

## 9-4 Agreements without Consideration

As a general rule, an agreement without consideration will not be an enforceable contract, because consideration is so important as the binding element within a contractual relationship. Nevertheless, some states eliminate the requirement of consideration in specific types of agreements. In contrast, there are certain promises that the courts always refuse to enforce because they lack even the rudimentary qualities of valid consideration, even though on the surface they may appear to offer that much-needed element.

### Enforceable Agreements

As noted previously, some states have chosen to eliminate the element of consideration in a few specifically named contracts. Unfortunately, as is frequently the case in such matters, there is no uniformity among jurisdictions as to the types of agreements subject to such laws. Still, some typical agreements falling into this category include promises under seal, promises after discharge in bankruptcy, debts barred by the statute of limitations, promises enforced by promissory estoppel, and options governed by the UCC (see Table 9-1).



**Promises under Seal** A seal is a mark or an impression placed on a written contract indicating that the instrument was executed and accepted in a formal manner. Today a seal is usually indicated by the addition of the word "seal" or the letters "L.S." (*locus sigilli*, meaning "place of the seal") following a party's signature. Years ago, contracts under seal required no consideration. Some states still honor a promise under seal, but most have abolished this concept especially in relation to sale of goods contracts. In fact, the UCC has eliminated the use of the seal in all sale of goods contracts. However, a few states still require the use of the seal in real property and certain other types of transactions. Because there is no uniformity in this regard, it is advisable to research and consult the specific requirements in your jurisdiction.

UCC 2-203 (see page 823)

**Table 9-1 Agreements without Consideration**

Agreement	Legal Status
Promises under seal	Enforceable in some states for contracts not involving goods; unenforceable under the UCC for contracts involving goods
Promises after discharge in bankruptcy	Enforceable in most states
Promise to pay debts barred by statute of limitations	Enforceable
Promises enforced by promissory estoppel	Enforceable only if offeror knew that offeree would rely on the promise and offeree places himself or herself in a different and difficult position as a result of that promise
Option	Enforceable under the UCC if made by a merchant, in writing, stating the time period over which the offer will remain open
Illusory promises	Unenforceable
Promise of a gift	Unenforceable
Past considerations	Unenforceable
Preexisting duties	Unenforceable as a consideration in a new contract

sure  
her  
ork.  
me-  
l her  
rk at  
took  
learn  
oyal-  
e bill  
pay-  
k and  
e suit  
faith,

ugh a  
s ren-  
mains  
reditor

Rollins  
saw the  
ie show,  
for only  
shingles  
and de  
. In this

- 9-3
- | false
- | false
- | false