

You will need these materials for part of the session on assessment scheduled for Friday, June 3 at 3 pm Eastern. It may help to have them conveniently accessible electronically or printed out.

## Class 8

### Working Group Problem

#### Analyzing contract formation: *test yourself*

A sou-sou/susu (also known by many other names) is a rotating savings club commonly used in African, Caribbean, in some U.S. immigrant communities. The concept is simple: a group of people commit to putting an equal sum of money into a pool on a regular basis, and each collects the full amount paid in by all members when it is their turn. If ten people joined a sou-sou and each contributed \$100 per week, at the end of every week one club member would receive a \$1,000 lump sum. Eight people in the savings club would mean an eight-week cycle, with the sou-sou ending or beginning a new cycle after that. Many members use the payouts from these savings clubs to finance new businesses, make down payments, or even pay for college tuition.

An agreed-upon treasurer manages the pool and creates the payout schedule. Interest is not collected or paid on club assets, and members are not required to complete credit checks or sign any official paperwork. These groups operate based on established trust among their community members, and therefore often comprise close-knit groups of extended family, co-workers, or fellow churchgoers.

Jade is deeply knowledgeable about antique teacup sets. She wanted to start an online antique ceramics business and needs funds to purchase inventory. A cousin told her about a sou-sou that was beginning in June. She joined the sou-sou with ten other people. The members decided to contribute \$1,000 per month each, and selected Winston as treasurer.

Four months into the eleven-month cycle, club member A.J. failed to make his monthly payment. This put Winston in a difficult position because tradition held him responsible for covering A.J.'s missing contribution. Winston was unable to come up with the additional money, which means the pool is now short \$1,000, just when Jade is scheduled to receive this month's payout.

1. Is there consideration in this agreement? Explain why or why not.
2. Is there mutual assent sufficient to form a legally enforceable contract?
  - What is Jade's strongest argument in favor of contract formation?
  - What is A.J.'s strongest argument against the formation of a contract?
3. Is Winston legally obliged to pay A.J.'s portion?
  - What facts support an argument that he is?
  - What facts support an argument that he is not?

## Restatement (Second) of Contracts

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### § 1. Contract Defined

A contract is a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty.

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**Comment:** [excerpted]

*a. Other meanings.* The word “contract” is often used with meanings different from that given here. It is sometimes used as a synonym for “agreement” or “bargain.” It may refer to legally ineffective agreements, or to wholly executed transactions such as conveyances; it may refer indifferently to the acts of the parties, to a document which evidences those acts, or to the resulting legal relations....

*b. Act and resulting legal relations.* As the term is used in the Restatement of this Subject, “contract,” like “promise,” denotes the act or acts of promising. But, unlike the term “promise,” “contract” applies only to those acts which have legal effect as stated in the definition given. Thus the word “contract” is commonly and quite properly also used to refer to the resulting legal obligation, or to the entire resulting complex of legal relations....

### § 17. Requirement of A Bargain

(1) Except as stated in Subsection (2), the formation of a contract requires a bargain in which there is a manifestation of mutual assent to the exchange and a consideration.

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