

Outline Notes from Contract Class 9/5/13

We are trying to figure out how to distinguish between:

**GRATUITOUS PROMISE**

(not legally binding)

(a gratuitous promise box or file)

**CONTRACT**

(legally binding)

(a contract box or file)

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↗

No

Yes

**CONSIDERATION**

(Bargained-for exchange)

**Dyer v National By-Products** holds that the fact that a claim is invalid does not foreclose forbearance being consideration, BUT the claimant must be in good faith and invalidity of the claim is relevant to good faith, so there must generally be reasonable grounds for belief for court to be satisfied belief honestly entertained (cf Corbin) (Note that this issue cannot be resolved at the summary judgment stage but would be resolved at trial which might encourage the defendant to settle.)

What would constitute reasonable grounds for belief?

Comparing this case with **Boehm v Fliege** (note 2 p. 46) we notice that claims may be invalid as a matter of law (Dyer) or because the facts do not support the claim (Boehm). We discussed whether this might make Boehm a better case for reasonable grounds for belief.

Settlements (and plea bargains) are pervasive in the US legal system. In Dyer the court identifies a policy in favor of upholding settlements.

We also discussed why I do not think it is a good idea for you to rely on online (or published) case briefs:

1. They may be unreliable
2. Even if they are accurate, by relying on them you do not learn how to read cases yourself - you may learn the holding in the particular case but you won't learn how to identify the holding in a different case; reading the decision itself allows you to develop an appreciation for how courts construct the judgments (if a case brief is what matters why don't judges just write case briefs?); how do you understand a new decision if you haven't developed the habit of reading judgments and have relied on potted summaries?
3. The aim here is not to memorize the rules in the cases you read ( that might make some sense if the cases were all there to give you the rules you need to know) sometimes cases are in the books to provoke thinking rather than to learn rules
4. If the exam at the end of the semester were a multiple choice exam relying on commercial or online case briefs might help, but you will be writing essays in this exam and it makes sense for you to have a more complex understanding of the material of the sort we are developing in class.