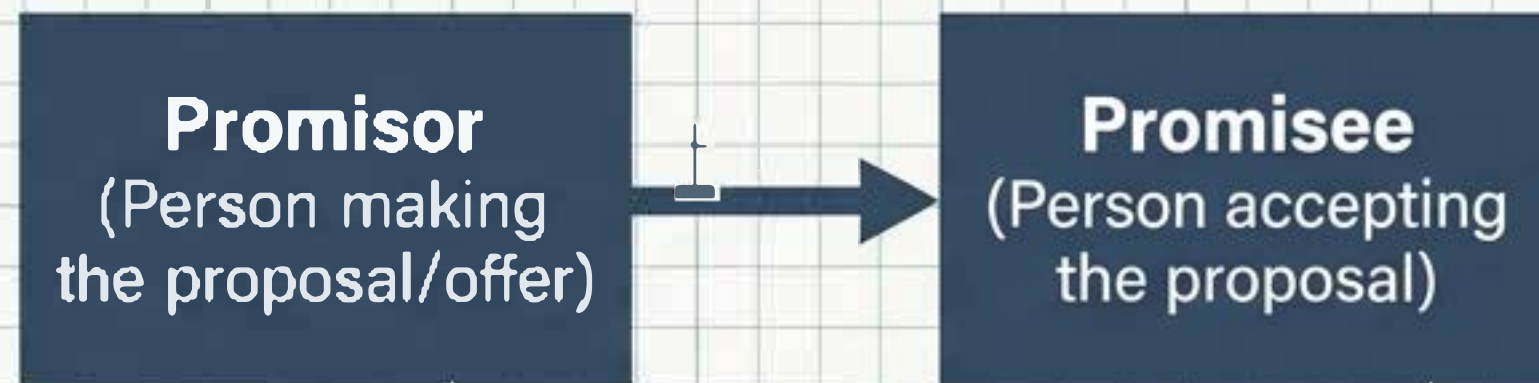


THE ANATOMY OF ENFORCEABILITY

**A Structural Master Guide to
Contracts I Formation & Consideration**

Designed for Rapid Issue-Spotting and Memorization (Rest 2d & UCC)

The Foundational Equation of a Contract



The Rule

Rest 2d § 1: A promise (or set of promises) for the breach of which the law gives a **remedy**, or the performance of which the law recognizes as a **duty**.

UCC Revised § 1-201(b)(12): The total **legal obligation** that results from the parties' agreement as determined by the UCC + other applicable laws.

Mapping the Governing Legal Frameworks

State Statutory & Common Law (Restatement 2d)

Applies to general contracts (services, real estate, intangible assets). Judge-made law.

The Uniform Commercial Code (UCC)

Article 2 applies specifically to the **Sale of Goods**. (Note: Article 9 governs rights to payment in security interests).

The CISG

Applies to contracts for the International Sale of Goods (US joined in 1988).

The Contract Formation Matrix

Mutuality

Unilateral Ks: A promise in exchange for an **act**.

Bilateral Ks: A promise in exchange for a **promise**.

Terms & Conditions

Express: Formed explicitly by words.

Implied in Fact: Formed by the conduct of the parties.

Implied in Law (Quasi-Contract):
Created by courts as a 'legal fiction' for equitable purposes, preventing unjust enrichment.

The Engine of Enforceability: Consideration (Rest 2d §71)

The Core Rule

To constitute consideration, a performance or a return promise must be **bargained for**. (Sought by the promisor in exchange for their promise, and given by the promisee in exchange for that promise).

1. An act other than a promise.

2. A forbearance.

3. The creation, modification, or destruction of a legal relation.

The Third-Party Nuance

Performance or return promises may be given to the promisor **or** to some other third person.

The Peppercorn Theory and Adequacy of Consideration

The Baseline:

Courts will NOT determine whether a promise is a subjective "benefit/detriment" or if the exchange is substantively fair.

