

A niece had worked in her aunt's bookstore for many years. The bookstore business, which was housed in a building that the aunt leased, was independently appraised at \$200,000. The aunt decided to retire. She wrote to the niece, expressing her affection for the niece and offering to sell her the bookstore business for \$125,000 if the landlord would agree to a transfer of the lease. The letter also specified when the aunt would transfer the business. The niece wrote back accepting her aunt's offer. In a phone call to the niece, the aunt stated that the landlord had approved the transfer of the lease and that she would now ask her attorney to draft a written contract so that there would be a record of the terms. Before the attorney had finished drafting the document, the aunt changed her mind about selling the business and informed the niece of her decision.

In an action for breach of contract brought by the niece against her aunt, is the niece likely to prevail?

- A. No, because the motivation for the transfer of the business was the aunt's affection for her niece, not the price.
- B. No, because the promised consideration was inadequate in light of the market value of the business.
- C. Yes, because the condition concerning the landlord's assent to the transfer of the lease was beyond the control of either party.
- D. Yes, because the document being drafted by the attorney was merely a record of an agreement already made, not a condition to it.

## Explanation:

### Contract conditions

|                             |   |
|-----------------------------|---|
| <b>Condition precedent</b>  | Uncertain future event that, if it occurs, creates party's obligation to perform (e.g., A agrees to hire B <i>if</i> B graduates college)                 |
| <b>Condition subsequent</b> | Uncertain future event that, if it occurs, excuses party's existing obligation to perform (e.g., B agrees to work for C <i>until</i> B graduates college) |

A **binding contract** is formed when one party (ie, the offeror) makes an offer and the other party (ie, the offeree) accepts it. The resulting contract can contain certain **conditions** affecting the parties' **duty to perform**:

**condition precedent** – an uncertain future event that, if it occurs, creates a party's duty to perform

**condition subsequent** – an uncertain future event that, if it occurs, excuses a party's existing duty to perform

Here, the niece accepted the aunt's offer to sell the bookstore for \$125,000 *if* the landlord agreed to transfer the lease. This created a condition precedent that triggered the aunt's duty to perform once the landlord agreed to the transfer. The aunt then told the niece that she would ask her attorney to draft a written contract. But this did not create a condition because conditions cannot be added unilaterally after contract formation.

Additionally, the parties' agreement to **memorialize the contract** in a final writing *after* a binding contract had been formed does **not prevent enforcement** of their original informal agreement. This is true **even if** the contemplated **writing is never prepared**. Therefore, the niece is likely to prevail in her breach of contract action.

**(Choice A & B)** Contracts must be supported by **valuable consideration**—ie, a bargained-for exchange of promises or performance. Here, the aunt's promise to sell her business and the niece's promise to pay \$125,000 constituted the necessary bargained-for exchange—even if the aunt was partially motivated by affection. And since equivalence in value is not required, it does not matter that the business is worth \$200,000.

**(Choice C)** Contracts are often conditioned on events that are beyond the control of either party (eg, the landlord's assent to the transfer of the lease), and this fact has no effect on the outcome of this dispute.

### Educational objective:

Once a binding contract is formed, the fact that the parties further agree that the contract will be memorialized in a final writing does not prevent enforcement of the original agreement—even if the writing is never prepared.

### **References**

Restatement (Second) of Contracts § 27 (Am. Law Inst. 1981) (existence of contract where written memorial is contemplated).

Restatement (Second) of Contracts §§ 224–25 (Am. Law Inst. 1981) (defining and explaining contract conditions).

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