

Contract Formation

Offer, Acceptance &
Consideration

What is a Contract?

- “A contract is a **promise** or a set of promises for the breach of which the law gives a remedy or the performance of which the law in some way recognizes as a duty.”
Restatement of the Law of Contracts, Second
- A ‘promise’ is an integral component of an **offer**.

What is an Offer?

- A legal offer is a promise (by the offeror) that proposes a valid **exchange**.
- “I will drive you to Los Angeles if you wash and wax my car.”
- “I will sell you my car for \$1200.”
- (I promise) I will drive you to Los Angeles, if you wash and wax my car.”
- (I promise) I will sell you my car, if you pay me \$1200.

Legal vs. Gratuitous Promises

- A 'legal' promise proposes a valid exchange.
A 'gratuitous' promise does not.
- **Legal:** "I will give you \$100 if you wash and wax my car."
- **Gratuitous:** "I will give you \$100 for your birthday."

Types of Offers: Unilateral vs. Bilateral

- **Unilateral** - (only 1 promise)
- Promise (by the offeror) in exchange for a performance (by the offeree).
- "I will drive you to Los Angeles if you wash and wax my car."
- "Johnny, I'll pay you \$20 if you mow my lawn this afternoon."

Types of Offers: Unilateral vs. Bilateral

- **Bilateral** - (2 promises):
Promise (by the offeror) in exchange for a promise (by the offeree).
- "I will drive you to Los Angeles on Tuesday, if you will wash and wax my car on Wednesday."
- "We will lend you \$1000, if you repay it with 10 monthly installments at 12% interest."

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Two types of speech acts: Autonomous vs. Cooperative

- **Autonomous** – go into effect immediately on being uttered
- “I will pay your tuition next quarter.” [commissive]
- “You’re fired!” [declaration]
- **Cooperative** – requires a response from the hearer
- “I bet you \$10 that the Charger will win this Sunday.
- “I will pay your tuition next quarter if you will mow my lawn once a week this summer.”

- An offer is a cooperative speech act.
- Therefore, it requires a response from the offeree.

The response may be:

acceptance – there is a contract

rejection – there is no contract

counter-offer – roles have been switched

no response – there is no contract

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What is Consideration?

- A legal promise (by the offeror) that proposes a **valid exchange**.
- A valid exchange is something of **value** given by each party to the contract. [quid pro quo]
"I will drive you to Los Angeles on Tuesday, if you will wash and wax my car on Wednesday."
"We will lend you \$1000, if you repay it with 10 monthly installments at 12% interest."

What is the Purpose of Consideration?

- Consideration distinguishes between **enforceable** and **nonenforceable** agreements.
- "I will sell you my car if you pay me \$1200." (adequate consideration)
- "I will put you up in my guest room if you come to San Diego." (gratuitous promise)

Types of Non-Consideration

- **'Past' consideration:**
"I will pay you \$20 for having mowed my lawn last week."
['Past consideration is no consideration']
- **Compare:** "I will you \$20 if you mow my lawn this afternoon."
- **Pre-existing duty:**
 - "If you pay me \$25/hour, I will tutor you on speech act theory."
 - **Compare:** "If you pay me \$25/hour, I will tutor you for your calculus exam."

- **'Sham' consideration:**
 - "I will sell you my Jaguar for \$10."
 - **Compare:** "I will sell you my Jaguar for \$10,000."
- **Condition on a gift**
"I will put you up in my guest room if you come to San Diego."
- **Compare:** "I will put you up in my guest room if you pay me \$75/night."

- **Fortuitous occurrence:**
 - "I will pay your tuition next quarter if you are accepted to law school." [assume student has already applied]
 - **Compare:** "I will pay your tuition next quarter if you apply and are accepted to law school."
