

A Promise To Do Something One Is Already Obligated To Do (apreexisting Duty) Is Not Valid Consideration.

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In contract law, understanding the concept of consideration is fundamental to determining whether an agreement is legally enforceable. One common misconception is that a promise to perform a duty that one is already legally obligated to do can serve as valid consideration for a new promise. However, under the doctrine of preexisting duty, such a promise generally does not constitute valid consideration. This article explores the legal principles surrounding apreexisting duty, its implications on contractual validity, and relevant case law, providing clarity for legal practitioners, students, and individuals entering into agreements.

Understanding Consideration in Contract Law

What Is Consideration?

Consideration is a core element required to form a valid contract. It refers to something of value exchanged between the parties that induces them to enter into the agreement. Consideration can take various forms, including:

- Money
- Goods
- Services
- Forbearance (refraining from doing something)
- Any benefit or detriment incurred by the parties

For a promise to be legally binding, there must be mutual consideration—each party must give or promise to give something of value.

Legal Significance of Consideration

The doctrine ensures that contracts are not formed based on gratuitous promises. It provides a legal framework that distinguishes enforceable agreements from mere gifts or informal arrangements. Without valid consideration, a contract may be deemed unenforceable.

The Doctrine of Preexisting Duty

Definition of Preexisting Duty

A preexisting duty refers to a situation where a party promises to perform a duty they are already legally obligated to do. This obligation may arise from:

- A contractual duty due to an existing agreement
- A statutory duty imposed by law
- A public duty owed to the community or a specific individual

In such cases, the promise to perform this duty cannot be considered valid consideration for a new agreement.

Legal Principle

The core legal principle is that a promise to do what one is already legally required to do does not constitute valid consideration. This is based on the idea that consideration must involve a detriment or benefit that is new or additional to the existing obligations.

Legal Rule:

A promise to perform an existing duty is not valid consideration for a new promise.

Why Is a Promise to Do Something Already Obligated Not Valid Consideration?

Rationale Behind the Rule

The rationale stems from fairness and economic efficiency:

- It prevents parties from artificially inflating the scope of their obligations.
- It discourages the use of existing obligations to extract additional benefits.
- It maintains the integrity of contractual exchanges by ensuring consideration involves a genuine sacrifice or benefit.

Example:

If a contractor is already contractually obliged to complete a building, promising to complete the same work again or to do additional work without new consideration is not enforceable.

Legal Consequences

- Such promises are generally unenforceable unless exceptions apply.
- The law recognizes that no new consideration has been provided to support the new promise.
- This principle prevents "re-affirming" or "resurrecting" existing duties as new obligations.

Exceptions to the Rule: When Can a Promise to Perform an Already Obligated Duty Be Valid?

While the general rule states that a promise to do what one is already obligated to do is not valid consideration, certain exceptions exist:

1. Additional or Different Consideration

If the promisor agrees to perform a duty that is different or more extensive than their original obligation, this may constitute valid consideration.

Example:

A contractor agrees to perform additional work beyond the original scope for extra pay.

2. Voluntary Assumption of a Duty

If the party voluntarily assumes a duty beyond their existing obligation, perhaps in response to an unforeseen circumstance, it may serve as valid consideration.

Example:

A firefighter who voluntarily stays longer at a fire scene beyond their duty may have provided consideration for additional compensation.

3. Accord and Satisfaction

This occurs when parties agree to settle a dispute by accepting a different performance, which can involve modifying existing duties.

4. New Contract or Modification

Under certain circumstances, courts may enforce modifications if they are made in good faith and involve new consideration or are supported by legal exceptions such as promissory estoppel.

Relevant Case Laws

Stilk v. Myrick (1809)

- Facts: Sailors promised to continue working on a ship in stormy weather, with the promise of extra pay.
- Decision: The court held that performance of existing contractual duties (continuing voyage) did not constitute valid consideration for the promise of extra pay.
- Implication: Promising to perform an existing contractual duty is not sufficient consideration.

Hartley v. Ponsonby (1857)

- Facts: Crew members agreed to work additional hours beyond their original contract after most of the crew deserted.
- Decision: The court found that the crew's promise to continue working, given the extraordinary circumstances, provided valid consideration for extra pay.
- Implication: When the existing duty is exceeded or altered, consideration may be valid.

Williams v. Roffey Bros & Nicholls (Contractors) Ltd (1990)

- Facts: A subcontractor agreed to complete work late, with the main contractor promising additional payment.
- Decision: The court held that practical benefits conferred can amount to valid consideration, even if the promisor was already obliged to perform.

Implications for Contract Drafting and Negotiation

Legal Cautions

- Avoid relying solely on promises to perform existing obligations as consideration.
- Ensure that any new or modified agreements involve additional consideration or fall within recognized exceptions.
- Be aware of the legal doctrine to prevent unenforceable agreements.

