

Chambersburg. In order to determine sufficiency of interest warranting local scheduling, please indicate which programs you and/or members of your firm would attend if scheduled in Chambersburg. Your reply must be received by Friday, March 25, 1983.

Program	Tuition	Length
Municipal Law	\$ 35.00	Full day
School Law	55.00	Full day
Unemployment Compensation	45.00	Half day
Secured Transactions under Revised UCC, Article 9	65.00	Full day
Filling Out Fiduciary Income Tax Return Subchapter S	N/A	2-3 hrs.
Bankruptcy of Small/Medium Business	50.00	Half day
Drafting Marital Settlement Agreements	65.00	Full day
Commercial Leases	55.00	Half day
Divorce Update: Equitable Distribution and Procedural Rules Governing Divorce Actions	55.00	Half day
Social Security Disability Claims	55.00	Half day

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**BAR NEWS ITEM AND NOTICE**

Most of you are probably already aware that our President Judge has been hospitalized for surgery. We are certainly all hopeful that he will soon be able to return to the Bench and display the vigor characteristic of him in the past. While it is probably best that we do not deluge him with visits at this time, I am sure he will appreciate our expressions of good wishes. The address is: Judge George C. Eppinger, Washington Adventist Hospital, 7600 Carroll Avenue, Takoma, MD 20912.

As a result of this development, of course, our remaining Judge, Judge Keller, is going to have a temporary increase in workload. Thus, the Court Administrator has announced that, until further notice, motions and petitions will be accepted only in Open Court, at 9:30 A.M. and 1:30 P.M., or after review by Judge Keller's Law Clerk, Carol Van Horn. It should also be noted, the Court Administrator's office should be checked for Open Court dates.

address or employment, including the name and address of a new employer.

**BOROUGH OF MONT ALTO V. UNIVERSITY HILL IMPROVEMENT COMPANY, INC., C.P., Franklin County Branch, Volume 7, Page 302**

*Equity - Supply of Water - Order to Replace Line - PUC Jurisdiction - Consideration*

1. The reasonableness, adequacy and sufficiency of the service provided by a public utility are all matters within the jurisdiction of the Public Utility Commission.
2. The PUC is not empowered to decide private contractual disputes between a citizen and a utility.
3. Where a supplier sues to require replacement of a water line under the terms of a contract, a Court of Common Pleas is empowered to act.
4. A contract has sufficient consideration where there is a binding promise to supply water and the supplier would suffer financially if defendant breached his promise.

*E. Franklin Martin, Esquire*

*Timothy W. Misner, Esquire*

**OPINION AND ORDER**

EPPINGER, P.J., December 10, 1982:

The Borough of Mont Alto entered into a contract in August of 1971, with John S. Yohe and Kathleen Corbett, developers of a tract located outside the Borough limits for the sale of water by the Borough to be metered at the Borough limits. From that point, defendants were to accept the water and distribute it to their customers through a line provided for the development. Yohe and Corbett were to be solely responsible for maintenance, repair and replacement of the line, as these became necessary due to deterioration. The Borough had the right under the contract to require replacement of the line when it determined replacement to be necessary.

On June 4, 1973, Yohe and Corbett conveyed their interests in the development to University Hill Improvement Company, Inc., defendant. On August 13, 1981, the Borough notified University Hill that the line should be replaced immediately, due to excessive deterioration. University Hill has not replaced the line. On March 2, 1982, the Borough filed a complaint in equity, requesting the Court to order the defendants to replace the water line, pursuant to the terms and conditions of the contract.

University Hill filed a demurrer to the complaint, alleging that jurisdiction of this matter should rest with the Public Utility Commission. The reasonableness, adequacy and sufficiency of the service provided by a public utility are all matters within the jurisdiction of the Public Utility Commission. *DiSanto v. Dauphin Consolidated Water Supply Company*, Pa. Super , 436 A 2d 197 (1981); *Elkins v. Bell Telephone Company of Pennsylvania*, 491 Pa. 123, 420 A 2d 371 (1980); *Allport Water Authority v. Winburne Water Company*, 258 Pa. Super 555, 393 A 2d 673 (1978). If a case involves an allegation that the utility has failed to provide a customer with reasonably continuous and adequate service, the matter may be referred to the Public Utility Commission, if it involves a complex issue, with which a judge or jury would not or could not be familiar. *Elkins v. Bell Telephone Company of Pennsylvania*, supra.

"It is equally well-settled, however, that the Public Utility Commission is not jurisdictionally empowered to decide private contractual disputes between a citizen and a utility." *DiSanto*, supra at p. 199. See also *Allport Water Authority v. Winburne Water Company*, supra; *Byer v. Peoples Natural Gas Company*, 251 Pa. Super 75, 380 A 2d 383 (1977); *Leveto v. National Fuel Gas Distribution Corporation*, 243 Pa. Super. 510, 366 A 2d 270 (1976); *Reading & Southwestern Railway Company v. Pennsylvania PUC*, 168 Pa. Super 61, 77 A 2d 102 (1950).

