

**Contracts I**  
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**Sample Exam Question #6 - Model Answers**

Methuselah was getting along in years and wanted to provide for his grandson Noah's future. Over dinner one evening, Methuselah asked Noah what he would like Methuselah to leave him after Methuselah died. Noah replied that he was very fond of Methuselah's chinchilla ranch. "Very well," said Methuselah, "I will change my will to leave you the chinchilla ranch." "Thanks, Grandpa," Noah replied. "I'll make you proud."

**A. Was Methuselah contractually obligated to amend his will to leave the chinchilla ranch to Noah? Please explain.**

No. While Methuselah may have offered the ranch to Noah, and Noah may have accepted it – though the former is certainly questionable – there was no consideration to support any promise Methuselah may have made to Noah.

At pre-*Restatement* common law, consideration was defined as a benefit to the offeror or a detriment to the offeree. See R2 § 79 cmt. b. Because Methuselah would not benefit (in this lifetime, at least) from willing the chinchilla ranch to Noah, nor would Noah have to suffer any detriment in order to get the ranch, Methuselah's promise was not supported by consideration and Noah had no contractual right to the ranch under pre-*Restatement* law. The *Restatement (Second)* dispenses with the requirement that, to be consideration, something must be a benefit to the offeror, a detriment to the offeree, or both. See R2 § 79(a). The *Restatement* also disavows the pre-*Restatement* views that the consideration must have induced the offeror to make the offer and that the offer must have induced the offeree to give the consideration. See R2 § 81.

The *Restatement* focuses more on process than substance, defining consideration as a return promise or performance *sought by the offeror* in exchange for his or her offer and *given by the offeree* in exchange for (but not necessarily as an inducement for) the offeror's offer. R2 § 71(2). Performance, in turn, may take the form of (1) engaging in some act other than making a promise, including paying money or other value, (2) forbearing from acting in a way that is otherwise legally permissible, or (3) creating, modifying, or destroying a legal relation. See R2 § 71(3). Noah neither promised, acted, refrained from acting, created, modified, destroyed a legal relation, nor paid his grandfather any money in exchange for Methuselah's promise, nor did Methuselah seek any of the foregoing from Noah. Therefore, there was no "bargained for" consideration, and Noah had no contractual right to the ranch under the *Restatement* approach.

- B. Suppose that Noah was a precocious sixteen year old who was, in Methuselah's opinion, a bit too fond of cold beer, high stakes, and fast cars. Methuselah promised to will the chinchilla ranch to Noah if Noah would refrain from drinking and gambling and avoid speeding tickets for the rest of Methuselah's life. Noah promised to refrain from drinking and gambling and to avoid speeding tickets for the rest of Methuselah's life. Was Methuselah contractually obligated to amend his will to leave the chinchilla ranch to Noah? Please explain.**

No. The question is not whether Noah's promise to refrain from drinking and gambling and to avoid speeding tickets for the rest of Methuselah's life would have been valuable consideration *per se*. As discussed in the answer to subpart "A," consideration may take the form of a return promise, R2 §§ 71 & 75, provided that what is promised would itself be consideration, *see* R2 § 75. The question is whether Methuselah bargained for Noah's return promise. Methuselah did not ask Noah to promise to refrain from the specified vices for the remainder of Methuselah's life. Methuselah asked Noah to actually refrain from those vices. Noah's promise was not consideration because Methuselah did not seek it in exchange for his promise to will the chinchilla ranch to Noah. *See* R2 § 71(2).

- C. Suppose that, in addition to promising to refrain from drinking and gambling and to avoid speeding tickets for the rest of Methuselah's life, Noah actually did as he promised for the rest of Methuselah's life. Was Methuselah contractually obligated to amend his will to leave the chinchilla ranch to Noah? Please explain.**

Yes, because Noah actually refrained from the specified vices for the remainder of Methuselah's life, which *was* what Methuselah bargained for. As discussed above, Methuselah did not ask Noah to *promise* to refrain from the specified vices for the remainder of Methuselah's life; Methuselah asked Noah to *actually refrain* from those vices. Noah's promise to do so was not consideration because Methuselah did not seek it in exchange for his promise to will the chinchilla ranch to Noah. *See* R2 § 71(2).

- D. When Methuselah's regular chinchilla herder told Methuselah that he required back surgery and that the doctor estimated it would take at least six months for him to recover sufficiently to resume work, Methuselah sought to hire Shem to tend the herd for a period of up to six months, or until Methuselah's regular chinchilla herder became physically able to resume his duties, if he was not able to do so for more than six months. In exchange for Shem's services, Methuselah promised to either (1) pay Shem \$1,000 per month or (2) provide Shem's family with suitable rent-free housing for as long as Shem tended Methuselah's chinchilla herd. Was Methuselah's promise to either pay Shem or house Shem's family valid consideration for Shem's services as a chinchilla herder?**

Perhaps. The fact that the promise permitted Methuselah to choose between two possible considerations is okay, as long as each of the choices, standing alone, would be valid consideration. R2 § 77(a). That said, there are two potential stumbling blocks here. First, what is "suitable" housing? If the determination of whether accommodations were "suitable" was left up to Methuselah, his promise to provide Shem's family with "suitable" rent-free housing may

have been illusory. *See* R2 § 77 cmt. a. Second, even if the “suitable” term did not make the promise illusory, the provision that Methuselah would house Shem’s family “for as long as Shem tends Methuselah’s herd” could run afoul of R2 § 76 if the promise to house was deemed to be conditional on Shem’s continued service and the court were to find that Methuselah had sufficient control over Shem’s continued service as to prevent the condition from occurring. On the other hand, once they formed their contract, Methuselah owed Shem a duty of good faith and fair dealing, *see* R2 § 205, which may have obliged Methuselah to provide Shem and his family, at a minimum, housing that a reasonable, disinterested third party would deem “suitable,” and to not act or fail to act in such a way as to affect the occurrence of the condition.

**E. Suppose that, rather than promising to either pay Shem \$1,000 per month or provide Shem’s family with suitable, rent-free housing for as long as Shem tends Methuselah’s herd, Methuselah promised to either (1) pay Shem \$1,000 per month or (2) pay Shem \$500 per month and provide Shem’s family with suitable rent-free housing for as long as Shem tended Methuselah’s herd. Would that promise constitute valid consideration for Shem’s services as a chinchilla herder? Please explain.**

Almost certainly. Now both alternatives that Methuselah offers would, standing alone, each be consideration for Shem’s promise to tend Methuselah’s chinchilla herd for six months. R2 § 77(a). Admittedly, the promise was worded so that it appeared that Methuselah, rather than Shem, would be the one who got to choose between the options. But, as long as either option, standing alone, was sufficient consideration to form a valid contract, and Shem was willing to leave the choice to Methuselah (and accept the risk that Methuselah will choose a different option than Shem), then the fact that Methuselah had the right to choose would not prevent contract formation. Moreover, as discussed above, Methuselah owed Shem a duty of good faith and fair dealing, which may have obliged Methuselah to provide Shem and his family with objectively “suitable” housing.