Best Practices

- Clearly specify new obligations, benefits, or considerations when modifying contracts.
- Document any voluntary assumptions or additional commitments.
- Seek legal advice when drafting agreements involving modifications or promises to perform existing duties.

Conclusion

A promise to do something one is already obligated to do – known as an apreexisting duty – generally does not constitute valid consideration under contract law. This principle helps prevent parties from artificially inflating their obligations and ensures that contractual modifications or new agreements are supported by genuine benefit or detriment. However, exceptions exist where the duty is extended, altered, or voluntarily assumed beyond the original scope. Understanding this doctrine is crucial for legal practitioners, businesspersons, and individuals to craft enforceable agreements and avoid invalid contracts. Recognizing when an apreexisting duty can or cannot serve as consideration safeguards the integrity of contractual relationships and promotes fair and lawful dealings.

Keywords: apreexisting duty, consideration, valid consideration, preexisting duty doctrine, contract law, enforceability, legal exceptions, contract modification, case law

Frequently Asked Questions

What is the legal principle behind a promise to do something already obligated by law or previous duty?

The principle is that such a promise is not considered valid consideration because the person is already legally or contractually obligated to perform that act, making the promise unenforceable.

Why is a promise to do something one is already obliged to do not enforceable as a contract?

Because it lacks new consideration; the promisor is not providing anything additional or valuable beyond their existing duty, which is a requirement for a valid contract.

Can a promise to perform a pre-existing duty be legally binding if made after the duty arises?

Generally no; once the duty exists, promising to perform it does not constitute valid consideration unless there is new or additional

consideration involved.

What is the exception to the rule that a promise to do an already obligated act is not valid consideration?

An exception occurs if there is a modification of an existing contract with mutual agreement, or if the promise is supported by new consideration, such as a change in terms or circumstances.

How does the concept of 'preexisting duty' relate to the enforceability of contractual promises?

It emphasizes that a promise to do what one is already legally required to do cannot serve as consideration, thus affecting the enforceability of such promises.

Does the law recognize any situations where a promise to perform an existing duty might be enforceable?

Yes, if the promise is supported by new consideration, such as a reward or an additional benefit, it may be enforceable despite the existing duty.

What role does consideration play in determining whether a promise to do something already obligated is valid?

Consideration requires that something of value be exchanged; since the promise to perform an existing duty does not provide new value, it generally does not constitute valid consideration.

How does the 'preexisting duty' rule impact contractual negotiations and modifications?

It discourages parties from relying on mere promises to perform existing obligations and emphasizes the need for new consideration to modify or enforce such promises.

Can a debtor's promise to pay a debt that is already due and payable be considered valid consideration?

Typically no, because paying an existing debt is not new consideration unless the debtor offers something additional or different from the original obligation.

Additional Resources

A Promise To Do Something One Is Already Obligated To Do (Preexisting Duty) Is Not Valid Consideration

Introduction

In the realm of contract law, the concept of consideration serves as a fundamental element that distinguishes enforceable agreements from mere gratuitous promises. Consideration refers to something of value exchanged between parties, serving as the inducement for entering into a contractual relationship. However, not all promises hold the same weight, especially when it comes to promises made to perform an act that one is already legally obliged to do. Such promises, known as "preexisting duty" promises, are generally deemed invalid as consideration. This principle helps prevent parties from artificially inflating contractual obligations or gaining unjust enrichment by exploiting existing duties. In this article, we will explore the legal doctrine surrounding preexisting duties, analyze the rationale behind its enforcement, examine relevant case law, and discuss exceptions and modern developments within this domain.

Understanding Consideration in Contract Law

Definition and Significance of Consideration

Consideration is a core element of a valid contract, representing the bargain or exchange that justifies enforcing the agreement. Without consideration, a promise is typically viewed as a gratuitous gift, which is not legally enforceable. The classic definition of consideration involves a mutual exchange where each party confers a benefit or incurs a detriment. This reciprocal exchange ensures that both parties are actively involved in the contractual relationship and that the agreement is not merely a one-sided act.

Elements of Valid Consideration

To be valid, consideration must generally satisfy the following criteria:

- Legal Value: The consideration must involve some legal benefit or detriment; it cannot be nominal or illusory.
- Bargained-for Exchange: The consideration must be part of a mutual bargain, meaning both parties intentionally exchange promises or acts.
- Adequacy: Courts do not typically assess the adequacy of consideration; as long as some consideration exists, its sufficiency is usually not scrutinized.
- Present or Future: Consideration must be given in the present or future; past consideration is generally not valid.

The Principle of Preexisting Duty

Definition and Legal Doctrine

Preexisting duty refers to a situation where a party promises to perform a duty that they are already legally obligated to do. Under the traditional contract law doctrine, such a promise does not constitute valid consideration because the party is not providing anything additional beyond their existing obligation.

The legal principle is succinctly summarized: "A promise to do what one is already legally bound to do is not sufficient consideration to support a new contract." This rule prevents parties from obtaining enforceable commitments based solely on their existing duties, which would otherwise lead to unjust

enrichment or contractual redundancy.

