Case Briefs

**Kirksey v. Kirksey**

Supreme Court of Alabama

*8 Ala. 131* (1845)

**Facts:**

The plaintiff was the wife of defendant’s brother, but had for some time been a widow, and had several children. In 1840, the plaintiff resided on public land, under a contract of lease, she had held over, and was comfortably settled, and would have attempted to secure the land she lived on. The defendant resided in Talladega county, some sixty, or seventy miles off. On the 10th October, 1840, he wrote to her the following letter:

“Dear sister Antillico—Much to my mortification, I heard, that brother Henry was dead, and one of his children. I know that your situation is one of grief, and difficulty. You had a bad chance before, but a great deal worse now. I should like to come and see you, but cannot with convenience at present. * * * I do not know whether you have a preference on the place you live on, or not. If you had, I would advise you to obtain your preference, and sell the land and quit the country, as I understand it is very unhealthy, and I know society is very bad. If you will come down and see me, I will let you have a place to raise your family, and I have more open land than I can tend; and on the account of your situation, and that of your family, I feel like I want you and the children to do well.”

Within a month or two after the receipt of this letter, the plaintiff abandoned her possession, without disposing of it, and removed with her family, to the residence of the defendant, who put her in comfortable houses, and gave her land to cultivate for two years, at the end of which time he notified her to remove, and put her in a house, not comfortable, in the woods, which he afterwards required her to leave.

**Hamer v. Sidway**

*79 Sickels 538*

Court of Appeals of New York

**Facts:**

One William E. Story, Sr. promised his nephew William E. Story, 2nd that he would pay him $5000 if he refrain from drinking, using tobacco, swearing, and playing cards or billiards for money until he became 21 years of age. The nephew agreed and fully performed the
conditions. Hamer (P) acquired it through assignment from William E. Story, 2nd and presented a claim of $5000 to the executor (D) of William E. Story, Sr. The claim being rejected by the executor on the grounds that there was no binding contract due to the lack of consideration, this action was brought.

**Issue:**

Is forbearance of rights a valid consideration?

**Rule of Law:**

A valuable consideration in the sense of the law may consist either in some right, interest, profit, or benefit accruing to the one party, or some forbearance, detriment, loss, or responsibility given, suffered, or undertaken by the other.

**Analysis:**

A waiver of any legal right at the request of another party is a sufficient consideration for a promise. The nephew had a legal right to use tobacco and drink alcohol. He gave up this right for a period of years to comply with the promise hence the requirement of consideration was met. Therefore the contract was enforceable.