Types of Promises

Unconditional vs. Conditional

Unconditional Promise (always legally gratuitous)

- “I will drive you to L.A.”
  Speaker is obligated immediately

Conditional Promises (often gratuitous)

- “I will drive you to L.A. tomorrow, if it rains” (fortuitous outside event)  
  Promise goes into effect immediately, but speaker obligated to perform only after the occurrence of the condition
- I will drive you to L.A. tomorrow, if I don’t have to work.
- “I will drive you to L.A. tomorrow, if you come to my house by 9 am.”
  The law refers to these as promises with a ‘condition precedent’
Promise with Consideration

A conditional promise that proposes a valid exchange (legally enforceable)

• “I will drive you to L.A. tomorrow, if you wash and wax my car this afternoon.”

Promisor’s commitment takes effect immediately
Promisor’s obligation to perform takes effect only after promisee completes the act requested by promisor

Beware of the condition precedent!

• “I will drive you to L.A. tomorrow, if you come to my house by 9 am.”
  (gratuitous promise with a condition precedent without consideration)
• “I will drive you to L.A. tomorrow, if you wash and wax my car this afternoon.”
  (a promise with consideration; its condition precedent proposes a valid exchange)

Valid Consideration

Felicity Conditions
Searle’s felicity conditions

“I promise that I will drive you to L.A.”

Illocutionary clause          Propositional clause
↓                        ↓
1. Sincerity rule   3. Propositional content rule
   [State of mind condition]   Futurity condition
               Ability condition

2. Essential rule       4. Preparatory rule
   [Essential condition]      Benefit condition (promisee)
               (promisee)           Non-expectancy condition

Futurity Condition

• Act or performance is to take place in the future

Situation: Employee plans to retire in one month

Boss: “I will give you a bonus if you stay here for another 3 months.” (valid)

Boss: “I will give you a bonus for having performed well the last 3 months.” (violation of futurity condition = ‘past consideration’)

Benefit Condition

• The performance by the other party is truly desired

• Situation: Father to daughter

• Father: “I will give you a new sports car if you go to the university I graduated from.” (valid)

• Father: “I will give you a new sports car in return for twenty-five dollars.”

• (violation of benefit condition = ‘sham consideration’)

Benefit Condition

- The performance by the other party is truly desired AND BARGAINED FOR
- You to acquaintance: “I will put you up in my guest room if you pay me $75/night.” (valid)
- “I will put you up in my guest room if you come to San Diego.” (violation of benefit condition = ‘gratuitous promise with a condition precedent’)

Non-Expectancy Condition

- One is already obligated to do the requested act
- Situation: Both of us are taking calculus
- “I will pay you $50 if you help me study for the calculus exam.” (valid)
- “I will pay you $50 if you take your calculus exam.” (violation of non-expectancy condition = ‘pre-existing duty’)

Ability Condition

One must actively do something to bring about the performance requested
- Situation: Son isn’t sure about going to law school
- Mother: “I will pay your tuition next quarter if you apply and are accepted to law school.” (valid)
- Situation: Son has applied to law school and is waiting to hear whether he has been admitted
- “I will pay your tuition next quarter if you are accepted to law school.” (violation of ability condition = ‘fortuitous occurrence’
Legal Reason vs. Speech Act Analysis for Non-consideration

<table>
<thead>
<tr>
<th>Legal nonconsideration</th>
<th>Violation of speech act condition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Past consideration</td>
<td>Futurity</td>
</tr>
<tr>
<td>Sham consideration</td>
<td>Benefit</td>
</tr>
<tr>
<td>Gratuitous promise</td>
<td>Benefit</td>
</tr>
<tr>
<td>Pre-existing duty</td>
<td>Non-expectancy</td>
</tr>
<tr>
<td>Fortuitous occurrence</td>
<td>Ability</td>
</tr>
</tbody>
</table>

Final Note

- For purposes of consideration, you can ignore (because they apply to a promisor):
  - State-of-mind condition of the sincerity rule
    (a violation would be a breach of contract)
  - Essential condition
    (a violation entails no meeting of the minds; hence, no contract)