

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.”

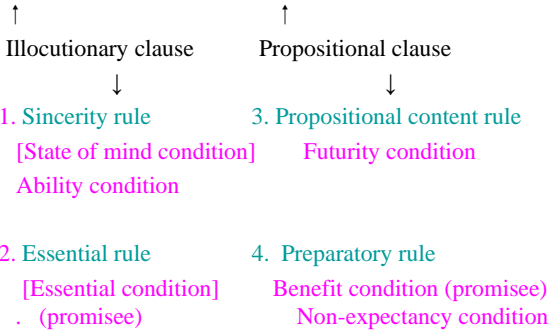
(a promise with consideration; its condition precedent proposes a valid exchange)

Valid Consideration

Felicity Conditions

Searle's felicity conditions

"I promise that I will drive you to L.A."



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

Legal nonconsideration	Violation of speech act condition
Past consideration	Futurity
Sham consideration	Benefit
Gratuitous promise	Benefit
Pre-existing duty	Non-expectancy
Fortuitous occurrence	Ability

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)
