

# THE BASES FOR ENFORCEABLE PROMISES

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Contract obligations originate from promises that parties voluntarily communicate. People make promises under varying circumstances for diverse reasons. Not every broken promise, however, constitutes a breach of contract.

The Restatement defines a contract as “a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty.” Restatement (Second) Contracts § 1. This definition suggests that contract law distinguishes between enforceable promises and those that are not.

A statement that merely takes the form of a promise is not sufficient to establish a contract. The general rule is that “the formation of a contract requires a bargain in which there is a manifestation of mutual assent to the exchange and a consideration.” Restatement (Second) Contracts § 17. In another chapter, we discuss the requirement of mutual assent, which typically takes the form of an offer and acceptance. This chapter focuses on the consideration requirement, which is generally met when the promise forms part of a reciprocal arrangement or *quid pro quo*, where both parties provide benefits to each other, usually (but not always) through mutual promises.

While consideration is the primary method of making promises legally binding under contract law, this chapter will also explore three additional mechanisms. The first encompasses promises that, under certain conditions, the law will enforce due to justifiable reliance by the promisee—recipient of the promise. Such promises are enforceable under a doctrine called promissory estoppel. The last two categories of obligations we will explore are closely related. The first involves situations in which one party was unjustifiably enriched at the expense of another. While that doctrine, known as unjust enrichment or restitution, is quite broad, it can also deal with promises that, for some reason, did not result in a fully enforceable contract. Finally, we will consider promises that were made as gratitude for past benefits, a category that is (somewhat inaccurately) called moral consideration.