A father and his adult daughter encountered an old family friend on the street. The daughter said to the family friend, "How about lending me $1,000 to buy a used car? I'll pay you back with interest one year from today." The father added, "And if she doesn't pay it back as promised, I will." The family friend thereupon wrote out and handed to the daughter his personal check, payable to her, for $1,000, and she subsequently used the funds to buy a used car. When the debt came due, both the daughter and the father refused to repay any part of it.

In an action by the family friend against the father to recover $1,000 plus interest, which of the following statements would summarize the father's best defense?

A. He received no consideration for his conditional promise to the family friend.

B. His conditional promise to the family friend was not made for the primary purpose of benefiting himself (the father).

C. His conditional promise to the family friend was not to be performed in less than a year from the time it was made.

D. The loan by the family friend was made without any agreement concerning the applicable interest rate.

Explanation:

Contracts subject to the statute of frauds are **enforceable only** if they are (1) in a **writing** that provides a reasonable basis to believe a contract was formed and (2) **signed** by the party against whom enforcement is sought. Here, the check from the family friend may have satisfied the writing requirement. But since it was not signed by the father, the contract is unenforceable if it is subject to the statute of frauds.

A **suretyship** is a promise to assume responsibility for a duty incurred by another (eg, the father's promise to pay the loan if the daughter does not). Under the **main-purpose rule**, suretyships are subject to the **statute of frauds *unless*** they are made for the promisor's **own economic advantage**. Therefore, the father's best defense is that his suretyship was primarily made to benefit his daughter, so it is subject to and *unenforceable* under the statute of frauds.

(Choice A) The suretyship is supported by consideration because each promise was induced by the promises of the other parties. The family friend loaned the daughter $1,000 based on *both* promises to pay him back (and vice versa).

(Choice C) A one-year contract is *not* subject to the statute of frauds if it is *possible* to perform within one year (even if the parties agree on a later completion date). Here, it was possible for the daughter or father to pay the loan within a year, so this would not trigger the statute of frauds.

(Choice D) An agreement concerning an applicable interest rate was not needed to form an enforceable contract.

Educational objective:

A suretyship is a promise to assume responsibility for a duty incurred by another. Unless a suretyship is made for the promisor's own economic advantage, it is subject to the statute of frauds—ie, it must be in writing and signed by the party against whom enforcement is sought.

References

- Restatement (Second) of Contracts § 112 (Am. Law Inst. 1981) (requirement of suretyship).
- Restatement (Second) of Contracts § 116 (Am. Law Inst. 1981) (main-purpose rule).

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