Rationale Behind the Doctrine

The underlying rationale for the preexisting duty rule includes:

- Prevents Unjust Enrichment: Without this rule, a party could threaten to breach an existing obligation to extract additional benefits, which would be unfair.
- Ensures Bargain Integrity: It maintains the integrity of the bargain, ensuring that consideration genuinely reflects new promises or acts.
- Discourages Fraudulent Claims: It discourages parties from making promises that are not truly new or voluntary, thus reducing fraudulent or coercive practices.

Application of the Preexisting Duty Rule

Classic Case Law

The doctrine of preexisting duty has been codified and reinforced through numerous landmark cases. Two of the most influential cases are:

- *Stilk v. Myrick* (1809): In this English case, sailors who agreed to complete a voyage and, after a storm, agreed to perform additional duties, sought extra payment. The court held that promises to perform an existing contractual obligation cannot serve as consideration for a new promise, affirming that "performance of existing duties" is not valid consideration.
- *Harris v. Watson* (1791): The court emphasized that a promise to perform an existing legal duty does not constitute consideration unless the duty has been exceeded or altered in some way.

Modern Judicial Approach

Contemporary courts generally adhere to the preexisting duty rule but recognize certain exceptions and modifications. They examine whether there has been:

- An Actual Change in Duty: For example, if unforeseen circumstances increase the scope or difficulty of existing duties, courts may find valid consideration.
- New Consideration or Benefit: If the promisor gains an additional benefit or if the promisee provides something beyond the existing obligation, the promise may be enforceable.
- Parties' Intentions: Courts also look at whether the parties intended the promise to be part of a new bargain.

Exceptions and Limitations

While the preexisting duty rule is a well-established principle, courts recognize several exceptions where promises to perform existing duties may be enforceable as consideration:

1. Unforeseen Difficulties or Increased Burden

If circumstances change unexpectedly, making the performance more burdensome or costly, courts may consider the promise of additional compensation valid. For example:

- A contractor agreeing to complete a project but later requesting extra payment due to unforeseen site conditions.

2. Partial Performance or New Terms

When the party performing the duty does more than originally agreed upon—such as providing additional services—they may have valid consideration for a new promise:

- For instance, a subcontractor who exceeds the scope of work might be entitled to additional compensation.

3. Agreement to Waive or Modify the Existing Duty

Parties can modify existing contractual obligations if:

- There is a mutual agreement supported by new consideration.
- The modification is made in good faith and is not coerced.
- The modification addresses unforeseen circumstances.

4. New Consideration in a Contractual Relationship

In some jurisdictions, even promises to perform existing duties can be binding if they are supported by new consideration, such as:

- A promise to refrain from suing, which can sometimes serve as valid consideration.

Modern Developments and Theories

Contract Modification Under the UCC

The Uniform Commercial Code (UCC), which governs commercial transactions in the United States, provides a more flexible approach to contract modifications. Section 2-209 states that an agreement modifying a contract does not require consideration to be binding, provided the modification is made in good faith.

This approach reflects modern commercial needs, recognizing that strict adherence to the preexisting duty rule could hinder flexibility and efficiency in business dealings.

Promissory Estoppel

Another modern doctrine related to consideration is promissory estoppel, which allows enforceability of a promise even without consideration if:

- The promisor makes a clear and definite promise.
- The promisee relies on that promise to their detriment.
- Enforcement is necessary to avoid injustice.

This doctrine provides an exception where a preexisting duty promise might otherwise be unenforceable, especially in cases of reliance.

Practical Implications and Legal Advice

For Businesses and Individuals

Understanding the preexisting duty rule is crucial in drafting and negotiating contracts. Parties should:

- Clearly specify any modifications or additional promises, ensuring they are supported by valid consideration.
- Be cautious when relying on promises to perform duties already owed, as such promises might not be enforceable.
- Consider including provisions that explicitly state when additional compensation is owed or when modifications are valid.

For Lawyers and Legal Practitioners

Legal practitioners should:

- Scrutinize the nature of promises in contractual disputes involving preexisting duties.
- Assess whether exceptions, such as unforeseen difficulties or partial performance, apply.
- Advise clients on the importance of documenting any modifications or additional promises to avoid unenforceability issues.

Conclusion

The principle that a promise to do something one is already obligated to do is not valid consideration remains a cornerstone of contract law, serving to uphold fairness and prevent unjust enrichment. While the doctrine is generally strict, modern legal frameworks and equitable doctrines like promissory estoppel provide flexibility, recognizing the realities of commercial and personal agreements. Ultimately, understanding the nuances of preexisting duties is essential for drafting enforceable contracts, resolving disputes, and ensuring that promises are meaningful and legally binding. As contract law continues to evolve, the balance between strict doctrine and practical flexibility will remain central to promoting justice and economic efficiency.

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