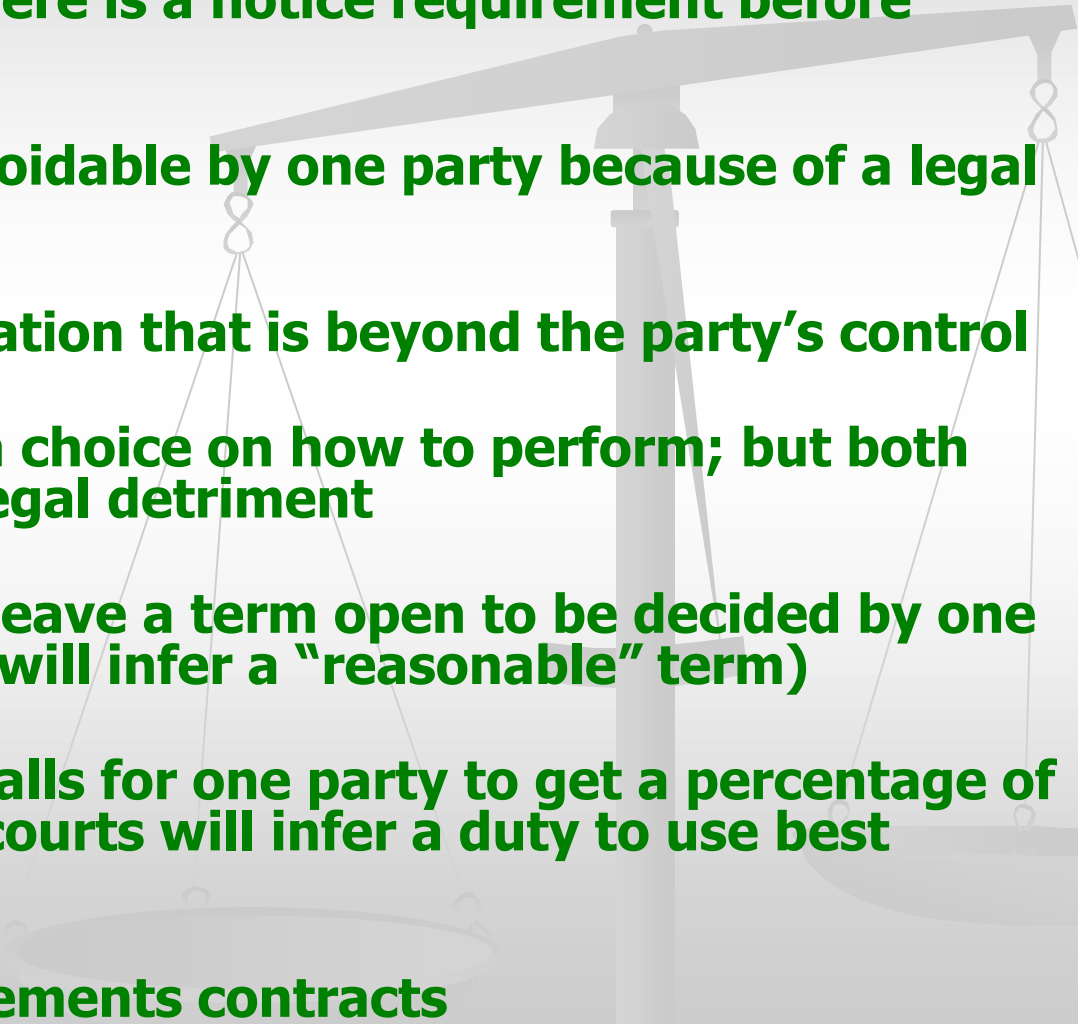
