

An automobile retailer had an adult daughter who needed a car in her employment but had only \$3,000 with which to buy one. The retailer wrote to her, "Give me your \$3,000 and I'll give you the car on our lot that we have been using as a demonstrator." The daughter thanked her father and paid him the \$3,000. As both the retailer and the daughter knew, the demonstrator was reasonably worth \$10,000. After the daughter paid the \$3,000, but before the car was delivered to her, one of the retailer's sales staff sold and delivered the same car to a customer for \$10,000. Neither the salesperson nor the customer was aware of the transaction between the retailer and the daughter.

Does the daughter, after rejecting a tendered return of the \$3,000 by the retailer, have an action against him for breach of contract?

- A. No, because the payment of \$3,000 was inadequate consideration to support the retailer's promise.
- B. No, because the salesperson's delivery of the car to the customer made it impossible for the retailer to perform.
- C. Yes, because the retailer's promise was supported by bargained-for consideration.
- D. Yes, because the retailer's promise was supported by the moral obligation a father owes his child as to the necessities of modern life.

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: <ul style="list-style-type: none">• performing (or promising to perform) act that is not legally required <i>or</i>• refraining (or promising to refrain) from performing legally permissible act

A **valid contract** is formed when a mutual agreement is supported by **adequate consideration**—ie, a **bargained-for exchange** of promises or performance. If the exchange involves items with economic value (eg, a car in exchange for money), there is **no additional requirement** that their **values be equivalent** or even roughly equivalent.

Here, the retailer promised to give the daughter the demonstrator car in exchange for \$3,000. Although the car was worth \$10,000, this difference in value did not prevent the daughter's payment from being consideration for the retailer's promise **(Choice A)**. Therefore, a valid contract arose between the parties, and the daughter has a breach of contract action against the retailer.

(Choice B) A party's contractual duties may be discharged if it has become objectively impossible to perform them. But impossibility does not apply when, as here, a seller or its agent sells contracted-for goods to someone else.

(Choice D) A promise based on a moral obligation is *not* supported by consideration and will not give rise to a contract. In addition, parents have no obligation—moral or otherwise—to provide their adult child with a car.

Educational objective:

A difference in economic value between the items exchanged is not ground for finding that a contract did not exist due to inadequate consideration.

References

- Restatement (Second) of Contracts § 71 (Am. Law Inst. 1981) (bargained-for exchange requirement).
- Restatement (Second) of Contracts § 79 (Am. Law Inst. 1981) (adequacy of consideration).

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