

Fact Pattern:

Elizabeth and Steven have been going out for several years. Unbeknownst to Steven, Elizabeth was also going out with Hugh. During a routine gynecological exam, Elizabeth discovers that she is pregnant. However, she is unsure who the father is.

Steven, who suddenly decided he wanted to date Nicole knew nothing about Elizabeth's relationship with Hugh and also decided that he wanted to end his relationship with Elizabeth. Steven promised not to abandon Elizabeth. Steven had his lawyer draw up the following agreement:

"Steven agrees to pay all of Elizabeth's medical bills resulting from her pregnancy in consideration of the love and affection Elizabeth has given to Steven during the past several years.

"Elizabeth agrees that she will not make any claims against Steven based upon her pregnancy."

Both Steven and Elizabeth signed the agreement. Shortly after Elizabeth gives birth, Elizabeth presents Steven with her medical bills. Steven, who is now involved with Nicole refuses to pay the medical bills. Steven defended on the ground that his promise was not supported by consideration.

Questions:

1. Was sufficient consideration given by Elizabeth?

Example Answer:

1. Yes. **Consideration** is legal detriment for which each promisor has bargained. The promise must be in exchange for the promisee's current exchange of a promise or performance. The performance offered in the exchange does not have to benefit either party, but the exchange is important. At first blush there does not seem to be adequate consideration because Steven agreed to pay all of Elizabeth's medical bills based upon the love and affection Elizabeth provided to him during the past several years.

However, forbearance to sue may also be sufficient consideration, provided Elizabeth had a good faith belief that a valid claim existed. The fact pattern indicates that she was dating Hugh simultaneously, but she did not know who her baby's father was. Accordingly, it would be arguable that Elizabeth had a good faith belief that Steven was the father.