

A patient owed a physician \$25,000 for professional services. The physician orally assigned this claim to her adult daughter as a wedding gift. Shortly thereafter, on suffering sudden, severe losses in the stock market, the physician assigned by a signed writing the same claim to her stockbroker in partial satisfaction of advances legally made by the stockbroker in the physician's previous stock-market transactions. Subsequently, the patient, without knowledge of either assignment, paid the physician the \$25,000 then due, which the physician promptly lost at a horse track. The physician remains solvent.

Assume that Article 9 of the Uniform Commercial Code does NOT apply to either of the assignments in this situation.

Which of the following is a correct statement of the parties' rights and liabilities?

- A. As the assignee prior in time, the daughter can recover \$25,000 from the patient, who acted at her peril in paying the physician.
- B. As the sole assignee for value, the stockbroker can recover \$25,000 from the patient, who acted at her peril in paying the physician.
- C. Neither the daughter nor the stockbroker can recover from the patient, but the daughter, though not the stockbroker, can recover \$25,000 from the physician.
- D. Neither the daughter nor the stockbroker can recover from the patient, but the stockbroker, though not the daughter, can recover \$25,000 from the physician.

Explanation:

Assignment of contractual rights

Type	Revocability	Warranties
Gratuitous	Revocable unless: <ul style="list-style-type: none">• obligor already performed• document symbolizing assigned right (eg, stock certificate) delivered• written & signed assignment delivered• promissory estoppel applies	None
For value	Irrevocable	Assignor warrants that he/she: <ul style="list-style-type: none">• has right to assign• is not subject to limitations/defenses unknown to assignee• will not defeat/impair assigned rights

An assignment is the transfer of a contractual right to another. Where there has been a **subsequent assignment** of the **same right**, the priority of those competing assignments depends on whether the **first assignment** was:

- **revocable** – in which case, the first assignment is **automatically revoked** and the **second assignment has priority** *or*
- **irrevocable** – in which case, the **first assignment has priority** unless the second assignee was a bona fide purchaser for value who lacked notice of the first assignment.

Here, the physician orally assigned her claim for the \$25,000 owed by the patient to her daughter as a wedding gift. That oral assignment was valid.* However, it was revocable because it was gratuitous and no exception applies (see above table). This means that the assignment to the daughter was automatically revoked when the physician subsequently assigned the same claim to her stockbroker. Accordingly, the daughter has no right to the \$25,000 (**Choices A & C**).

The physician's **assignment** to the stockbroker was **for value** (namely, in partial satisfaction of advances), so it was **irrevocable**. Every assignment for value carries an **implied warranty** that the **assignor will not** do anything to **defeat or impair the**

assigned right. The physician breached that warranty by accepting the \$25,000 owed by the patient and losing it at the horse track. As a result, the stockbroker can recover \$25,000 from the *physician*.

However, the stockbroker cannot recover that amount from the *patient*. The reason is that the **assignee's rights** against the obligor are **subject to any defenses** that the **obligor had against the assignor**. Payment by the obligor (patient) to the assignor (physician) can be raised as a defense, provided that the payment was made before the obligor had notice of the assignment (as seen here). Therefore, the patient did *not* act at her peril in paying the physician **(Choice B)**.

*Oral assignments are generally valid. However, a writing is required for (1) wage assignments, (2) assignments of interests in land, and (3) assignments intended as security instruments under Article 9 of the Uniform Commercial Code—none of which apply here.

Educational objective:

A subsequent assignment of the same right revokes any prior *revocable* assignment. If the first assignment was *irrevocable*, it has priority unless the second assignee was a bona fide purchaser for value who lacked notice.

References

- Restatement (Second) of Contracts § 342 (Am. Law Inst. 1981) (subsequent assignment of same right).

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