

3020 CONSIDERATION

[Insert first paragraph of 3010 and first paragraph of 3012 if desired.]

Consideration is an essential element of a contract; it is necessary to the validity and enforceability of a contract.

Consideration is the price bargained and paid for a promise – that is, something intended by the parties to be given in exchange for the promise.

Consideration is an act or a promise which is either a detriment incurred by the offeree, or a benefit received by the offeror, at the request of the offeror, either of which does not occur gratuitously, but which is accepted and regarded as consideration by both the offeror and the offeree. Detriment as used here means any act which occasioned the offeree the slightest trouble or inconvenience, and which the offeree was not otherwise obliged to perform or refrain from performing. Benefit as used here means anything of slight or trifling value to the offeror.

[For a detriment to the offeree, or a benefit to the offeror, to rise to the status of consideration in a legal sense, the forbearance, detriment, loss or responsibility borne by the one party, or the right, interest, profit or benefit accruing to the other party, must not consist of an already existing legal obligation.]

It is not a proper function of the jury to determine whether the consideration is a fair and adequate exchange for the promise. Fairness and adequacy are for the offeror and offeree to judge for themselves. Any legal consideration, no matter how slight, will be sufficient. However, the mere inconvenience of making or receiving a promise is not itself consideration. [Love and affection alone are not sufficient to support a contract.]

[If consideration is sufficient in other respects, it does not matter from whom or to whom it moves. The consideration may move to the offeror or a third person, and may be given by the offeror or a third person.]

[Mutual promises for the future performance of acts by the parties may constitute consideration for each other if the promises are capable of being performed, are given in exchange for each other, and are mutually binding upon the parties. The promises must be equally binding upon both parties, but it is not necessary that the value of the promises be equal.]

[Something given or received before the time a promise is made, and therefore without reference to such promise, is past consideration which is not sufficient to support a contract.]

[A moral obligation may operate as consideration where the offeror has previously received a material pecuniary benefit from the offeree who expected to be compensated therefor and who was not under an existing legal or moral duty to confer the benefit without compensation. Thus, reaffirmation of a past legal obligation, such as a debt that has been discharged in bankruptcy, is sufficient consideration.]

[In order that forbearance to sue upon a claim may constitute a valid consideration, the claim need not be one which could be successfully prosecuted, but the claim must not be brought in bad faith, or be frivolous or vexatious.]

COMMENT

This instruction and comment were approved by the Committee in 1975. Editorial changes were made in 1993 to address gender references in the instruction. No substantive changes were made to the instruction.

Consideration; benefit; detriment: Briggs v. Miller, 176 Wis. 321, 325, 186 N.W. 163 (1922); 17 Am. Jur. 2d Contracts §§ 85, 92, 97; Restatement Contracts § 75; Home Savings Bank v. Gertenbach, 270 Wis. 386, 395, 71 N.W.2d 347, 72 N.W.2d 697 (1955); Onsrud v. Paulsen, 219 Wis. 1, 261 N.W. 541 (1935); Barr

v. Granahan, 255 Wis. 192, 196, 38 N.W.2d 705 (1949); 1 Williston Contracts (3d ed.) §§ 102, 102A; First Wisconsin National Bank v. Oby, 52 Wis.2d 1,5, 6, 188 N.W.2d 454 (1971); Estate of Hatten, 233 Wis. 199, 216, 288 N.W. 278 (1940).

Existing legal obligation: Beacon Fed. Savings & Loan Ass'n v. Panoramic Enterprises, Inc., 8 Wis.2d 550, 99 N.W.2d 696 (1959).

Adequate consideration: Estate of Hatten, *supra*; 17 Am. Jur. 2d Contracts § 102; Briggs v. Miller, *supra*.

Love and affection: Estate of Briese, 240 Wis. 426, 431, 3 N.W.2d 691 (1942).

Consideration to or from a third person: Durand West, Inc. v. Milwaukee Western Bank, 61 Wis.2d 454,460, 213 N.W.2d 20 (1973).

Mutual promises: Stack v. Roth Bros. Co., 162 Wis. 281,156 N.W. 148 (1916); Atlee v. Bartholomew, 69 Wis. 43, 33 N.W. 110 (1887); Levin v. Perkins, 12 Wis.2d 398, 107 N.W.2d 492 (1961).

Past consideration: Chudnow Constr. Corp. v. Commercial Discount Corp., 48 Wis.2d 653, 180 N.W.2d 697 (1970); 17 Am. Jur. 2d Contracts § 125.

Moral obligation: Estate of Schoenkerman, 236 Wis. 311, 313,294 N.W. 810 (1940); Cohen v. Lachenmaier, 147 Wis. 649, 652, 133 N.W. 1099 (1912); McLean v. McLean, 184 Wis. 495, 199 N.W. 459 (1924); First Trust Co. v. Holden, 168 Wis. 1,168 N.W. 402 (1918).

Forbearance to sue: Elmergreen v. Kern, 174 Wis. 622, 182 N.W. 947 (1921).

Promissory estoppel as consideration: Hoffman v. Red Owl Stores, Inc., 26 Wis.2d 683, 133 N.W.2d 267 (1965). 17 Am. Jur. 2d Contracts § 89.

A seal on a written contract imports only a rebuttable presumption of consideration. Wis. Stat. § 891.27; Schwartz v. Evangelical Deaconess Society of Wisconsin, 46 Wis.2d 432, 441, 175 N.W.2d 225 (1970).

If any part of the consideration for a promise is illegal, the promise is void, for it is impossible to say what part of the consideration induced the promise. Menominee River Boom Co. v. Augustus Spies Lumber & Cedar Co., 147 Wis. 559, 571, 132 N.W. 1118 (1912).