

ASPEN PARALEGAL SERIES

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Basic Contract Law for Paralegals
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Chapter 4

CONSIDERATION

Learning Objectives

After studying this chapter you will be able to:

- ▶ Define “contractual consideration”
- ▶ Discuss the concept of mutuality of consideration
- ▶ Differentiate between a benefit conferred and a detriment incurred
- ▶ Exemplify what is not considered to be legally sufficient consideration
- ▶ Explain the “preexisting duty rule”
- ▶ Discuss the impact of the UCC on traditional concepts of consideration
- ▶ Explain what is meant by the sufficiency of the consideration
- ▶ Define “promissory estoppel”
- ▶ Discuss “accord and satisfaction”
- ▶ Indicate how one becomes a guarantor

Consideration

Consideration is something that has legal value.

Detriment as Consideration

For a detriment to qualify as consideration, the person incurring the detriment must:

1. give up a legal right
2. at the request of the other party
3. in exchange for something of legal value

What is Not Consideration

- Past consideration is no consideration
- Moral consideration is no consideration
- A gift can never be legal consideration
- Illusory promises are never consideration
- Promises to do that which one is already bound to do are not consideration

Circumstances Under Which a Preexisting Duty May Be Consideration

- If new or different consideration is given
- The purpose is to ratify a voidable obligation
- The duty is owed to a third person, not the promisee
- Unforeseen circumstances make the duty more difficult to fulfill

Does a Bad Bargain Matter?

- ▶ **Caveat emptor**: Let the buyer beware
- ▶ **Caveat venditor**: Let the seller beware

Valid Accord and Satisfaction

The requirements are:

- A valid contract
- A dispute between the parties with respect to that contract and
- An agreement to compromise the dispute rather than sue

Guarantees

A **guarantee** is a written promise to answer for the debts of another that is enforceable against the guarantor.

Requirements for a Guarantee to be Valid

- A valid contract is entered into between two or more parties
- The guarantor creates the guarantee at the time the contract is executed and
- The guarantee is in writing