The Peppercorn Rule:

Even a negligible amount (a peppercorn or a penny) is sufficient consideration if bargained for.



The Bargained-For Seesaw

The Danger Zone:

Adequacy matters when extreme disproportion indicates issues with capacity, purpose, or power differentials.

Application: Grandma Betty selling a million-dollar farm to a multinational corp for \$1,000 raises eyebrows for capacity/inducement, not strict adequacy.

The Promise Spectrum: Conditions vs. Gifts

Valid Conditional Promises (Bargained-For)

Rule Box:

The condition **induces** the promise and limits the promisee's freedom of action. Based on objective manifestation of intent rather than subjective motives.

Application Box:

"If you paint my house, I will pay you \$500."
(Legal detriment = consideration).

Gratuitous Promises (Nudum Pactum)

Rule Box:

Unenforceable absent **detrimental reliance**. The condition is merely a step to receive a gift. Distinguished from gratuitous transfers which are completed with delivery.

Application Box:

"If you give me your address, I will mail you a \$500 check." (No real inducement = no consideration).

***Crucial Nuance*:** Family contracts are often oral, informal, and lack significant bargaining, making them highly susceptible to being ruled gratuitous.

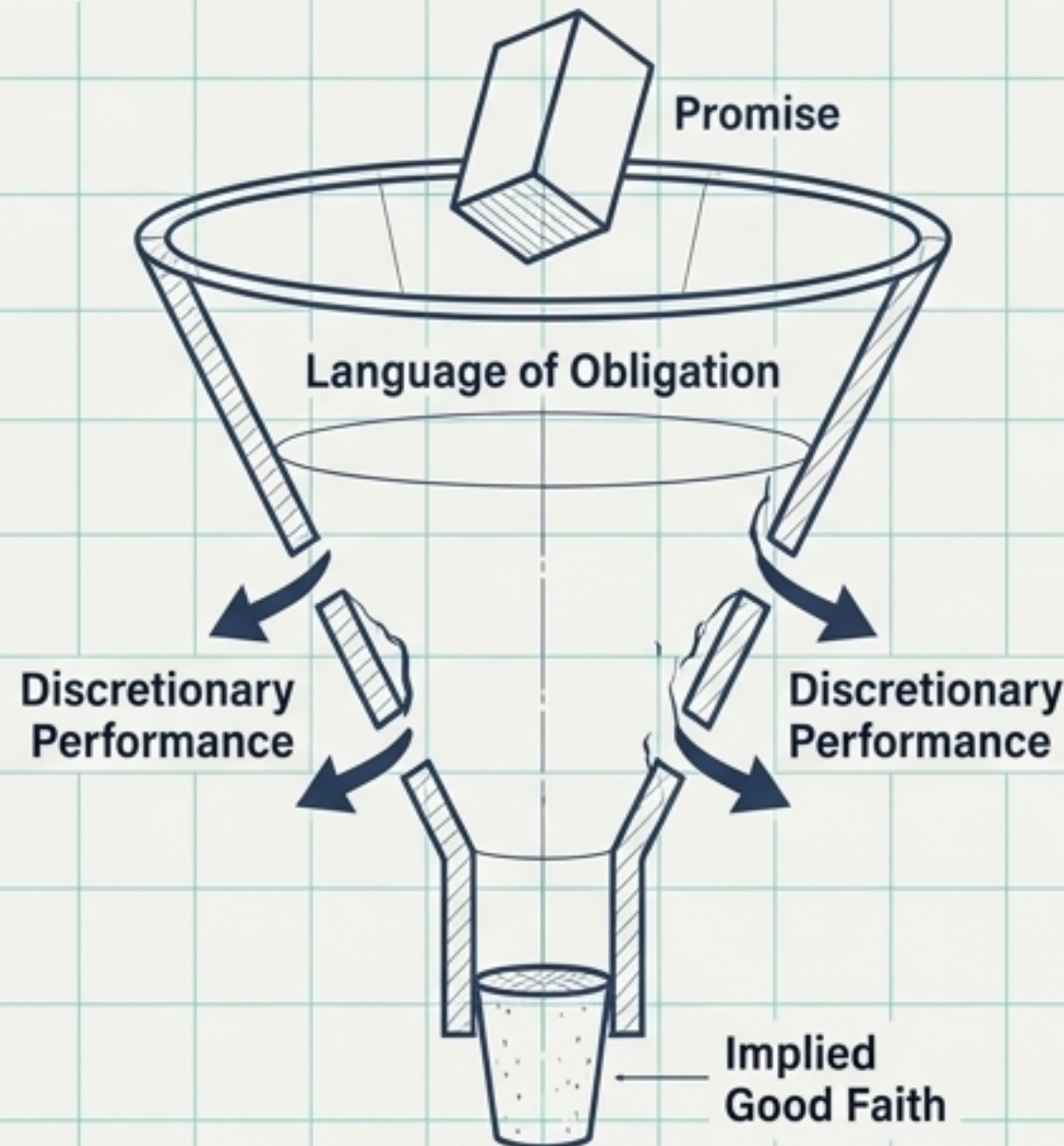
Illusory Promises and Mutuality of Obligation

