

A man sent an email to a friend that stated: "Because you have been a great friend to me, I am going to give you a rare book that I own." The friend replied by an email that said: "Thanks for the rare book. I am going to give you my butterfly collection." The rare book was worth \$10,000; the butterfly collection was worth \$100. The friend delivered the butterfly collection to the man, but the man refused to deliver the book.

If the friend sues the man to recover the value of the book, how should the court rule?

- A. For the friend, because she conferred a benefit on the man by delivering the butterfly collection.
- B. For the friend, because she gave the butterfly collection to the man in reliance on receiving the book.
- C. For the man, because the consideration given for his promise was inadequate.
- D. For the man, because there was no bargained-for exchange to support his promise.

Explanation:

Elements of valuable consideration

Bargained-for exchange Each party's willingness to enter agreement must be induced by other party's act/promise

Legal detriment Each party must relinquish legal right by either:
performing (or promising to perform) act that is not legally required *or*
refraining (or promising to refrain) from performing legally permissible act

Formation of a contract generally requires a bargained-for exchange of promises or performance (ie, **valuable consideration**). The **bargained-for exchange** requirement is not met unless each party's willingness to enter into the contract was induced by the other party's act or promise. So if either of the parties intended to make a **gift**, this **requirement cannot be met**.

Here, the man promised to give a rare book to his friend. The man clearly intended to make a gift since he did not ask for anything in exchange. This means that the man's promise was not induced by the friend's promise to give him her butterfly collection, so there was no bargained-for exchange (ie, consideration) to support his promise. Therefore, no contract arose between the parties, and the court should rule in favor of the man.

(Choice A) The mere fact that the friend conferred a benefit on the man by delivering the butterfly collection does not mean that the man has an enforceable obligation to deliver the book to the friend.

(Choice B) In the absence of consideration, the doctrine of **promissory estoppel** provides a basis to enforce a promise upon which a party reasonably and detrimentally relied. However, this doctrine can only be invoked if it is the only way to avoid *substantial injustice* (not seen here).

(Choice C) Instead of giving inadequate consideration, the friend gave no consideration at all since the man did not bargain for her return promise to deliver the butterfly collection. And parties generally cannot challenge a contract on the ground that the consideration given for their promises was inadequate (eg, due to a difference in economic value).

Educational objective:

A promise to make a gift is generally unenforceable because it does not involve the bargained-for exchange that is required to constitute valuable consideration.

References

Restatement (Second) of Contracts § 71 (Am. Law Inst. 1981) (bargained-for exchange).

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