

An entrepreneur owed his neighbor \$1,000, plus interest at 8% until paid, on a long-overdue promissory note, collection of which would become barred by the statute of limitations on June 30. On the preceding April 1, the entrepreneur and the neighbor both signed a writing in which the entrepreneur promised to pay the note in full on the following December 31, plus interest at 8% until that date, and the neighbor promised not to sue on the note in the meantime. The neighbor, having received some advice from his nonlawyer brother-in-law, became concerned about the legal effect of the April 1 agreement. On May 1, acting pro se as permitted by the rules of the local small claims court, the neighbor filed suit to collect the note.

Assuming that there is no controlling statute, is the April 1 agreement an effective defense for the entrepreneur?

- A. No, because the entrepreneur's April 1 promise is enforceable with or without consideration.
- B. No, because there was no consideration for the neighbor's promise not to sue, in that the entrepreneur was already obligated to pay \$1,000 plus interest at 8% until the payment date.
- C. Yes, because the entrepreneur's promise to pay interest until December 31 was consideration for the neighbor's promise not to sue.
- D. Yes, because the law creates a presumption that the entrepreneur relied on the neighbor's promise not to sue.

## Explanation:

### Exceptions to preexisting-duty rule

<b>Main rule</b>		Promise to perform (or performance of) preexisting duty is not consideration
<b>Common-law exceptions</b>	<b>New/alterd consideration</b>	New duty added or preexisting duty altered (eg, acceleration of due date)
	<b>Ratification of voidable duty</b>	New promise to perform voidable duty (eg, upon reaching age of majority)
	<b>Honest dispute</b>	Scope of duty honestly disputed
	<b>Unexpected event</b>	Fair & equitable modification in view of unanticipated circumstances
	<b>Renewed promise</b>	Renewed promise to pay preexisting debt despite technical defense (eg, statute of limitations, bankruptcy) if written or partially performed
	<b>Third party</b>	Third party offers additional promise that is contingent on performance of preexisting duty
<b>UCC exception</b>	<b>Modification</b>	Modification sought in good faith—ie, honesty and observance of reasonable commercial standards of fair dealing

UCC = Uniform Commercial Code.

A **valid claim** can be permanently or temporarily settled by entering a written **settlement agreement** in which each party's promise or performance is **consideration** (ie, exchanged) for the other party's promise or performance. A promise to perform (or the performance of) a **preexisting contractual duty** is generally *not* consideration. But if the duty is **altered in any way** (eg, acceleration of a due date), there is **consideration**, and the agreement will provide an effective defense in a lawsuit that asserts the settled claim.

Here, the entrepreneur owed the neighbor \$1,000 plus 8% interest *until paid*. On April 1, they signed a settlement agreement in which the entrepreneur promised to repay the debt *by December 31*. Although the entrepreneur was already obligated to pay 8% interest, the new due date altered his duties (**Choice B**). As a result, the entrepreneur's promise was consideration for the neighbor's promise not to sue before December 31. Since the neighbor sued before then (on May 1), the April 1 agreement is an effective defense for the entrepreneur.

**(Choice A)** The entrepreneur's April 1 promise to repay the debt by December 31 would be *unenforceable* without consideration. But that promise *is* supported by consideration—ie, the neighbor's return promise not to sue before December 31.

**(Choice D)** Under the doctrine of [promissory estoppel](#), a promise can become enforceable if the promisee (eg, the entrepreneur) *proves* that he/she reasonably and detrimentally relied on that promise. But the promisee's reliance will not be *presumed*.

**Educational objective:**

A promise to perform (or the performance of) a preexisting contractual duty is not consideration *unless* that duty is altered in some way (eg, acceleration of a due date).

**References**

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

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