

GOALS

- Define consideration
- Determine when there is no consideration

CONSIDERATION



WHAT'S YOUR VERDICT?

Your neighbors are going skiing in the Canadian Rockies near Calgary, Alberta. Their vacation will last 10 days. They unilaterally offer to pay you \$30 on their return if you pick up their mail each day they are gone. You accept by picking up their mail every day.

Is there consideration for both parties? Is the contract enforceable?

The main purpose of consideration is to distinguish between social promises, such as offering a birthday gift, and more serious transactions where one thing is being exchanged for something else.

A **gift** is the transfer of ownership without receiving anything in return. A **promise** to make a gift is generally not enforceable. Only after a **donor** (the person giving the gift) transfers possession of the gift to the **donee** (the person receiving the gift) with the intent to transfer ownership, does the transaction irrevocably shift ownership to the donee.

There are three requirements of **consideration**.

1. Each party must give an *act, forbearance, or promise* to the other party.
2. Each party must *trade* what they contribute to the transaction (act, forbearance, or promise) for the other party's contribution.
3. What each party trades must have *legal value*, that is, it must be worth something in the eyes of the law.

Act, Forbearance, or Promise

In *What's Your Verdict?* what you contributed was picking up the mail each day. This is an *act*. It was traded for the neighbor's *promise* to pay the

\$30. Both this act and promise have value in the eyes of the law. When examining promises, we look for legal value in the underlying act that is promised. Similarly, if someone promises **forbearance** (to *not do something*), we look beneath the promise and ask if the forbearance has legal value.

Trading

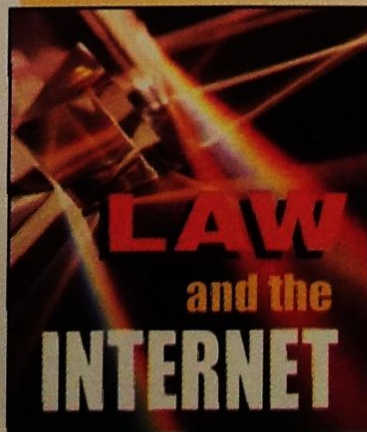
In a typical contract, one party in effect says to another, "If you do this for me (pick up my mail), I shall do that for you (pay you \$30)." A person promising an action or forbearance is the **promisor**. The person to whom the promise is made is the **promisee**. In most contracts, trading arises as one party exchanges a promise for the promise of the party on the other side. There has been a bargaining, or trading, of one promise for the other.

Consideration must be *mutual*. This means that each party must give

In today's world we all want instant results: Find the answer to a question by a quick search on the World Wide Web. Order a book by clicking a button at your favorite book vendor's Web page. Buy a share of stock or your favorite CD online. Even buy your next vehicle by searching, pointing, and clicking "I accept" on the purchase agreement.

But just how safe are the "cybercontracts" we make online? Can you legally consummate a contract by e-mail? Does a digital signature bind an electronic contract and make it enforceable? Electronic contracts raise complex legal issues. Although in most states the answer to whether the digital signature constitutes a legal contract would be yes, the answer to clicking the "I accept" is less clear-cut.

Internet law is evolving, and it will have many test cases over the course of several years. Many lawsuits have been brought before the courts, but the establishment of cybercontracting and Internet law is just beginning. Contrary to other actions in today's world, the law is just not established with a quick click of "I accept."



consideration, and each must receive consideration. Consideration can be given by conferring (or promising to confer) a benefit or by incurring (or promising to incur) a detriment. If either of the parties does not give consideration, the other has no duty to perform as promised.

Legal Value

Legal value means there has been a change in a party's legal position as a result of the contract. In *What's Your Verdict?* you performed an act which involved a benefit to your neighbor (picking up mail). There is legal value because this changed (benefitted) your neighbor's legal position. Your neighbors, as promisors, benefitted your legal position by promising the \$30. Because both the act (picking up the mail) and the promise (to pay \$30) have legal value and were traded, consideration is present and there is a contract. Legal value (a change in legal position) is most commonly found in this form—in the *exchange of two benefits*.

Legal value can also be found in the exchange of *benefit for a detriment*. A detriment always arises when you promise forbearance—that is, promise to refrain from doing what you have a right to do. If your uncle said on your eighteenth birthday, "Look, if you refrain from smoking until your twenty-first birthday, I'll give you \$25,000." You respond, "Yes, I accept." What you have promised is not a benefit to your uncle, but rather a detriment to yourself—you have given up a legal right. This is a change in your legal position and is thus valid consideration.

Legal value can also arise from the *exchange of two detriments*. If you say to your neighbor that you will forbear buying a dog if she will forbear building a fence, both parties have changed their legal positions. Therefore, there is consideration.

Adequacy of Consideration

Generally, what the parties give and get as consideration need *not* be of equal economic value. This idea is

sometimes expressed as, "The courts do not inquire into the adequacy of consideration."

IN THIS CASE

While cleaning out his garage, Shreve found an old glass lampshade. He showed it to Laval, who thought it was an authentic Tiffany antique. Laval offered to buy it for \$150, and Shreve accepted. When Shreve later learned that it was worth at least \$450, he tried to cancel the contract and reclaim the lampshade. "Your miserable \$150 was not a fair price!" he said. "That shade is worth at least three times as much!" Shreve sued, but lost because \$150 is *sufficient* consideration for a \$450 lamp.

The values that different people place on the same property may vary widely. For example, one person might gladly pay \$60,000 for an original and exclusive high-fashion gown by a famous designer. Others would not be interested in owning such a gown for \$60. A person also might place a higher value on a product at one time than at another. For example, when you have been baking for hours on the sunny side of a baseball stadium, you might willingly pay three times the grocery-store price for a cold soft drink.

Economic value is unimportant as long as there is genuine agreement. However, a big difference in economic value of what one gives and receives may be evidence of mutual mistake, duress, undue influence, or fraud. If the consideration received by one of the parties is so grossly inadequate as to shock the conscience of the court, the contract will be declared unconscionable. In such a case, the contract or the unconscionable clause may not be enforceable.

