

A debtor's \$1,000 contractual obligation to the aunt was due on July 1. On the preceding June 15, the aunt called her niece and said, "As my birthday gift to you, you may collect on July 1 the \$1,000 the debtor owes me." The aunt also called the debtor and told him to pay the \$1,000 to her niece on July 1. On July 1, the debtor, saying that he did not like the niece and wouldn't pay anything to her, paid the \$1,000 to the aunt, who accepted it without objection.

Will the niece succeed in an action for \$1,000 against the debtor?

- A. No, because the aunt's acceptance of the \$1,000, without objection, was in effect the revocation of a gratuitous assignment.
- B. No, because the debtor cannot be compelled to render performance to an assignee whom he finds personally objectionable.
- C. Yes, because the aunt had effectively assigned the \$1,000 debt to her.
- D. Yes, because the aunt's calls to the niece and the debtor effected a novation.

Explanation:

Assignment of contractual rights

Limitations	<ul style="list-style-type: none">• Assignment permitted unless it:<ul style="list-style-type: none">– materially increases obligor's contractual duties or risks– materially reduces obligor's chance of obtaining performance <i>or</i>– is void (not merely prohibited) under contract provision
Requirements	<ul style="list-style-type: none">• Present intent to immediately assign right• Consideration generally required to make assignment irrevocable<ul style="list-style-type: none">– Exceptions: promissory estoppel, delivery of document symbolizing assigned right (eg, stock certificate), delivery of written & signed assignment
Assignee's rights	<ul style="list-style-type: none">• Assumes all of assignor's rights as contract stands at time of assignment, subject to claims/defenses that:<ul style="list-style-type: none">– accrued before obligor received notice of assignment <i>or</i>– stem from assignor's present or future failure to perform• Assignor loses rights & therefore cannot enforce contract

An assignment is the transfer of rights under a contract to a third party. A **gratuitous assignment**—ie, one that is ***not supported by consideration*** such as money—can generally be **revoked by words or conduct**.

Here, the aunt transferred her right to collect the \$1,000 debt to her niece. The assignment was gratuitous because it was a birthday gift to the niece and the aunt asked for nothing in return. However, the debtor paid the \$1,000 to the aunt—not the niece. By accepting the \$1,000 without objection, the aunt effectively revoked the gratuitous assignment to the niece **(Choice C)**. Therefore, the niece will not succeed in an action against the debtor.

(Choice B) There is no rule that excuses a party from rendering performance to an assignee whom the party finds personally objectionable.

(Choice D) A novation is a substitute contract in which the parties agree to replace an original contracting party with a new party. But here, the debtor never agreed to replace the aunt with the niece (no novation).

Educational objective:

An assignment (ie, transfer of contractual rights) that is not supported by consideration can be revoked by words or conduct.

References

- Restatement (Second) of Contracts § 321 (Am. Law Inst. 1981) (assignment of future rights).

Copyright © 1995 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.