

**Fact Pattern:**

Alice has been an employee of the Brady family for over 30 years and is currently 55 years old. As the Brady family grew, Alice's role lessened as the Brady kids began to be able to take care of themselves. It took her a little longer to wash the clothes and sweep the floors. Nevertheless, Alice loves her job very much and planned to work for the Bradys until she dropped. Alice planned to work as long as possible because she did not want to retire unless she could maintain her current standard of living (e.g., bowling and going out to movies with her boyfriend Sam). The Bradys did not provide retirement benefits and Alice did not start saving for retirement until she was 45 years old.

Recently, Alice received a letter which read as follows:

Mike and I are pleased to inform you that in appreciation of your fine work and many contributions to raising Greg, Peter, Bobby, Marsha, Jan, and Cindie, we want you to retire at age 65, so that you can enjoy your golden years while you are still able. We will pay you \$45,000.00 per year for the remainder of your life, if you retire at age 65. If you accept this commitment, please let me know in writing.

The letter was signed /s/ Carol Brady.

Upon receipt of the letter, Alice immediately wrote a letter to Carol expressing her joy and excitement and committing to retire at age 65. The letter was signed /s/ Alice.

Five years later, when Alice was 60, she began to seriously think about her pending retirement. Alice met with her boyfriend Sam and together they decided that Alice and he could not live comfortably on the promised \$45,000.00 a year. To make up for their perceived shortfall, Alice decided to sell a piece of land that her Aunt had left her. The land was in a busy part of town, which recently enjoyed a price surge. Within a few weeks of putting her land for sale, she received a second letter which provided as follows:

Carol and I are pleased to inform you that in appreciation of your fine work and many contributions to raising Greg, Peter, Bobby, Marsha, Jan, and Cindie, we want you to retire at age 65, so that you can enjoy your golden years while you are still able. We will pay you \$60,000.00 per year for the remainder of your life, if you retire at age 65. If you accept this commitment, please let me know in writing.

The letter was signed /s/ Mike Brady.

Again, upon receipt of the letter, Alice immediately wrote a letter to Mike expressing her joy and excitement and committing to retire at age 65. She also

wrote that because of the increased promised retirement benefit, she no longer needed to put her land for sale. If Alice had sold the land, she would have netted \$400,000.00. If she invested the \$400,000.00 at 5%, her annual income would have been approximately \$20,000.00.

Alice retired at age 65. The Bradys began paying the \$60,000.00 a year. After a few years, Mike wrote Alice informing her that his business was diminishing and that Carol and he could only pay Alice \$45,000.00 a year, which Carol had originally promised. Alice objected to the change, but was informed that the Bradys were only contractually obligated to pay \$45,000.00 a year.

Alice is very saddened by the revelation. Her land value has diminished to \$200,000.00. Alice has come to you to determine whether she would prevail in a lawsuit to against the Bradys.

### **Questions:**

What legal theory(ies) would support her claim that she is owed \$60,000.00 a year? Fully discuss.

### **Example Answer:**

#### Applicable Law

A contract is a legally enforceable agreement. A contract can also be thought of as a promise or set of promises for breach of which the law gives a remedy or in performance of which the law, in some way, recognizes a duty. The first question you must ask in the analysis of any contracts questions is the applicable law. The answer will be either the Uniform Commercial Code (UCC) Article 2 or the common law (C/L). The UCC applies to contracts involving the sale of goods. § 2-102. The Common Law applies to all other contracts, for example service contracts. Here, the contract is for services, thus transaction will be controlled by the C/L.

#### Contract Formation

A valid contract requires: (1) mutual assent, i.e., offer and acceptance; (2) consideration or a substitute; and (3) no defenses to formation.

An offer is the manifestation of willingness to enter into a bargain, made in such a way as to justify the offeree's understanding that assent to the bargain is invited and will form a contract. Here, Carol Brady expressed a commitment to pay Alice upon retirement for a set term (remainder of her life) for a set fee (\$45,000.00).

Acceptance of an offer is the offeree's manifestation of assent to the offeror's terms in a manner invited or required by the offer. Alice accepted the offer in writing as required on the same terms.

Consideration is generally bargained-for legal detriment (i.e., give up something of value or limit liberty to act or refrain from acting in a certain way). Here, Carol agreed to pay Alice upon her retirement and Alice agreed to retire at age 65. Neither Carol nor Alice was required to do so.

Five years later, Mike Brady offered \$60,000.00 for the same action on Alice's part, i.e., retiring at age 65. Although Alice accepted the agreement, the offer is not valid if it is not supported by consideration. Compare contracts under the UCC, where contract modifications do not require consideration. Stated another way, Alice has a pre-existing duty to retire at age 65.

Without consideration, the contract modification is unenforceable unless there is a consideration substitute such as detrimental reliance or promissory estoppel. Promissory estoppel allows a court to enforce promises in the absence of consideration if the promisor should have reasonably expected to induce action or forbearance on the part of the promisee or a third party, and which does induce such action or forbearance if injustice can be avoided only by its enforcement. Here, to afford the lower retirement income, Alice was prepared and willing to sell land that her Aunt had given her. As indicated in her second acceptance letter, Alice decided not to sell her land in reliance upon the increased promise of retirement income.

The Bradys paid \$60,000.00 when Alice retired. Alice may argue that the Bradys waived the right to object to the absence of consideration by performing under the contract.

#### Statute of Frauds

The Statute of Frauds provides that certain contracts are enforceable only if they are evidenced by a written memorandum. A writing is required because the contracts are either valuable or because the parties could easily imagine a contract was formed, when none was intended. For example, contracts in consideration of marriage, contracts to pay the debt of another, real estate contracts, contracts not fully performable within one year, contracts for the sale of goods for \$500 or more.

Here, Alice, Carol, and Mike exchanged writings that comprise the promises between the parties. Therefore, the Statute of Frauds is satisfied.

#### Breach / Damages

The Bradys appear to have breached their contract with Alice. The primary objective of contract damages is to put the nonbreaching party in the same

position that she would have been in had the contract been performed. This is also known as expectancy damages or benefit of the bargain. Accordingly, Alice should be entitled to \$60,000.00 a year.

If the court finds the \$60,000.00 promise unenforceable, Alice would be entitled to consequential and incidental damages caused by relying upon the promise. Consequential damages are those damages or those losses which arise not from the immediate act of the party, but in consequence of such act. By accepting the \$60,000.00 promise, Alice decided not to sell her land, which she would have sold under the \$45,000.00 promise. Alice would have sold her land for \$400,000.00, which after investing would have yielded \$20,000.00, thus Alice has suffered consequential damages of \$20,000.00.