

**Jurisdiction:** All State & Federal

## Question

1. If at one time in history people used tulips or sea shells for money, it appears the money or currency is nothing more than an agreed upon contract between the parties, even if the parties are two people, or an entire society. Since nothing on earth has any intrinsic value except man, everything else has a use. That would mean that man has the right to declare the “thing” that is being used as money or currency and has the right to declare its value. That would mean it is a contract under the principles of contracts?

The user's query suggests that money or currency is essentially an agreed-upon contract between parties, and questions whether this makes it a contract under the principles of contracts. The search results provide relevant insights into the nature of money and its legal implications.

1. Historically, various items such as beaver skins, shells, and tobacco have been used as money, but these were not legal tender and had limited circulation. Precious metals like gold and silver, when stamped with a designated value, have universally served as money and the medium of exchange ([Legal Tender Cases, 79 U.S. 457 \(1870\)](#)) [1].
2. Money is considered the universal standard of value and measure of exchange. The power to coin and regulate money is an essential attribute of national sovereignty. While various commodities have been used as money, gold and silver have been preferred due to their desirable qualities for this purpose ([Legal Tender Cases, 79 U.S. 457 \(1870\)](#)) [1].
3. Parties are not legally obligated to use the legal standards of value in their contracts. They can base their contracts on any medium of exchange that possesses measurable value, such as foreign money or other commodities ([Neely v. McFadden, 2 S.C. 169 \(1870\)](#)) [2].
4. The Constitution and Acts of Congress have established certain forms of money, such as coins of gold and silver, as legal tender. Private contracts cannot override this sovereign power. While parties can agree to use other forms of value in their contracts, these agreements are not enforceable as legal tender unless recognized by law ([Shollenberger v. Brinton, 3 Am. Law Reg. \(N.S.\) 591 \(1866\)](#)) [3].
5. Money, in its broad sense, is a medium of exchange and a measure of value. It is a device with value between those who use it, and its value can fluctuate like other commodities ([DeBiase v. Commercial Union Ins. Co. of New York, 53 Misc.2d 45 \(1967\)](#)) [4].
6. The ordinary meaning of money includes any generally accepted medium of exchange, such as gold, coins, or notes, used to trade goods and services ([United States v. Harmon, 474 F.Supp.3d 76 \(2020\)](#)) [5].

Based on the search results, while money can be seen as an agreed-upon medium of exchange between parties, its status as legal tender and its regulation are determined by national sovereignty and law. Private agreements on what constitutes money are valid as long as they do not conflict with established legal standards. Therefore, while money can be part of a contract, its legal enforceability as currency is subject to the laws governing legal tender.

The above response is AI-generated and may contain errors. It should be verified for accuracy.

## Cases, statutes, and regulations

### 1. Legal Tender Cases

Supreme Court of the United States • December 01, 1870 • 79 U.S. 457 • 1870 WL 12742

"...It is true that, at certain periods in the history of some of the States, the skins of the beaver passing by tale; strings of shells, known as wampum, passing by measure; and packages of tobacco of defined weights were, in the absence of the precious metals, used as money, and were made the medium of exchanges. But none of these was a 'legal tender' as money, or ever had anything but a local and limited circulation, or ever was used as a substitute for money, after money was introduced. While in all ages of the world, in all countries, the precious metals, when stamped with a designated value, have been known as moneys; and (with representatives of such moneys) have always been the great and universal medium of exchanges...."

"...All writers upon political economy agree that money is the universal standard of value, and the measure of exchange, foreign and domestic, and that the power to coin and regulate the value of money is an essential attribute of national sovereignty. Goods and chattels were directly bartered, one for another, when the division of labor was first introduced, but gold and silver were adopted to serve the purpose of exchange by the tacit concurrence of all nations at a very early period in the history of commercial transactions. Commodities of various kinds were used as money at different periods in different countries, but experience soon showed the commercial nations that gold and silver embodied the qualities desirable in money in a much greater degree than any other known commodity or substance. Daily experience shows the truth of that proposition, and supersedes the necessity of any remarks to enforce it, as all admit that a commodity to serve as a standard of value and a medium of exchange must be easily divisible into small portions; that it must admit of being kept for an indefinite period without deteriorating; that it must possess great value in small bulk, and be capable of being easily transported from place to place; that a given denomination of money should always be equal in weight and quality, or fineness to other pieces of money of the same denomination, and that its value should be the same or as little subject to variation as possible. Such qualities, all agree, are united in a much greater degree in gold and silver than in any other known commodity, which was as well known to the members of the Convention who framed the Constitution as to any body of men since assembled, and intrusted to any extent with the public affairs. They not only knew that the money of the commercial world was gold and silver, but they also knew, from bitter experience, that paper promises, whether issued by the States or the United States, were utterly worthless as a standard of value for any practical purpose...."

