

Something of legally
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Issue 6.

1. Title: Consideration

2. Textbook reference: Chapter 12

3. Possible search terms: Consideration, past consideration, option-to-cancel, accord, satisfaction, release, promissory estoppel 4. Here is the situation:

Andrea, the president of Standard Corporation, announces to Standard employees, “ If you work hard, and profits remain high, you’ll get a bonus, if management thinks it’s warranted.” Profits remain high, but no bonus is paid. If the employees sue, would a court enforce the promise?

The fact that a promise has been made does not mean the promise can or will be enforced. Under the common law, a primary basis for the enforcement of promises is consideration. Consideration usually is defined as the value (such as cash) given in return for a promise (in a bilateral contract) or in return for a performance (in a unilateral contract)

Something of legally sufficient value may consist of a promise to do something that one has no prior legal duty to do. The performance of an action that one is otherwise not obligated to undertake, or the refraining from an action that one has a legal right to undertake called a forbearance.

Promises made in return for actions or events that have already taken place are unenforceable. These promises lack consideration in that the element of bargained for exchange is missing. Past consideration is no consideration. The second element of consideration is that it must provide the basis for the bargain struck between the contracting parties. The item of value must be given or promised by the promisor (offeror) in return for the promisee’s

promise, performance, or promise of performance. This helps distinguish contracts from gifts.

A court would not enforce the promise. If the terms of the contract express such uncertainty of performance that the promisor has not definitely promised to do anything, the promise is said to be illusory - without consideration and unenforceable. A promise is illusory when it fails to bind the promisor. This is an illusory promise or no promise at all because performance depends solely on the discretion of the president. There is no bargained for consideration. The statement indicates only that management may or may not do something in the future. The president is not obligated now or later.

This is a test