

## CONSIDERATION QUIZ

Prof. Bell

**NOTE:** Please assume that both the UCC and the Restatement (2nd) of Contracts apply, as relevant. To best mimic the actual MBE experience, allot yourselves 1.8 minutes/answer.

### Questions 1 & 2

Goldwater Law school accepted Sue Billings as a student for its fall '99 entering class. Her proud father, Max Billings, Esq., told her, "I will buy you a new Miata at the end of your first semester if you don't drink beer from Monday through Friday of each school week." Sue replied, "You can order that Miata now, Dad. I've been meaning to tell you: I converted to Islam last week and have thus sworn off alcohol."

Sue returned home after her first semester at Goldwater. Her Uncle West was visiting the family. In West's presence, Sue's father asked her, "Did you abide by your promise not to drink?"

Sue replied, "Yes, Dad." Max then told Sue that he had ordered the Miata and that it would be available for delivery within a month.

"So long as you continue to refrain from drinking beer during school," Max added, "I'll pay your insurance and gas bills for the Miata."

Uncle West, touched by the concern of his brother Max for Sue, made the following statement: "Sue, I promise that if anything happens to your father I'll continue to cover your insurance and gas bills."

A few weeks later Sue received tragic news of her father's demise. The executor of Mr. Billing's estate told Sue that he did not feel compelled to give her the newly arrived Miata. Furthermore, Uncle West told Sue that even if she got the car and even if she continued to refrain from drinking, he did not regard himself as obligated to pay her insurance and gas bills.

1. The most accurate statement concerning Uncle West's promise to Sue would be:

- (A) the promise would not be legally binding because he reserved a choice of alternative performance.
- (B) the promise constituted an unenforceable conditional gift.
- (C) the promise would be enforceable as a quasi contract.
- (D) the promise would be legally binding because Sue relied on it to her detriment.

2. In a suit against the executor of Mr. Billing's estate to recover the Miata for breach of her father's oral agreement, Sue will

- (A) succeed, since Mr. Billing's promise created a quasi contract.
- (B) not succeed, since Mr. Billing's promise was only a conditional gift.
- (C) succeed, since she was under no legal obligation to refrain from drinking.
- (D) not succeed, since Sue did not rely on it to her detriment.

#### Questions 3 & 4

Carla, a collector of antique cars, was friends with Art, a collector of paintings. Art told Carla that Perry owned an Persian rug collection valued at \$100,000, which Art believed they could purchase for \$50,000. Art had \$5000 in cash and owned a 1945 Rolls Royce valued at \$50,000.

After many discussions, Art and Carla entered into the following agreement:

"July 16, 1979

Upon Art's request and at any time within one year from the date hereof Carla will lend Art \$50,000 without interest, at which time Art will deliver his Rolls Royce to Carla for her use and enjoyment. If after one year Art is unable to repay Carla the \$50,000, Carla will sell the Rolls Royce. Carla will retain \$50,000 from the sale and give any excess proceeds to Art. If Carla sells the Rolls Royce for less than \$50,000, Art will pay Carla the difference.

(Signed) Art  
(Signed) Carla"

The next day Art and Carla executed the following written agreement:

"July, 17, 1979

In consideration of her many acts of friendship and affection, I desire to give Carla an interest in the rugs that I plan to purchase from Perry. If I receive over \$100,000 from their resale I will give Carla 30% of the excess.

(Signed) Art

Accepted  
(Signed) Carla"

After nearly a year of negotiations, Perry agreed to sell the rugs to Art for \$60,000. Art then came to Carla with his Rolls Royce and requested the \$50,000 loan. Carla, who had lost interest in the transaction, refused to lend Art any money. As a consequence, on February 15, 1980, Art borrowed \$50,000 from First Bank at 11% interest, purchased the rugs for \$60,000, and soon thereafter resold them for \$150,000. When Carla learned of the sale, she contacted Art and demanded \$15,000. Art rebuffed her and in turn demanded that Carla pay him \$5,500, the amount of interest due on his bank loan.

3. Art sued Carla for breach of their agreement of July 16, 1979. That agreement is

- (A) enforceable in all respects.
- (B) unenforceable, because there was no consideration to support Carla's promise to lend Art \$50,000 without interest.
- (C) unenforceable, because Art reserved a choice of alternative performance.
- (D) unenforceable, because the contract was indefinite as to the time of performance.

4. Carla sued Art for breach of their July 17th agreement whereby Art promised to pay Carla 30% of the excess profits from the sale of the rugs. The court should render judgment for

- (A) Carla, since the agreement was enforceable as a quasi contract.
- (B) Carla, since she relied on Art's promise to her detriment.
- (C) Art, because he made a conditional promise and the condition did not obtain.
- (D) Art, since their agreement would be unenforceable for lack of consideration.

## CONSIDERATION QUIZ--ANSWER KEY

Note that these are wordy questions, but not much wordier than the average MBE contracts question (a type of question to which the MBE typically gives a long wind-up). As always, this strategy pays off:

First read the question.

Next, read the call to the answer.

Next, *before reading the possible answers*, perform your own mini-analysis.

Lastly, see if you can find your answer among those offered.

- 1: (B) Sue did not need to do anything to benefit from Uncle West's promise, meaning there was no consideration. Nor did she rely upon it. It was a pure gratuity.
- 2: (C) Sue's religious convictions play no role in the matter, as she retained the *legal* right to drink. As in *Hamer v. Sidway*, her promise to refrain from exercising her legal rights constituted consideration.
- 3: (A) This one you should get by process of elimination, if nothing else.
- 4: (D) Past acts cannot provide present consideration and none of the usual exceptions apply. Most notably, the broad exception of R. (2d) §86 does not apply both because Carla will not suffer injustice if she does not get the money and she presumably rendered her acts of friendship and affection as gifts.