

## **Problem 1**

The Palumbo Recreation Center is a valued neighborhood institution partly funded by the city and partly funded by activity fees and private donations. Community members can do things like rent out the basketball court for an adult basketball league, or enroll their kids in the afterschool program, or join the youth flag football team.

Kendra Smith is a heavy user of the Rec Center, and her children play in the Palumbo rec basketball league. The center has had a problem in recent years because other teams will not play at the Palumbo gym due to the old and unpredictable scoreboard. It does not keep proper time and sometimes erases the score, causing much confusion and mayhem.

At registration for 2019 Youth Basketball, Kendra is dismayed to see the old board is still up. She talks to the director, who tells her that a new scoreboard will cost \$10,000, which they do not have the money for. Kendra cannot cover that entire amount, either, but says that when the Rec Center has half of the funds needed, she will write a check for the other half.

She writes out the following:

I, Kendra Smith, promise to pay \$5,000 to the Palumbo Recreation Center when they can show proof of \$5,000 in a New Scoreboard earmarked account. Palumbo Rec promises to install a new scoreboard on receipt of the funds.

Kendra and the Rec Center director both sign at the bottom.

Palumbo Rec Center raises \$5,000 for a scoreboard and the director shows the bank account statement to Kendra. She apologizes and says she will not be paying the \$5,000. Her kids are now into musical theater and she has lost interest in the scoreboard.

You are an associate at a firm hired by Palumbo. The partner has asked you to draft a memo briefing her on the breach of contract claim. Write a brief (300 words maximum) memo explaining what they should sue for and the arguments for and against recovery. If there are additional facts that would be helpful to your analysis, indicate what those facts are.

## Problem 1 Model Answer

In this case, we will seek expectation damages, namely \$5,000, from Kendra Smith. That is the amount of money that puts us in the position we would have been had this contract been fulfilled. Smith is going to argue that her promise is unenforceable as a contract because there is no consideration. She will try to convince a court that she was induced to give the money because she loves Palumbo and wanted to make a meaningful gift to a program that has benefitted her children. She will argue that she was not getting anything in return (the scoreboard would not in fact be in her possession), so it was more like a Dougherty vs. Salt gift.

We have a good argument to make that there is indeed consideration on her promise to pay. If her children currently play on the Palumbo basketball team, we can characterize her deal as follows: the Palumbo rec center was induced promise to buy a scoreboard by her promise to give them \$5,000, and she was induced promise them money by their promise to install a new scoreboard. Notice here that there is a distinction between the present facts and those of Dougherty vs. Salt—Smith's promise presumably does reflect her longstanding affection for Palumbo, but it is also forward-looking. Unlike Aunt Tillie, Smith expects Palumbo to do something *in the future* in return for her money.

This is a difficult case, because if you step back and look at the basic structure of the transaction, this looks like a gift: she is giving money and a community organization is getting a scoreboard. I would suggest we need more information about what induced her promise. It would be helpful to know, for example, if Palumbo was already planning to fundraise for a new scoreboard and this was her way of helping speed up the process; then it looks more like a gift. If she was using her contribution to try to persuade her rec center to change their priorities, we have a stronger case that Palumbo is entitled to recovery under a standard bargain theory of consideration.