### 2. Neely v. McFadden

Supreme Court of South Carolina. • November 26, 1870 • 2 S.C. 169 • 1870 WL 3508

"...One or two propositions may assist this enquiry. In the first place, parties are under no legal obligation to employ the legal standards of value at the time and place of contract. They may contract with reference to foreign money, or a medium of exchange not recognized as money by any system of laws. They may base their contracts on pounds sterling, or Mexican dollars, or anything else possessing value capable of being measured, that is to say, of being compared with other objects of known value. Although the policy of laws of this class is to induce uniformity in contracts, they have never attempted to compel it. In the next place, it is not an invariable rule that parties are to be held to be familiar with the technical force and effect of legal terms and expressions...."

### 3. Shollenberger v. Brinton

Supreme Court of Pennsylvania. • January 01, 1866 • 3 Am. Law Reg. (N.S.) 591 • 52 Pa. 9

"...But the analogy is delusive in this, that neither oats, nor coal, nor iron, nor any other commodity of commerce, not even gold and silver in bullion, has ever been declared a legal tender in payment of debts. The Constitution made the "coins" of gold and silver a legal tender, and these Acts of Congress have made treasury notes a legal tender, establishing thus a final and irreversible standard of all values. If Congress had said that oats at thirty pounds to the bushel should be a legal tender in payment of all debts, what would your contract for thirty-two pounds avail against the supreme power? Such a contract would be included in "all debts," and so would be solvable by the legal standard of values. Weights and measures are regulated by statutes, and may be adjusted between parties by private contracts, but currency and legal tenders belong only to the supreme power in the State to regulate, and cannot be controlled by private contract. A promise to pay in a better currency than the legal standard is not an unlawful contract, and a moral obligation may result from it, but the law accounts this obligation an imperfect one because it cannot be enforced at law. It is enforceable only in foro conscientiae. When parties come into courts of law with their contracts, they must accept the rule the law-making power has prescribed. The legal obligation of money contracts can never rise higher than the legal standard of money. Debtors will pay their debts in the cheapest currency they can, and when Congress declares that all private debts shall be payable in a depreciated paper currency, and the courts hold such legislation constitutional, it signifies nothing that a particular debtor stipulated to pay in specie; his creditor must take that which the law has authorized the debtor to tender. Had the plaintiff below contracted for gold or silver as articles of commerce, he would have been entitled to recover their value, the same as if any other commodity had been contracted for; but he contracted for specie which is currency and a legal tender, and the legislative power has provided an equivalent in a certain form of paper, and has authorized every debtor to pay in that, and in this exercise of legislative power the contract rights of the creditor were sacrificed...."

"...To-day, my house has a certain market value in the different kinds of lawful money of the country, to wit--one hundred dollars in gold, one hundred and five in silver, or two hundred in treasury notes. The laws of trade, which have created this difference between the different kinds of money, are beyond my control. If to suit my purposes I sell for gold, and if notes to an equal number of dollars will pay my demand for gold, it is clear that not only my contract is worthless, but I have suffered an actual loss of one-half of my property...."

### 4. DeBiase v. Commercial Union Ins. Co. of New York

Civil Court, City of New York, New York County, Trial Term, Part 43. • March 08, 1967 • 53 Misc.2d 45 • 278 N.Y.S.2d 145

"...Nonetheless, if some broad use of the word 'money' is to be acknowledged, it is as any commodity having a means of exchange, as sheep, wampum, copper rings, quills of salt, shovel blades, tobacco or gold, etc. By

itself then, money is but a device having value between those who use it. Money is, in some countries, a mere commodity bought and sold in the market, and its value fluctuates in the market like that of other commodities. Richard v. American Union Bank, 253 N.Y. 166, 170 N.E. 532, 69 A.L.R. 667...."

