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.”
Contract Formation

Offer, Acceptance & Consideration

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
Contract Formation

Offer, Acceptance & Consideration

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.”