A car dealer owed a bank $10,000, due on June 1. The dealer subsequently sold a car to a buyer at a price of $10,000, payable at $1,000 per month beginning on June 1. The dealer then telephoned the bank to ask whether the bank would accept payments of $1,000 per month for 10 months beginning June 1, without interest, in payment of the dealer's debt to the bank. The bank agreed to that arrangement, and the dealer then asked the buyer to make his car payments directly to the bank. When the buyer tendered the first payment to the bank, the bank refused the payment, asserting that it would accept payment only from the dealer. On June 2, the bank demanded that the dealer pay the debt in full immediately. The dealer refused to pay, and the bank sued the dealer to recover the $10,000.

In this suit, which of the following arguments best supports the bank's claim for immediate payment?

A.   The agreement to extend the time for payment was not in writing.

B.   The dealer could not delegate its duty to pay to the buyer.

C.   The dealer gave no consideration for the agreement to extend the time of payment.

D.   The dealer's conduct was an attempted novation that the bank could reject.

Explanation:

Consideration problems that prevent contract formation

Gift	No bargained-for exchange
Token consideration	No inducement to bargain if performance entirely devoid of value
Sham consideration	No legal detriment & no inducement to bargain if recited performance not intended to be completed
Preexisting duty / past consideration	No legal detriment if performance already owed or completed
Illusory promise	No legal detriment if apparent promise imposes no obligation

Contract modifications must generally be supported by **new consideration**—ie, each party must alter its duties in some way—**unless** the modification is **fair and equitable** in light of **unanticipated circumstances**. The promise to perform, or the performance of, a **preexisting duty is insufficient** for new consideration and will not discharge the parties' duties under the initial (ie, unmodified) contract.

Here, the car dealer owed the bank $10,000, due on June 1. When the dealer asked whether the bank would accept installment payments beginning on June 1, the bank agreed. But the reason for the dealer's request (ie, the car sale) is not a circumstance that renders consideration unnecessary since it was completely unrelated to the debt owed to the bank. And since the dealer had a preexisting duty to pay that debt, he gave no consideration for the agreement to extend the time of payment. Therefore, the bank has a claim for immediate payment.

(Choice A) A writing is not required to modify a contract unless the statute of frauds applies to the modified contract (not seen here).

(Choice B) Absent a contrary term, either party to a contract *can* delegate its duty of performance to a third party. However, this would not extinguish the party's liability for breach should the third party fail to perform.

(Choice D) A novation is a new contract that (1) substitutes a new party for one of the original parties, (2) discharges the original party's obligations, and (3) requires agreement by all the parties involved. But here, the bank never agreed to substitute the buyer or discharge the dealer's debt.

Educational objective:

Modification of an existing contract requires new consideration unless the modification is fair and equitable due to unanticipated circumstances. A promise to perform a preexisting duty does not constitute new consideration.

References

Restatement (Second) of Contracts § 73 (Am. Law Inst. 1981) (explaining that performance of a pre-existing legal duty is not consideration).

Restatement (Second) of Contracts § 89 (Am. Law Inst. 1981) (explaining that modification of a contract without new consideration is binding if it is fair and equitable in view of unanticipated circumstances).