## 5. United States v. Harmon

United States District Court, District of Columbia. • July 24, 2020 • 474 F.Supp.3d 76 • 2020 WL 4251347

"...1. The Ordinary Meaning of Money Covers Bitcoin and the MTA Adopts That Ordinary Meaning. Where a statute does not define a term, courts "look first to the word's ordinary meaning." *Mohamad v. Palestinian Auth.*, 566 U.S. 449, 454, 132 S.Ct. 1702, 182 L.Ed.2d 720 (2012); see also, e.g., *FCC v. AT & T Inc.*, 562 U.S. 397, 403, 131 S.Ct. 1177, 179 L.Ed.2d 132 (2011) ("When a statute does not define a term, we typically give the phrase its ordinary meaning" (internal quotation marks omitted)); *Hood v. United States*, 28 A.3d 553, 559 (D.C. 2011) ("When the terms of a statute are undefined and not recognized terms of art, we presumptively accord them their ordinary meaning in common usage, taking into account the context in which they are employed ."). Money, in common parlance, is a medium of exchange - that is, a token that can be traded for goods or services. See *Money*, Am. Heritage Dictionary (4th ed. 2000) ("A medium that can be exchanged for goods and services and is used as a measure of their values on the market, including among its forms a commodity such as gold, an officially issued coin or note, or a deposit in a checking account or other readily liquefiable account."); *Money*, Oxford English Dictionary (3d ed. 2002) ("Any generally accepted medium of exchange which enables a society to trade goods without the need for barter; any objects or tokens regarded as a store of value and used as a medium of exchange."); *Money*, Merriam-Webster Online, <https://www.merriam-webster.com/dictionary/money> ("(S)omething generally accepted as a medium of exchange, a measure of value, or a means of payment."). Money is also often "regarded as a store of value." *Money*, Oxford English Dictionary (3d ed. 2002)...."

## 6. *Morris v. Edwards*

Supreme Court of Ohio. • December 01, 1823 • 1 Ohio 189 • 1823 WL 15

"...The doctrine established by this case is, that if a contract be for a given sum, without describing the kind of money or currency, and there are two or more kinds of money or currency, varying in value, either party may prove which was intended; but if the contract designates the currency, such evidence is inadmissible, because the plaintiff must receive the kind of money or currency designated, or its value...."

"...When words used in a contract have different significations in different places, they will take effect as they are understood where they are spoken.' 1 Pow. on Cont. 376. And in the same book, 407, 'If money is to be paid by reason of a contract, the terms shall be understood and accepted according to their import, where it is to be received; that is, it shall be paid in currency there.' In 1 Forb. 419, 'Words should be expounded fairly, in the common sense that the words bore, in the place and at the time' they were used. It will be observed that the author is treating here of such rules as belong to the municipal law, in cases where chancery follows the law. If these passages have any meaning, they establish the right of giving parol testimony, to prove the signification of words used in a contract, in the place where the contract is made, and to show the currency of that place, by which I understand its value in comparison with any other description of currency. But of what use is such testimony, unless it be to ascertain the rule of damage, or the amount to be recovered? I can not discover any other object for

which it can be required. If it be not to ascertain the value or amount of the currency spoken of, when reduced or raised to the kind of money or currency in which the court is to render its judgment, it would be wholly irrelevant...."

