

A woman owed her friend \$5,000, plus interest at 6% until paid. Collection of the debt would become barred by the statute of limitations on July 31. On the preceding May 1, the woman and the friend both signed a writing in which the woman promised to pay the debt in full on the following December 31, plus interest at 6% until that date, and the friend promised not to sue to collect the debt in the meantime. The friend became concerned about the legal effect of the May 1 agreement, and on June 1 filed suit to collect the debt.

On January 2 of the following year, the friend's suit has not come to trial, and the woman has not paid the debt. The friend amends the complaint to add a second count to enforce the promise the woman made in the May 1 agreement.

Does the new count state a claim upon which relief can be granted?

- A. No, because such relief would undermine the policy of the statute of limitations against enforcement of stale claims.
- B. No, because the woman's May 1 promise was lawfully conditioned upon the friend's promise not to sue prior to December 31.
- C. Yes, because the woman's failure to pay the debt, plus interest, on December 31 makes the friend's breach of promise not to sue before that date no longer material.
- D. Yes, because the woman's May 1 promise is enforceable by reason of her moral obligation to pay the debt.

## Explanation:

### Common examples of constructive (ie, implied) conditions

<b>Condition of performance</b>	Each party's performance is conditioned on other party's performance
<b>Condition of cooperation</b>	Each party's performance is conditioned on other party's cooperation with that performance
<b>Order of performance</b>	Simultaneous performance possible – each party's performance is condition <i>concurrent</i> to other party's duty to perform (ie, performance due simultaneously) One party's performance takes time – party's completion of longer performance is condition <i>precedent</i> to other party's duty to perform

A **settlement agreement** is a written and signed contract in which one party forgoes his/her right to sue on a claim in exchange for **consideration**. Unless stated otherwise in the agreement, **each party's duty** to perform is impliedly **conditioned upon** the **other party's performance**. This means that a **breach** by one party **excuses the nonbreaching party from performing**, and the breaching party cannot enforce the agreement.

Here, on May 1, the woman and the friend signed a settlement agreement in which the woman agreed to repay her overdue debt by December 31, and the friend promised not to sue in the meantime. But the friend breached this agreement by filing suit on June 1. And since the woman's May 1 promise was lawfully conditioned upon the friend's promise not to sue before December 31, the woman was not required to repay the debt on December 31 **(Choice C)**. Therefore, the friend cannot enforce the May 1 agreement.

**(Choice A)** The underlying policy behind statutes of limitation is one of procedural fairness to the defendant—not one against the enforcement of stale claims.

**(Choice D)** A promise made out of a sense of moral obligation to compensate someone for a benefit previously received is generally unenforceable due to lack of consideration (ie, moral or past consideration). But here, the woman's promise to repay the debt by December 31 was made in exchange for the friend's promise not to sue—not because of the woman's moral obligation to pay the debt.

### Educational objective:

Unless stated otherwise, each party's duty to perform under a settlement agreement is conditioned upon the other party's performance. This means that a breach of the agreement excuses the nonbreaching party from performing, and the breaching party cannot enforce the agreement.

### References

Restatement (Second) of Contracts § 74 (Am. Law Inst. 1981) (settlement of claims).

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