Chapter 13 Outline – Consideration

1. Consideration to support a contract requires two things: 1) something of legally **sufficient** value given in a 2) bargained for exchange

What constitutes legally sufficient value: --a promise to do something one is not already legally bound to do or a promise to forebear from doing something one is legally entitled to do.

Sufficient v. Adequate – what is the difference. Sufficient is not comparative. Is does not look at what given and what was received. Adequacy does. For purposes of formation, courts generally do not consider the adequacy of consideration.

When there is a lack of adequacy (i.e., huge discrepancy between values), this is a factor that the Court may look at for purposes of determining whether to enforce an agreement. Lack of adequacy may be evidence of duress, undue influence, or unconscionability.

1. Situations that lack consideration:

 Pre-Existing Duty the “hold up” case

 Past-Consideration no bargained for exchange

 Illusory promises no real enforceable promise made. Performance always remains discretionary

1. Settlement of Claims –

 Accord and Satisfaction (debt must be in dispute)

 Release

 Covenant (Promise) Not to Sue

Which preserve the original claim till performance is complete? Limitations on the use of Accord and Satisfaction

1. Exceptions to Consideration:

 Promissory Estoppel - a promise which someone has relied on to their detriment

 Promise to Pay for Debts barred by the Statute Limitations

 Charitable Subscriptions (a variation on detrimental reliance)