## 7. Cook v. Lovett

Court of Common Pleas of Pennsylvania, Philadelphia County. • January 01, 1908 • 17 Pa. D. 347 • 1908 WL 3152

"...My conclusion in this case is founded upon what I regard as a cardinal principle of our government, that legitimate commerce depends upon an unflinching respect for the established standard of value. In a case where it is shown that the sovereignty has attached the quality of what is commonly called money, and sometimes known as legal tender, to a specifically described coin or form of instrument in writing, no convention of private parties—in other words, no private contract between man and man—shall be recognized in the law as subverting this act of sovereignty so long as the parties pretend to deal with money. Men may agree to barter, and one may stipulate to pay while the other binds himself to accept a return in a described article. If the contract is such as expressly to exclude the recognition of anything but a return in commodity, it will be recognized as binding the obligor to tender the designated objects and the obligee to accept them; but if, on the other hand, whilst, as at bar in this contention, there is in the terms of the contract an indication of a payment in a commodity, coupled, however, with a reference by way of description to legal money in any form, in such case it would be in contravention of the act of sovereignty to adjudicate that the obligee was bound to accept what was admitted not to be the money of the country to the derogation of the liquidating power of the latter...."

"...But even if there had been no change in the law by Congress, that case would not rule the one we are considering. Judge Sharswood, in deciding that case, recognized "the power of Congress to settle conclusively the value of a dollar, so as at least to bind all subsequent contracts." If the covenant in this case had been for "\$90, lawful money of the United States," there is no doubt that it could only be satisfied with gold or silver coin of the United States. But it was not. The parties did not agree to any such thing. The Spanish dollar stipulated for there was not declared by Act of Congress to be a legal tender. It was not a lawful coin at the time the contract was made, and was not equal in value with the coins declared by Act of Congress to be lawful dollars, whether of silver or gold. It was not interchangeable with the lawful coins. In order to bring this case within *Morris v. Bancroft*, 1 W. N. C. 223, it would be necessary to strike out of the contract the words "silver Spanish milled dollars, each to be of the weight of seventeen pennyweights and six grains," and that would leave the covenant stand "90 ... lawful money of the United States." That would force us to inquire 90 what? The contract would not enlighten us. It is, therefore, clear that the contract must stand as it is written. It was for a specific commodity, a coin of foreign denomination, which at the time was current money in the United States, and was of a known fineness and designated weight. In reality it was a contract for 414 grains of standard silver. The contract was "clearly for the benefit of the owner of the rent and not for the benefit of the ground tenant," as was said in *Johnson v. Ash*, 142 Pa. 45. The rent owner made the stipulation of the particular coin with which the rent was to be paid and specified its weight. The use of the words "lawful money of the United States" was merely descriptive of that particular coin, and the ground tenant agreed to pay him in the Spanish dollars thus specified. There is no question that they had a right to make such an agreement. There was no law against it. If the rent owner chose to specify a coin, as he did, that was not, under the laws of the United States, a legal tender for a dollar, he had a perfect right to do so, and his description of it as "lawful money of the United States" does not make it a coin of equal value with those that the Acts of Congress had declared to be lawful money and legal tender for one dollar in payment of debts. He has not brought himself within the terms of the Acts of 1793 and 1806, and the rent is payable in the specific coin stipulated for. There is no injustice done him by giving him the very thing he said the rent should be paid in...."

## 8. Green v. Sizer

**High Court of Errors and Appeals of Mississippi.** • October 01, 1866 • 40 Miss. 530 • 1866 WL 1900

"...In coming to this conclusion we cannot disregard the fact that a vast amount of the rights and property of our citizens depends on contracts founded on considerations like that of the case before us; nor can we overlook the circumstances under which such contracts were made. The currency on which they were founded was, for upwards of four years, almost exclusively the circulating medium of the country-issued by governments having, in fact, complete power over the people, and exercising undisturbed political functions. It was the representative of their rights and property in all pecuniary transactions of a private character, and was, at the time, valuable and convertible into gold or silver to a considerable value. It answered all the purposes of a circulating medium among the people, and immense interests were acquired by means of it, under circumstances of the greatest good faith by both parties, and of large profit to the parties who received it; contracts of the highest obligation were entered into in consideration of it, and by it food and clothing and other absolute necessities were obtained...."

## 9. **Richard v. American Union Bank**

**Court of Appeals of New York.** • February 11, 1930 • 253 N.Y. 166 • 170 N.E. 532

"...The conclusion in the earlier case rested largely, if not solely, upon the premise that: 'Presumably the plaintiffs, when they made a contract to obtain foreign money or credit abroad, intended to use it as money in the country where it is the recognized medium of exchange. Fluctuations in the value of the money, when measured by currency of this or any other country, may not affect the use for which plaintiffs are presumed to have intended it.'..."

