

A college student asked her friend to lend her \$2,000. The friend replied that he would do so only if the student's father, a wealthy businessman, would guarantee the loan. At the student's request, the businessman mailed a signed letter to the friend: "If you lend \$2,000 to my daughter, I will repay it if she doesn't." On September 15, the friend, having read the businessman's letter, lent \$2,000 to the student, which she agreed to repay in installments of \$200 plus accrued interest on the last day of each month beginning October 31.

The businessman died on September 16. Later that same day, unaware of the businessman's death, the friend mailed a letter to the businessman advising that he had made the \$2,000 loan to the student on September 15.

The student failed to repay any of the debt, and the entire \$2,000 is due. In an action by the friend against the businessman's estate for \$2,000 plus accrued interest, which of the following, if any, will serve as (an) effective defense(s) for the businessman's estate?

- A. The businessman died before the friend accepted his offer.
- B. There was no consideration to support the businessman's promise, because he did not receive any benefit.
- C. There was no consideration to support the businessman's promise, because he did not receive any benefit, and the businessman died before the friend notified him that his offer had been accepted.
- D. None of the above.

### Explanation:

A **suretyship** arises when one party (guarantor) promises a second party (creditor) that the guarantor will **pay the debt of a third party** (principal) if he/she defaults. To be enforceable, a suretyship must be **in writing** and supported by **consideration**. The consideration requirement is met if the guarantor is compensated for the promise. But even if the guarantor is uncompensated, the **consideration** requirement is still satisfied if: the **creditor conditioned the loan** to the principal on the **guarantor's promise to pay** or the **guarantor made the promise** to pay **before or at the same time** as the **creditor made the loan** to the principal.

In either case, the loan itself serves as valid consideration for the guarantor's promise—even if the guarantor is not notified when the loan is made. That is because the loan is a legal detriment to the creditor that was induced by the guarantor's promise.

Here, the friend would agree to loan the student \$2,000 only on the *condition* that the student's father, the businessman, guarantee it. The businessman was not compensated, but he promised to guarantee the loan in writing *before* the friend loaned \$2,000 to the student. Therefore, although the businessman died the following day before receiving notice of the loan, his promise *was* supported by consideration (ie, the loan to his daughter) **(Choices B & C)**.

Additionally, a guarantor's **offer** to form a suretyship can be **accepted by promising to give** the loan or **giving the loan**. Here, the businessman's offer to form a suretyship was accepted when the friend loaned the student \$2,000 on September 15—*before* the businessman died on September 16 **(Choice A)**. As a result, none of these will serve as effective defenses for the businessman's estate.

### Educational objective:

A promise to guarantee a debt is supported by consideration if (1) the guarantor is compensated, (2) the loan is conditioned on obtaining a guarantee, or (3) the promise is made before or at the same time as the loan.

### References

Restatement (Second) of Contracts § 88 (Am. Law Inst. 1981) (explaining that a promise to guarantee a loan is binding if the promisor should reasonably expect that promise to induce the loan).

Copyright © 1995 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.

## Consideration for suretyships

