

A debtor owed a lender \$1,500. The statute of limitations barred recovery on the claim. The debtor wrote to the lender, stating, "I promise to pay you \$500 if you will extinguish the debt." The lender agreed.

Is the debtor's promise to pay the lender \$500 enforceable?

- A. No, because the debtor made no promise not to plead the statute of limitations as a defense.
- B. No, because there was no consideration for the debtor's promise.
- C. Yes, because the debtor's promise provided a benefit to the lender.
- D. Yes, because the debtor's promise to pay part of the barred antecedent debt needs no consideration to be enforceable.

## 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/altered 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 promise to perform a preexisting duty is generally unenforceable for lack of **consideration**. But under a long-established exception to this rule, a debtor's **renewed promise to pay** all or part of a **preexisting debt** is **enforceable** if:

the debtor renewed the promise despite the existence of a **technical defense** to recovery of the original debt (eg, statute of limitations, bankruptcy) *and*

the renewed promise was made **in writing or partially performed**.

Here, the statute of limitations barred recovery on the lender's claim against the debtor for \$1,500. Despite this defense, the debtor made a renewed promise to pay \$500 of the preexisting debt. And though there was no consideration for this promise, it was made in a *written* letter (**Choice B**). Therefore, the debtor's promise to pay \$500 is enforceable without consideration.

**(Choice A)** Although the debtor made no promise to waive his statute-of-limitations defense, his renewed promise to pay part of the debt is still enforceable since it was made in writing despite being time-barred. And that promise will defeat the statute-of-limitations defense with respect to \$500 of the debt.

**(Choice C)** Early case law described the consideration requirement in terms of *benefit* to the promisee (here, the lender), whereas modern courts focus instead on legal *detriment* to the promisor (here, the debtor). But whether the debtor's promise was a benefit or a detriment is irrelevant because consideration is not required.

**Educational objective:**

A promise to perform a preexisting duty is generally unenforceable. But a debtor's renewed promise to pay all or part of a preexisting debt is enforceable if the debtor renewed his/her promise despite a technical defense (eg, statute of limitations) AND the renewed promise was made in writing or partially performed.

**References**

Restatement (Second) of Contracts § 82 (Am. Law Inst. 1981) (explaining that a renewed promise to pay a preexisting debt is binding if that debt would be binding except for the statute of limitations).

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