## 10. **Lick v. Faulkner**

**Supreme Court of California.** • July 01, 1864 • 25 Cal. 404 • 1864 WL 664

"...What constitutes money, and its use as a measure of values, has ever been, among political economists, an important element in the consideration of subjects relating to material wealth. Money, in its enlarged sense, is that general medium of exchange by reference to which the value of other things is estimated, and is the representative and equivalent of such value. Those who desire, may learn from history that since society had its first existence many different commodities have been used as a circulating medium or medium of exchange. Some of these were most inconvenient and ill adapted to the purposes of exchange, but seem to have been adopted for want of something better. The precious, as well as the base metals, were used in some countries at an early date, though in others, at a comparatively modern period, other substances were employed as the currency, by which exchanges were effected. Shekels of silver were current money in the time of Abraham. The Spartans adopted iron; the ancient Romans copper; the Russians, at one time, platinum; the North American Indians used wampum, with which the Puritans, at one time, effected their own exchanges. To this enumeration might be added others, and also instances of the use of the products of labor as a medium of exchange or money. The writers on political economy generally agree that whatever comes to be used as the common equivalent for other things, and the standard by which their values are measured, be the commodity whatever it may be, is money. (McCullough's Political Economy, Ch. 4; John Stuart Mill's Political Economy, Book 3, Ch. 7; Bowen's Political Economy, Ch. 18; Rees' Cyclopaedia.)..."

"...Money is, as we have before observed, in a general and enlarged sense, a medium of exchange, by which the value of other things is estimated, and is the representative and equivalent of such value, and in the sense

of the term as thus defined we must understand the words "lawful money," as used in the Act of Congress under consideration...."

### 11. *In re Midas Coin Co.*

United States District Court, E.D. Missouri, Eastern Division. • February 07, 1967 • 264 F.Supp. 193 • 4 UCC Rep.Serv. 220

"... 'Money' means a medium of exchange authorized or adopted by a domestic or foreign government as a part of its currency. '...'"

### 12. *Murray v. Gale*

Supreme Court of New York, First District, General Term. • November 01, 1867 • 5 Abb.Pr.N.S. 236 • 52 Barb. 427

"... Now the thing, the coin, which by the contract is to be valued in money, cannot by the contract be treated as money. Money and the thing which it is to measure and express the value of, cannot both be viewed or treated as money, even though that thing be gold or silver coin...."

### 13. *Holyoke Water Power Co. v. American Writing Paper Co.*

Supreme Court of the United States. • March 01, 1937 • 300 U.S. 324 • 57 S.Ct. 485

"... 'Approved, June 5, 1933, 4.40 p.m.' 3. The argument is made that in the case now before us the currency called for by the contract is stated too indefinitely to be translated, dollar for dollar, as required by the Resolution, into the legal tender of the hour. But the difficulty is quite imaginary. Things that are equal to the same thing are equal to each other. There is application for the maxim here. If the currency to be paid by the lessee is to be the equivalent of gold, and if the gold is to be the equivalent of a stated number of gold dollars of a particular weight and fineness, then the covenant to pay the currency is tantamount to a covenant to pay the dollars, and dollars of the stated standard. This is the obligation that respondent took upon itself when it became a party to these leases. It is, however, the very obligation that has been outlawed by the statute as a menace to the maintenance of our monetary system. *Norman v. Baltimore & Ohio R. Co.*, supra, 294 U.S. 240, at pages 306, 311, 55 S.Ct. 407, 415, 417, 79 L.Ed. 885, 95 A.L.R. 1352. 'Dollar for dollar' the obligation for the payment of money conforming to the standard of the covenant is to be discharged with money of the standard established by the law...."

### 14. *Carter v. Cox*

Supreme Court of Mississippi. • October 01, 1870 • 44 Miss. 148 • 1870 WL 2879

"... That a specie currency has been immemorial and universal, that it is liable to no abuses or fluctuations, that it is immaculate and unchangeable, that it has any fixed value as money except by law and common consent, which can also substitute any other currency or money, are delusions, which it is time, were dispelled. 8 Wallace; 41 Miss...."

