

A father whose only living relatives were a daughter and a nephew owned land worth \$500,000. In return for his daughter's promise to pay \$300,000 to his nephew at the time of the father's death, the father executed and delivered to his daughter a quitclaim deed to the land. The daughter took possession of the land.

Two years later, in a signed writing, the father directed his daughter to pay to a neighbor, at the father's death, \$50,000 of the \$300,000 that was to go to the nephew. The daughter, who had long disliked the neighbor, told her father that she did not plan to honor his request. The father died, and his daughter has since refused to pay anything to either the nephew or the neighbor. The neighbor has sued the daughter for the \$50,000.

Is the neighbor likely to prevail?

- A. No, because the daughter did not consent to any modification of the contract she had made with her father. (63%)
- B. No, because the nephew was a third-party beneficiary of the contract between the father and his daughter, and the nephew's interest could not be modified without his express written consent. (18%)
- C. Yes, because the father retained a transferable interest in the future proceeds of his daughter's promise. (9%)
- D. Yes, because the father's signed modification is enforceable without consideration. (8%)

Incorrect

Correct answer A

63% Answered correctly

02 mins, 07 secs Time Spent

2023 Version

Explanation:

Modifying existing contracts

Governing law		Requirements
Common law	Traditional view	Parties' agreement New consideration
	Modern view	Parties' agreement New consideration <i>unless</i> modification is fair & equitable due to unanticipated circumstances
UCC		Parties' agreement Good faith (ie, honesty & observance of reasonable commercial standards of fair dealing) New consideration <i>not</i> required

UCC = Uniform Commercial Code.

At common law, **contract modifications** must be supported by **new consideration**—ie, each party must alter its duties in some way—unless the modification is fair and equitable in light of unanticipated circumstances. Additionally, contract modifications **require mutual assent**—ie, both parties to the original agreement must agree to the modification.

Here, the father and the daughter originally agreed that the daughter would pay \$300,000 to the nephew upon the father's death in exchange for a quitclaim deed to the land. Two years later, the father attempted to modify the contract to require the daughter to pay \$50,000 of the \$300,000 to the neighbor, but the daughter refused. And since the daughter did not consent to any modification of the contract she had made with her father, the original contract was not modified. As a result, the neighbor is unlikely to prevail in the suit against the daughter.

(Choice B) The nephew was an intended **third-party beneficiary** of the original contract because the father intended to benefit the nephew by requiring the daughter to pay him \$300,000. However, the nephew's express written consent was not required to modify this contract because the contract did not grant him this right. Instead, the contract was not modified because the daughter did not consent to the modification.

(Choice C) The father retained no interest in the future proceeds of his daughter's promise. Therefore, he could not alter her obligations under the original contract without her consent.

(Choice D) Whether the attempted modification by the father required new consideration or was permissible because it was fair and equitable in light of unanticipated circumstances is irrelevant. That is because the daughter did not consent to the modification.

Educational objective:

At common law, contract modifications must be supported by new consideration unless the modification is fair and equitable in light of unanticipated circumstances. Additionally, contract modifications require mutual assent—ie, both parties to the original agreement must agree to the modification.

References

Restatement (Second) of Contracts § 89 (Am. Law Inst. 1981) (explaining the requirements for contract modification).

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