult, and thus need to review?
2. How might the topics in this chapter come up in the future in your personal (or work) life?
3. How can you use your personal (or work) experience to contribute for a class discussion on the topics in this chapter?
4. Which topics would you like to independently learn more about?

Summary

Now that the lesson has ended, you should have learned how to:

- Define consideration.
- Describe the concept of sufficiency of consideration.
- Identify the ideal conditions for achieving accord and satisfaction by use of an instrument.
- Describe the good-faith requirement for contracts.
- Define promissory estoppel.