"... In reference to these views we submit a few authorities showing the origin, progress, and establishment of specie as money, its liability to abuses or fluctuations, and that its value consists in its endorsement by the supreme authority or prerogative of the nation, as with a paper currency, which may also be money when stamped with

the impress of law. Tomlin, quoting Co. Litt., 207, says, "money is that metal, be it gold or silver, which receives authority by the prince's impress to be current; for as wax is not a seal without a print, so metal is not money without impression." Quoting 1 Hale's Hist. P. C., 188, he further says: "money is said to be the common measure of all commerce through the world, and consists principally of three parts: the material whereof it is made, being silver or gold, the denomination or intrinsic value given by the king by virtue of his prerogative, and the king's stamp thereon." Again, "it belongs to the king only to put a value, as well as the impression, on money; which being done, the money is current for so much as the king hath limited." 2 Inst., 575...."

## 15. 🚩 **In re Koreag, Controle et Revision S.A.**

United States Court of Appeals, Second Circuit. • April 09, 1992 • 961 F.2d 341 • 1992 WL 68987

"...2. New York Uniform Commercial Code. As pertinent here, N.Y.U.C.C. S 2-105 (McKinney 1964) defines "(g)oods" as "all things . which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid " (emphasis added). This definition indicates that money is excluded only when it is used as the medium of exchange. In a currency exchange contract, however, the money is not the medium of exchange, but rather the object of exchange. Such currency thus constitutes "goods" within the meaning of section 2-102, and accordingly a contract to exchange currencies is subject to the Code. This view has recently been approved by the New York Court of Appeals, which applied the Code to a contract to exchange U.S. dollars for Italian lire. See *Intershoe, Inc. v. Bankers Trust Co.*, 77 N.Y.2d 517, 521, 571 N.E.2d 641, 643, 569 N.Y.S.2d 333, 336 (1991) ("There seems no question that the UCC applies to foreign currency transactions (see, UCC 2-105 Official Comment 1, McKinney's Cons.Laws of N.Y., Book 621/212, UCC 2-105, at 96; Buerger & O'Connor, Practice Commentary, op. cit., at 94).")...."

## Additional Research on This Topic

### 16. **Griswold v. Hepburn**

Court of Appeals of Kentucky. • June 17, 1865 • 2 Duv. 20 • 63 Ky. 20

"...The commodity which has thus, by the uniform but silent, unconcerted operation of human motives and action, become the common medium of exchange and general measure of value, constitutes the money of the community, and in this character it acquires an additional value...."

### 17. **Rush v. Casco Bank & Trust Co.**

Supreme Judicial Court of Maine. • November 20, 1975 • 348 A.2d 237

"...Unavailability of gold and fact that term "dollar" is statutorily defined as "a number of grains of gold, nine-tenths fine" did not render "Money Manager Agreement," which called for payment in "dollars," incapable of legal performance, in view of federal legislation which outlaws agreements requiring payment in a particular kind of



coin and which provides that every obligation calling for payment in money shall be discharged by whatever may be "legal tender" at time of payment. Gold Reserve Act of 1934, S 15, 31 U.S.C.A. S 444; 31 U.S.C.A. S 463...."

## 18. 016.20.1-E. Section E

AR ADC 016.20.1-E

"...1. Cash -- Cash consists of money which is on hand in the form of currency or coins. Foreign currency or coins are cash to the extent that they can be exchanged for United States issue. (Coin collections, however, are not considered to be cash, even though they are a resource. Their value is based on collector's value which is determined by contact with a knowledgeable source.)..."

## 19. 🚩 § 1. Trusts, etc., in restraint of trade illegal; penalty

15 USCA § 1

"...Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding \$100,000,000 if a corporation, or, if any other person, \$1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court...."