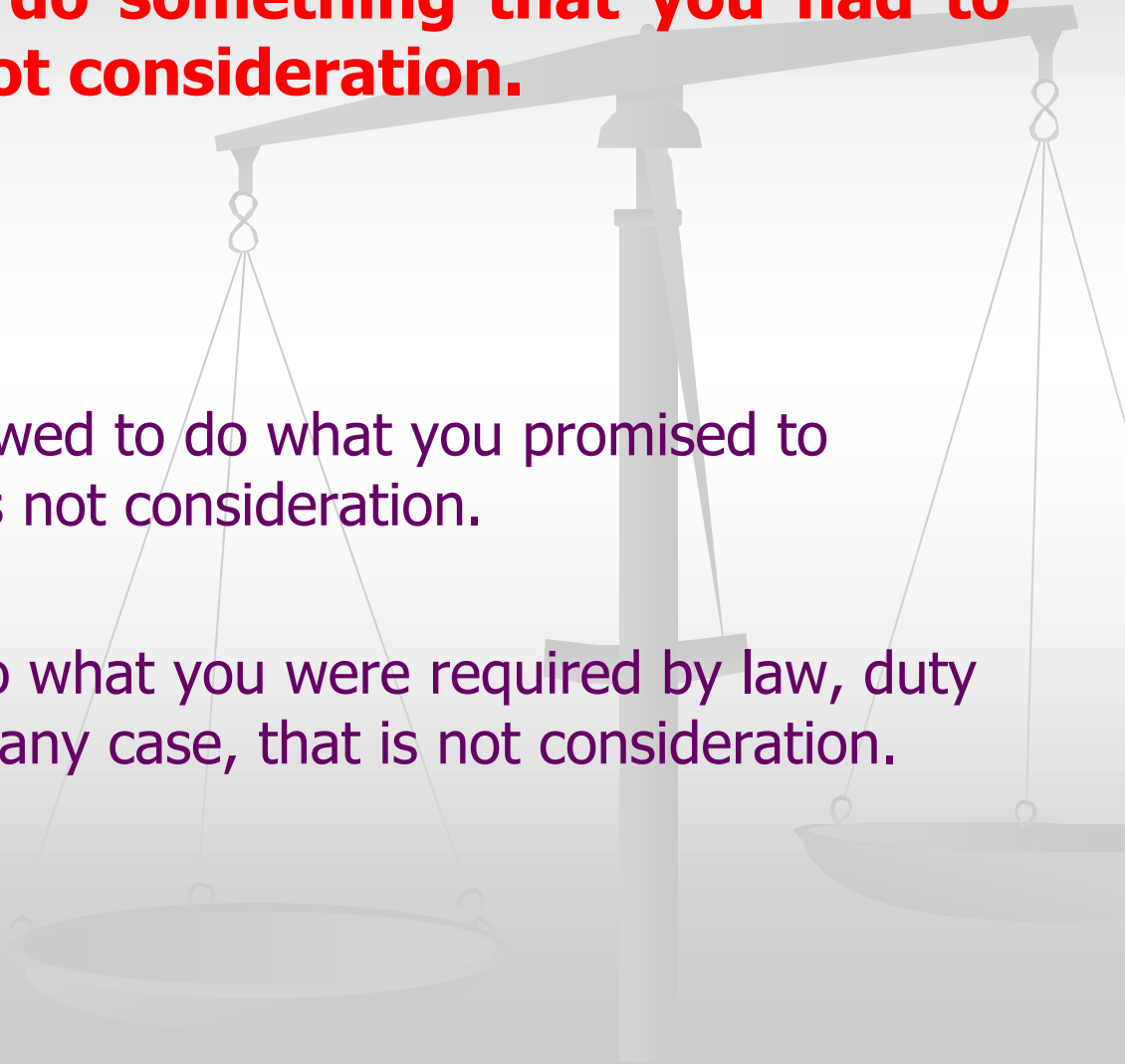


