Inspiring Greatness
INDEPENDENCE SCHOOL DISTRICT

Business/Marketing Virtual Learning

10-12 grade Business Law

May 11, 2020

Lesson: [May 11, 2020]

Objective/Learning Target:

Consideration

Identify situations when in which consideration is not needed.

Identify when the doctrine of promissory estoppel can be applied.

Let’s Get Started

Watch These Two Videos:

1. Statutes of Limitation and Repose

2. Promissory Estoppel

4 Exceptions to the Requirement of Consideration

1) <u>Promises to Charitable Organizations</u>

Individuals and business firms often contribute to charitable organizations, such as churches, schools, and hospitals not operated for profit. The contributions may be completed gifts or promises (pledges) to pay in the future. Because the party who makes the pledge receives nominal consideration (such as a building or a chair being named for the donor) or nothing in return, one might assume that the pledge is unenforceable.

Courts, however, generally enforce such promises provided the charity states a specific use for the money and actually acts in reliance on the pledge. Note, however, that many states have passed “dead man’s statutes”. These statutes generally act to cancel oral pledges allegedly made to a charity by a deceased person closely before his or her death. They accomplish this by prohibiting testimony in support of the alleged oral pledge by parties who stand to benefit from it.

4 Exceptions to the Requirement of Consideration

2) Promises Covered by the UCC

a) **Firm Offers -** Under the UCC, a merchant who makes an offer in a signed writing to buy or sell goods and promises to leave the offer open is bound for the period of time stipulated or up to three months. This is called a firm offer and is enforceable even when no payment or other consideration has been given for the promise.

b) **Modifications -** At common law modification of a contract needs consideration. Under the UCC, however, a good-faith agreement that modifies an existing contract for the sale of goods needs no new consideration. For example, after a sale has been made, a seller could agree to give the buyers a valid warranty without further charge. This modification is enforceable though not supported by consideration.

4 Exceptions to the Requirement of Consideration

3) <u>Promises Barred from Collection by Statute</u>

a) **Statutes of Repose and Limitations -** A state’s statute of repose, typically specifies a time limit, starting from the time a product is purchased, within which a lawsuit for injuries due to product defects can be brought. A state’s statute of limitations specifies a time limit for bringing a lawsuit once you become aware of a legal claim. In many states, the term of the statute of repose is 12 years whereas the term of the statute of limitations for breach of contract or torts is three years.
Some states will enforce a promise to pay a claim after the passage of time imposed by either or both of these statutes even though there is no consideration for the promise. These states do require that the promise be in writing.

b) **Debts Discharged in Bankruptcy -** Sometimes, even after a debt has been discharged as a result of the debtor declaring bankruptcy, the obligation may be reaffirmed or (reinstated) by a promise of the debtor. This is often done when someone close to the debtor cosigned or guaranteed payment on the debt. Such a promise does not have to be supported by additional consideration to be legally binding. To avoid taking advantage of other creditors, however, the debts to be reaffirmed have to be listed with the bankruptcy court during the proceeding.

4 Exceptions to the Requirement of Consideration

4) Promissory Estoppel

At times a rigid adherence to the letter of the law can produce injustice. As a consequence, the law allows courts to counteract this effect by taking certain actions in the name of equity, or basic fairness. One such action that the courts can take is to use the **doctrine of promissory estoppel**. When brought into use—or “invoked”—by the courts, promissory estoppel prevents promisors from stating in court that they did not receive consideration for their promises. Under the doctrine of consideration, if a person cannot claim they did not get what they demanded in return for being bound to their promises, then those promises can be enforced against them.

For the courts to invoke promissory estoppel, the following conditions must be met:

- The promisor should reasonably foresee that the promisee will rely on the promise.
- The promisee does, in fact, act in reliance on the promise.
- The promisee would suffer a substantial economic loss if the promise is not enforced.
- Injustice can be avoided only by enforcement of the promise.

ACTIVITY #26

1) Name four exceptions to the requirement of consideration.

2) A store owner promises to fund the building of an addition to her church. Then the economy takes a downturn, and the store's business decreases.

   a) Is she legally obligated to fulfill her promise to the church?
   b) Why or why not?

3) As she lay on her deathbed, Holly, a famous actress, decided to join a church. The church's minister, Reverend Thomas, and choir director, Brother Carlos, were present. Later, during the settlement of Holly's estate, both church officials claimed that, while alone with the two of them just before she died, Holly had orally promised half her estate to the church. The church brought suit to enforce Holly's promise.

   a) Will the church receive half of Holly's estate?
   b) Why or why not?