

You Be the Judge –You are to play the role of an appellate judge and tell me the proper legal outcome of the fact patterns below. For this assignment, you must hand-write the terms involved, the holding, and your analysis – not the facts or issue. Your analysis must be based upon the law we discussed in class. If there is something you do not understand, you may use your textbook or the internet to help with the legal concepts covered within. Make sure you, like the judges in the cases we have briefed, define everything completely as well as properly apply the facts to the law. Finally, remember - contract disputes are civil claims. This means, plaintiff must establish each element of their claim by a preponderance of the evidence. So, I do not care whether you get the right outcome based on the actual case, and instead I am more interested in how you reach your conclusions.

Case #1 – What is Value?

Facts: William Story wanted his nephew to grow up healthy and prosperous. In 1869, he promised the 15-year-old boy \$5,000 if the lad would refrain from drinking liquor, using tobacco, swearing and playing cards or billiards for money, until his twenty-first birthday. The nephew had a legal right to do those things. The nephew agreed and kept his word. When he reached his twenty-first birthday, the nephew notified his uncle that he had honored the agreement. The uncle congratulated the young man and promised to give him the money, but said he would wait a few more years before handing over the cash, until the nephew was more mature. The uncle died and his estate refused to pay. Hamer, to whom the nephew had transferred his rights, sued. The estate argued that the nephew had given no consideration for the uncle's promise. The trial court found for the plaintiff and the uncle's estate appealed.

Issue: Did the nephew give consideration for the uncle's promise?

Case#2 – What are Illusory Promises?

Facts: Brodsky signed an option contract to buy land from Culbertson. Brodsky was to deliver a check for \$5,000, representing "earnest money," to a bank. The bank would hold the check in escrow, uncashed, for 60 days. Brodsky could inspect the property and perform engineering studies. If he decided against buying, he could terminate the agreement and demand his earnest money. Ultimately, Brodsky decided that he did want to buy the land, but Culbertson refused to sell, claiming that Brodsky gave no consideration. The trial court ordered Culbertson to convey the land, and he appealed.

Issue: Did Brodsky give valid consideration that makes Culbertson's promise enforceable?

Case #3 – What is a Preexisting Duty?

Facts: Herbert White refinanced his home through Citizens Trust Bank. When he fell behind on his payments (he owed about \$43,000) the Bank notified White that it intended to foreclose. The Bank sent White a formal notice that it would sell his house at a foreclosure sale. The finance agreement stated that if the Bank foreclosed, White owed the full amount.

On the sale date, White offered the Bank a cashier's check for \$35,000 to stop the foreclosure. The Bank's collection manager accepted the letter and drafted an agreement which he and White signed. The agreement stated:

Citizens Trust Bank agrees to postpone the foreclosure [based on] a payment of \$33,000 in certified funds and a possible \$2,000 from the account of Cora White Cummings on the above-referenced property. Our Attorney William A. Broughman will forward you a written agreement, for your signature, to consummate this transaction. The payoff balance as of 11:05 AM is \$7,986.43. If his sister pays the \$2,000, the balance will be \$5,986.43.

White paid the extra \$2,000. The collection manager did not send an additional document, he believed that White would pay the balance within 30 days, but White never did. The bank sold White's home through foreclosure.

White sued the bank claiming that is had breached its contract not to foreclose. A jury agreed, awarding White \$250,000. The Bank appealed arguing that White gave no consideration for the agreement because he was already obligated to pay the full balance.

Issue: Was the signed letter an enforceable contract?

Case #4 – What is Accord & Satisfaction?

Facts: Jim Henches, a licensed massage therapist, treated Benjamin Taylor after he was injured in a car accident. Henches billed Taylor for more than \$7,000. Taylor's insurance company thought the bill was too high and paid only \$2,625 for 24 massages.

Henches continued to send bills to Taylor including charges for time spent consulting with Taylor's other health care providers, preparing to testify in Taylor's personal injury lawsuit, and attempting to collect his debts. In response to a bill for \$11,945.86, Taylor's lawyer sent Henches a letter stating:

I have reviewed your billing statements and am having a difficult time understanding a number of charges you included. By my calculations, the amount owed to you is approximately \$5,243.45. I have enclosed a check for that amount as payment in full to settle Mr. Taylor's account with you.

The letter was accompanied by a check with "final payment: written on the notation line. Henches filed suit seeking the full balance. The he wrote "attorney/fee" on the check over the word "final" and deposited the check.

The trial court gave summary judgment to Taylor, holding that the deposit of the check was an accord and satisfaction. Henches appealed.

Issue: Was there an accord and satisfaction discharging the debt?