

Preexisting duty

Law



The issue at hand is a consideration for modifying the terms of reference of the contract between Jones Construction and Duane Reade.

In general, there are four requirements of a valid contract: agreement, consideration, contractual capacity and legality. Consideration is usually defined as the value given in return for a promise or for a performance. This can be further broken down into two parts, namely, the legally sufficient value in exchange for the promise and the bargained-for exchange. Under most circumstances, a promise to do what one already has a legal duty to do does not constitute legally sufficient consideration. This preexisting legal duty may be imposed by law or may arise out of a previous contract.

Likewise, if a party is already bound by contract to perform a certain duty, that duty cannot serve as consideration for a second contract. However, if, during performance of a contract, extraordinary difficulties arise that were totally unforeseen at the time the contract was formed, a court may allow an exception to the rule.

In this case, Jones and DR entered the initial contract which Jones need to build a DR Drug Store for DR. The contract is valid since it had met the four requirements. However, in the second contract, which is a modification of the initial contract, the legally sufficient consideration was missing. What Jones promise to do in the second contract was to build the DR Drug Store, which they already have legal duty to do in the initial contract. Due to the preexisting duty rule, the second contract was not enforceable. Moreover, the accident that happened to Jones was not an unforeseen difficulty.

Although the reason for the collapse of the trusses was not due to faults or deficiencies in the building plan prepared by Jones, as a construction company, they should have anticipated for unforeseen events or included <https://assignbuster.com/preexisting-duty/>

clauses in their first contract such as the liquidated damages clause. Thus, Jones cannot argue about this point.

To sum up, Jones cannot recover in this case because of the preexisting duty rule. DR does not need to pay the additional money to Jones which was mentioned in the second contract.