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## Contracts - Consideration - Accord and Satisfaction of a Liquidated Debt

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767, the court sustained a barber's code on the ground that it was a trade affected with a public interest. Yet in the same opinion the court said, "The main objective, somewhat disguised, is the welfare of the trade rendering the services. The general public interest if any, is indirect and incidental." Similar codes were sustained in *Herrin v. Arnold*, 183 Okla. 392, 82 P. (2d) 977 (1938); *Board of Barber Examiners v. Parker*, 190 La. 214, 182 So. 485 (1938). Such codes were declared unconstitutional in: *City of Mobile v. Rouse*, 27 Ala. App. 344, 173 So. 254 (1937); *Ex parte Kansas*, 22 Cal. App. (2d) 161, 70 P. (2d) 962 (1937); *State v. Ives*, 123 Fla. 401, 167 So. 394 (1936).

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**Contracts—Consideration—Accord and Satisfaction of a Liquidated Debt.—**

An indorsee brought action on a note. The defendant maker pleaded discharge by virtue of a three-party agreement under which the plaintiff had acquired the note from the former holder. This agreement had been fully executed. Under it the former holder received from the plaintiff an automobile worth \$250. The plaintiff received from the defendant livestock and produce worth \$250, and the defendant paid the license fee on the automobile. At the time of the agreement the defendant was hopelessly insolvent. The trial court directed a verdict for the plaintiff on the ground that "a mere promise of the debtor to pay a sum less than the debt in full satisfaction of it is without consideration and binds neither party." *Rye v. Phillips* (Minn. 1938) 282 N.W. 459.

The Minnesota Supreme Court characterized the doctrine invoked by the plaintiff as a relic "of antique law which should have been discarded long ago" and as evidence of the capacity of lawyers "to make the requirement of consideration an overworked shibboleth rather than a logical and just standard of actionability." There is no reason, said the court, why a person should be prevented from making an executed gift of incorporeal as well as corporeal property. But the decision was ultimately based on the fact that "the new tripartite contract pleaded had plenty of consideration."

The common law doctrine, that a past due, liquidated debt can not be discharged by payment of a lesser sum, is one that has provoked much opposition. At least ten states have changed it by statute: Alabama, California, South Dakota, Georgia, Maine, North Carolina, North Dakota, Oregon, Tennessee, Virginia. WILLISTON, *CONTRACTS* (2d ed. 1936) § 120, n. 9.

Iowa has long accepted part payment from an insolvent debtor in full satisfaction. *Engbreitson v. Seiverling*, 122 Iowa 522, 98 N.W. 319 (1904). In a Kansas case a defendant was indebted to plaintiff bank for the sum of \$1370 covered by two notes, one for \$870 and the other for \$500. Defendant, being unable to feed the stock mortgaged to secure the first note, entered into an agreement whereby payee bank agreed to accept the proceeds of the sale of the mortgaged livestock in full settlement providing that defendant did not go into bankruptcy. The sale netted \$515, for which payee returned the note for \$870, but brought suit on the other. It was held that the debtor's agreement not to enter bankruptcy was sufficient consideration to support creditor's promise to accept the proceeds of the sale in full payment of both notes. The court stated that any possible loss or inconvenience to the one or benefit to the other was enough to sustain the agreement extinguishing the debt by a smaller sum. *Hall v. Swindell*, 147 Kan. 382, 76 P. (2d) 769 (1938).

Payment by a third person of less than the full amount of the liquidated debt is generally held sufficient to extinguish the debt. *Chamberlain v. Barrows*, 282 Mass. 295, 184 N.E. 725 (1933); *Jessewich v. Abbene*, 154 Misc. 768, 277 N.Y. Supp. 599 (1935).

As to payment of an amount admittedly due in full satisfaction of a disputed claim, there is a conflict of authority. Iowa has held such a payment sufficient in *Marshall v. Bullard*, 114 Iowa 462, 87 N.W. 427 (1901).

Payment of a lesser sum before the debt falls due is held sufficient consideration for an agreement to extinguish the debt if the agreement is in writing. To illustrate: Defendant had conveyed to plaintiff by warranty deed a tract of land under an agreement by which plaintiff was to pay him \$600 during every year of defendant's life. In a later agreement between the same parties, \$500 was accepted in full settlement, nothing being owed at the time. The court implied enough from the letters passing between the two, to constitute an "express acceptance of the creditor in writing." (Comp. Laws 1913, Par. 5828) *Schieber v. Schieber*, 64 N.D. 720, 256 N.W. 159 (1934); *Princeton Coal Co. v. Dorth*, 191 Ind. 615, 133 N.E. 386 (1921)

The New Jersey Supreme Court could find no reason to uphold an agreement to accept payments smaller than the amount due under the terms of a lease, but conceded that the requirement of consideration was a nominal one which could be complied with by any consideration, no matter how insignificant. The holding is typical of those jurisdictions which have not expressly abandoned the old rule. *Levine v. Blumenthal*, 117 N.J.L. 23, 186 Atl. 457 (1936). All seem willing to grasp at any legal straw by means of which they can permit payment of the lesser sum.

Wisconsin follows the old rule. Yet, from the beginning the courts have shown a desire to avoid it if possible. *Palmer v. Yeager*, 20 Wis. 91 (1865) set forth the exception: any new, distinct benefit, however slight, payment of a lesser amount before maturity, delivery of property or labor to a lesser value.

Even prior to this decision the Wisconsin court had permitted a judgment debtor to satisfy the judgment for one-half of its full amount. *Reid v. Hibbard*, 6 Wis. 175 (1858). This case had seemed to promise a liberal interpretation for Wisconsin. *Merriam v. Field*, 29 Wis. 592 (1872) likewise set forth a strong case for the opponents of the consideration requirement. An agreement, written and executed, to accept 750,000 feet of lumber in full payment for three previous agreements for the delivery of some 1,000,000 feet was upheld as a valid accord and satisfaction. It is difficult to understand what distinction can be made between an obligation so definitely ascertained and so easily translated into terms of dollars and cents and one for the payment of a sum of money. The analogy found in the lumber case is even stronger as we note that the debt was owing and paid in the same medium although in a smaller amount. Yet the attempted settlement of a like obligation to pay a definite sum of money by payment of a lesser sum has been held ineffective. *M. Schulz Co. v. Gether*, 183 Wis. 491, 198 N.W. 433 (1924).

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