In deciding who should have initial jurisdiction, the Court in *DiSanto*, supra at 200 approached the problem in the following manner:

The precise question to be considered in this appeal is whether the facts of this case involved issues, be they contractual or not, concerning the reasonableness, adequacy and sufficiency of public utility service in which case the matter is within the initial jurisdiction of the Pennsylvania Public Utility Commission, or whether the facts of this case constitute only a private contractual dispute between a utility and a citizen concerning non-service related matters over which a court of general jurisdiction is empowered to act.

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## LEGAL NOTICES, cont.

ty, deceased.

**STRINE** First and final account, statement of proposed distribution and notice to the creditors of Ruth M. Strine, executrix and the Valley Bank and Trust Company, executor of the Last Will and Testament of Earl P. Strine late of Guilford Township, Franklin County, Pennsylvania, deceased.

**WALKER** First and final account, statement of proposed distribution and notice to the creditors of the Valley Bank & Trust Company executor in the estate of Edna S. Walker late of the Borough of Chambersburg, Franklin County, Pennsylvania, deceased.

Glenn E. Shadle  
Clerk of Orphans' Court of  
Franklin County, Pa.

3-11, 3-18, 3-25, 4-1

This matter is a private contractual dispute between a utility and a citizen, (albeit a corporation) over which a Court of Common Pleas is empowered to act. No complaint was filed by the customer concerning the adequacy of service provided by the utility against the customer.

University Hill has filed another demurrer to the Borough's complaint. Alleging that on the fact of the contract there is a lack of consideration between the parties. University Hill states that neither the contract attached to the complaint, (Exhibit A), nor the complaint itself require the plaintiff to supply water to the defendant.

Paragraph 13 of the contract reserved to the Borough a qualified right to stop supplying water. It could only exercise the right if the water supply became inadequate, if the customer was wasting too much water, or if the customer failed to pay for its water. Thus the right to stop supplying water is not absolute and is reasonable under the circumstances.

Under this contract, defendant is not required to buy any water from the plaintiff. Defendant's failure to buy water would cause the plaintiff some detriment, because at its expense it has installed water meters for the customers in defendant's area, and it has the expectation of receiving payments for supplying water.

Thus these actions based upon its expectations, the past benefit conferred on the defendant, and the possibility of future detriment, all provide a basis for finding sufficient consideration on the part of the plaintiff.

We find that the plaintiff has made a binding a reasonable promise to supply water to the defendant. It is also possible that plaintiff would suffer financial detriment, if the defendant decided to breach its promise to buy water from the plaintiff. Either one of these is sufficient consideration under a contract. "Consideration is defined as a benefit to the party promising, or a loss or detriment to the party to whom the promise is made." *General Mills, Inc. v. Snavely*, 203 Pa. Super 162, 167, 199 A 2d 540 (1964); *Widmer v. Widmer*, 176 Pa. Super 264, 266, 106 A 2d 875 (1954); *Stelmack v. Glen Alden Coal Co.*, 339 Pa. 410, 414, 14 A 2d 127 (1940).

University Hill's demurrers will be overruled.

## ORDER OF COURT

December 16, 1982, defendant's preliminary objections are overruled.

HOCKENBERRY V. HOCKENBERRY, C.P. Franklin County  
Branch, F.R. 1980 - 359 - D

*Divorce - Equitable Distribution - Bifurcation Proceeding*

1. A Court may, in its discretion, bifurcate the divorce decree from collateral issues and grant the divorce while reserving jurisdiction on all remaining matters.

2. The Court may not make an order for equitable distribution of marital property prior to the entry of a divorce decree.

*Barbara B. Townsend, Esq.*, Counsel for Plaintiff

*Robert C. Schollaert, Esq.*, Counsel for Defendant

## OPINION AND ORDER

KELLER, J., December 17, 1982:

This is a divorce action filed by the plaintiff on December 18, 1980, in which she seeks a divorce on the grounds of an irretrievable breakdown of the marriage, 23 P.S. 201 (c) and (d). The grounds alleged permit plaintiff to proceed with a mutual consent divorce, or alternatively, to file an affidavit alleging a three-year separation of the parties to obtain a divorce without defendant's consent.

An amended complaint was filed on August 21, 1981, and served upon the defendant on September 1, 1981. The amended complaint alleged an additional count requesting the Court to equitably divide the parties' marital property. On March 15, 1982, plaintiff moved for the appointment of a Master to take the testimony and file a report and recommendation on the issue of equitable distribution only. Defendant filed his Motion Raising a

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