The Mutuality Principle: Exceptions

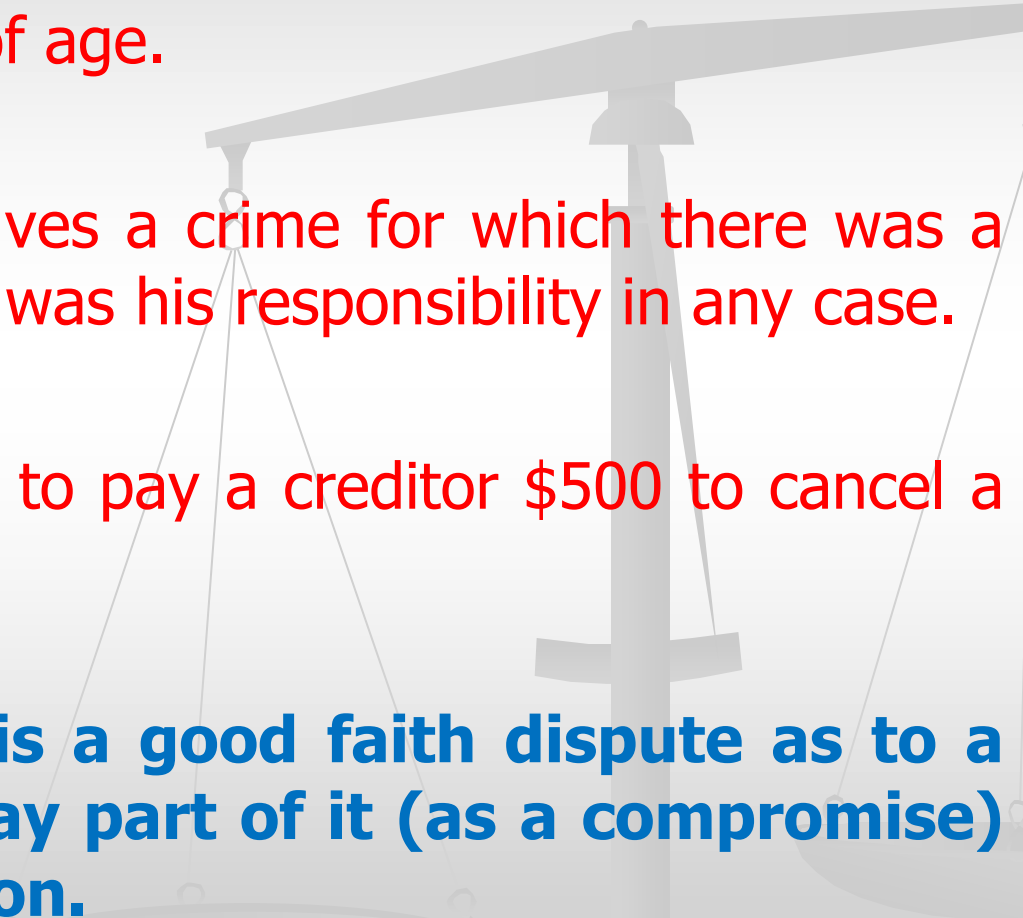
- **1) Unilateral Contracts**
 - **2) Contracts where there is a notice requirement before termination**
 - **3) A contract that is voidable by one party because of a legal disability**
 - **4) A conditional obligation that is beyond the party's control**
 - **5) When a party has a choice on how to perform; but both choices constitute a legal detriment**
 - **6) Where the parties leave a term open to be decided by one party later (the court will infer a "reasonable" term)**
 - **7) Where a contract calls for one party to get a percentage of profits or sales only; courts will infer a duty to use best efforts**
 - **8) Output and Requirements contracts**
- 

The Pre-Existing Duty Rule

- **Rule: Agreeing to do something that you had to do in any case is not consideration.**
- Thus:
 - If you were not allowed to do what you promised to forbear from, that is not consideration.
 - If you promise to do what you were required by law, duty or contract to do in any case, that is not consideration.



The Pre-Existing Duty Rule - Examples

- A teenager promises to refrain from drinking until he reaches 21 years of age.
 - A police officer solves a crime for which there was a reward; but which was his responsibility in any case.
 - A debtor promises to pay a creditor \$500 to cancel a \$1,000 debt.
 - **However, if there is a good faith dispute as to a debt, an offer to pay part of it (as a compromise) is valid consideration.**
- 

Quiz Time!



The Pre-Existing Duty Rule - Exceptions

- A promise to a third party to do the performance that was owed to the second party is valid consideration; even though the performance was owed to the second party in any case.
- If there is a valid defense to the deal, agreeing not to raise that defense is valid consideration.
- Pre-existing duty rule doesn't apply if contract is rescinded and then re-formed.
- A good faith modification based on unforeseen changed circumstances can be valid even without new consideration.

In **UCC cases**, modifications are binding even without changed circumstances; as long as they are made in good faith and without any duress or coercion.

Partial Payment Check Rule

■ Scenario:

- A debtor sends a check to the creditor for less than the full amount of the debt; and the check says “IN FULL PAYMENT” on it. The creditor cashes the check and then sues for the rest.

- **Basic Rule: Cashing the check could fairly be construed as accepting the offer. Thus, it would be a binding compromise, assuming that there is consideration for taking the lower amount.**

■ Thus:

- If there was no dispute as to the original amount of the debt, there is no consideration for the compromise, and so the original amount of the debt stands.
- If there was a good faith dispute as to the original amount of the debt, there is consideration for the compromise, and so the debt is discharged.