The Danger (Rest 2d §77)

If the occurrence of a condition of performance is entirely within the **discretion of the promisor, commitment is absent.**

("I will do it... if I want to").

It does **NOT constitute consideration.**



The Illusory Funnel

The Judicial Rescue

Courts prefer to **enforce contracts**. They plug the leak by reading ***implied-in-fact*** or ***implied-in-law*** terms into the agreement.

Example: Promising a % of earnings (could be zero). Court implies a term requiring "**reasonable good-faith efforts**" to earn income. Modern approach treats this as "**bargaining for a chance.**"

Specific Consideration Triggers: Forbearance & Rewards

Forbearance Logic Flow

Rule: Relinquishing a **legal right** constitutes a legal detriment (Rest 2d §74).

Danger: You cannot forbear an **illegal act** (underage vices, murder-for-hire).

Nuance: Surrendering an **invalid claim** is NOT consideration **UNLESS** the claim is doubtful in fact/law, **OR** the surrendering party reasonably believes it is valid.

Rewards Logic Flow

Rule: Offers to the public contemplate **acceptance by performance**.

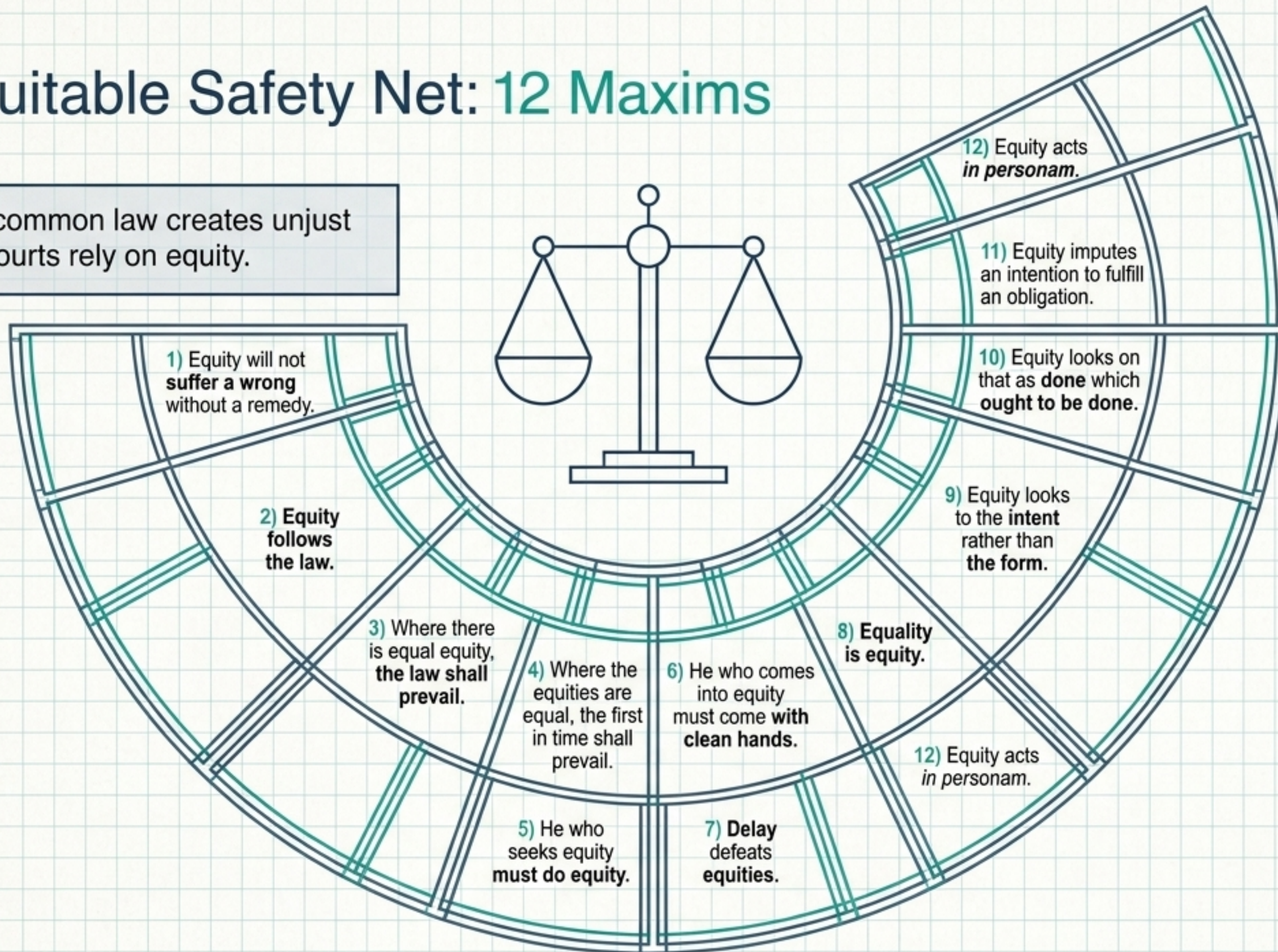
Test: The party **must know** of the reward offer, and the act must be **induced** by the promise.

The Enforceability Status Matrix

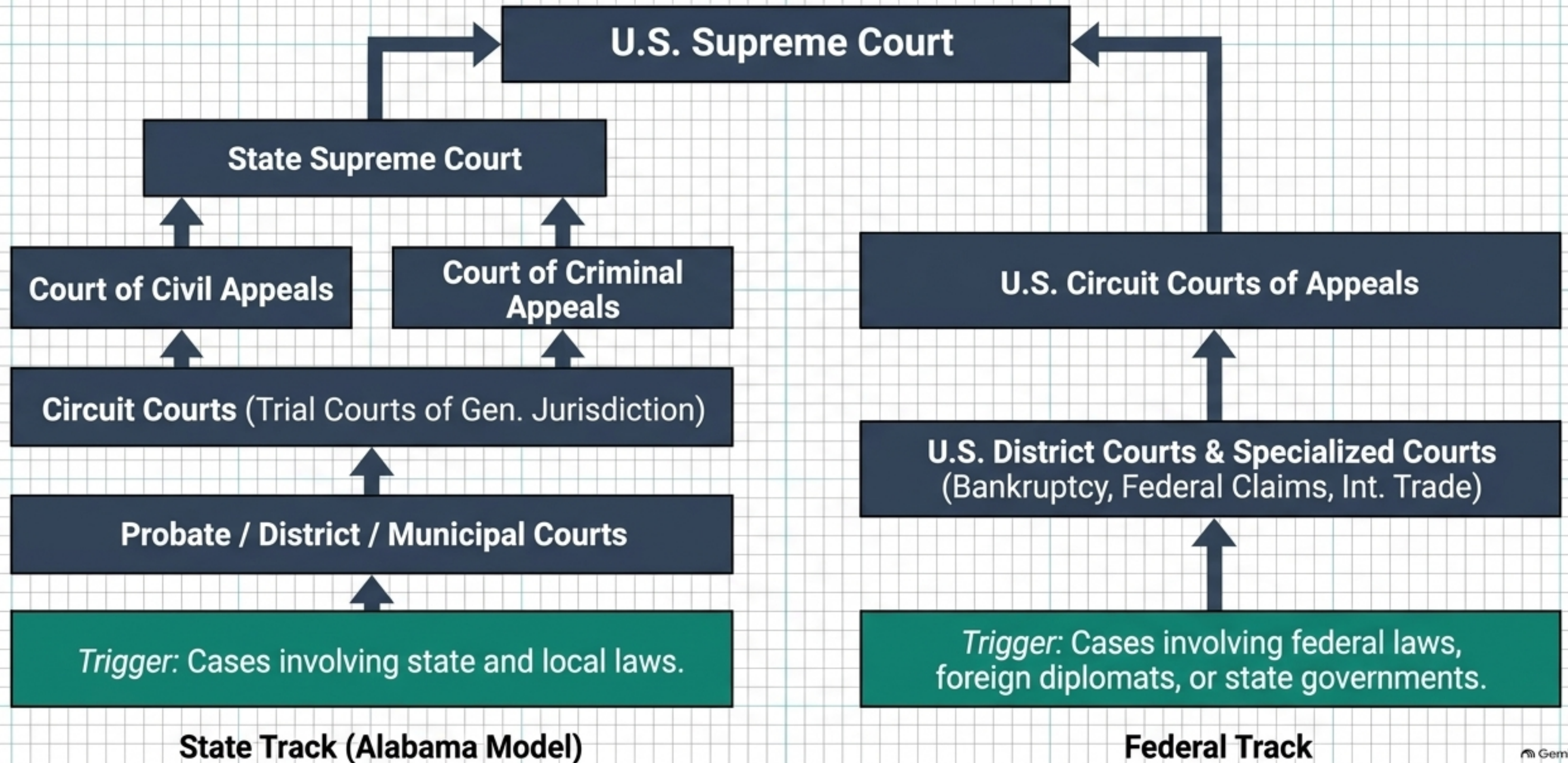
	Valid K	Contains all elements (agreement, consideration, legal capacity, legal purpose).
	Enforceable K	A valid contract that can be enforced because there are <i>no legal defenses</i> against it.
	Voidable K	A valid contract where a party has the <i>option</i> of avoiding or enforcing the obligation (e.g., minor capacity).
	Unenforceable K	A contract exists but cannot be enforced by a court due to a <i>legal defense</i> (e.g., statute of frauds).
	Void K	No contract exists at all, or it completely lacks legal obligation (e.g., contract to commit a crime).

The Equitable Safety Net: 12 Maxims

When strict common law creates unjust outcomes, courts rely on equity.



The Arenas of Enforcement: Jurisdictional Architecture



The Enforceability Diagnostic Checklist (Master Synthesis)

Step 1: Jurisdiction & Domain

Does this
involve goods?

If Yes -> **UCC
Article 2.**

If No ->
**Restatement
2d.**

Step 2: Mutual Assent

Is there an
**objective
manifestation
of intent?**

Step 3: Consideration Check

- Was it **bargained for?**
(Yes = valid)
- Is it an **illusory promise?**
(If yes, can we read in
good faith?)
- Is it a **gratuitous
promise?** (If yes,
unenforceable absent
reliance)
- Is it a **pre-existing duty**
or invalid claim? (If yes,
invalid)

Step 4: Status Output

Output: Valid,
Voidable,
Unenforceable,
or Void.