## 20. 🚩 Wisconsin Central Ltd v. United States

Supreme Court of the United States • June 21, 2018 • 585 U.S. 274 • 138 S.Ct. 2067

"...What does the government have to say about all this? It concedes that money remuneration often means remuneration in a commonly used medium of exchange. But, it submits, the term can carry a much more expansive meaning too. At least sometimes, the government says, "money" means any "property or possessions of any kind viewed as convertible into money or having value expressible in terms of money." 6 Oxford English Dictionary 603. The dissent takes the same view. See post, at 2076 (opinion of BREYER, J.). But while the term "money" sometimes might be used in this much more expansive sense, that isn't how the term was ordinarily used at the time of the Act's adoption (or is even today). Baseball cards, vinyl records, snow globes, and fidget spinners all have "value expressible in terms of money." Even that "priceless" Picasso has a price. Really, almost anything can be reduced to a "value expressible in terms of money." But in ordinary usage does "money" mean almost everything ?..."

## Administrative decisions and guidance

## **In the Matter of Tronox Limited a corporation, National Industrialization Company (TASNEE) a corporation, National Titanium Dioxide Company Limited (Cristal) a corporation, And Cristal USA Inc. a corporation.**

May 15, 2018 • 2018 WL 2427136

"...Increase Concentration In The Relevant Market 23 4. The Documented History of Coordination in the TiO2 Industry Strengthens the Presumption 24..."

"...increase concentration in an already consolidated market with a long history of price-fixing litigation and subsequent court decisions outlining pervasive..."

"...Supp. 2d 799, 823 (2013) Moreover, Tronox has a demonstrated history of curtailing chloride TiO2 output in order to drive up..."

"...case for two reasons: First, the TiO2 industry has a history of coordination that multiple courts have recognized. [FN5] As the..."

## **In the Matter of Microsoft Corp. a corporation, and Activision Blizzard, Inc., a corporation.**

October 02, 2023 • 2023 WL 6634120

"...Content is Particularly Important 18 H. The Industry Has a History of Consolidation 20 I. Microsoft Has a History of Making Content from Acquired Studios Exclusive 21 II. RELEVANT..."

"...Rivals Post-Acquisition 58 i. Microsoft is Willing to Lose Money on First- Party Exclusive Titles 58 ii. Past Acquisitions 59 iii. ZeniMax 59..."

"...future is threatened by the largest merger in the industry's history. Besides the traditional buy-to-play model in which gamers..."

"...a relatively mature market, and the future of video gaming appears to lie in subscription services and cloud gaming. Microsoft's Xbox..."

## **Office of the Attorney General**

January 01, 1970 • 1970 WL 245053

"...Cunningham, said, in a special tribute: "Oscar is a remarkable man, cut from a special cloth of gold, who follows no..."

"...active in the state. Also personnel of this office have appeared before school and service groups, and other interested organizations to..."

"...enforcement in the consumer protection area; by enabling any persons contracting or purchasing consumer goods or services, solicited by a seller at the home of the buyer, to rescind the contract or purchase within three days after the contract or purchase is made; eliminating the privileged position that the..."

"...hearings, involving the corporate and personal income tax, sales and use taxes, property taxes, inheritance taxes, cigarette and beer taxes, motor..."

## Practical Law

### Merger Agreement (Private Company, Pro-Buyer)

Standard documents • **Maintained** • Delaware, National/Federal

A long-form agreement for the acquisition of a US private corporation by merger, drafted in favor of the buyer. This Standard Document assumes, among other things, that the merger is structured as a reverse triangular merger and the target company and merger subsidiary are Delaware corporations. It also assumes that the signing and closing of the transaction are not simultaneous. This Standard Document has integrated notes with important explanations and drafting and negotiating tips. For mergers involving a public target company, see Standard Document, Merger Agreement (All-Cash; Pro-Buyer).

"...than the closing per share merger consideration (referred to as underwater options or out-of-money options) to be cancelled for no consideration. If the plan documents do not clearly provide the administrator the right to cancel underwater options for no consideration, the parties may need to obtain the consent of such optionholders or accept the risk that some optionholders may claim that they..."

"...This definition of Losses aims to be reasonable by expressly excluding punitive damages (except if awarded in a third-party claim) and not expressly including incidental, consequential, special, or indirect damages (including loss of revenue, diminution in value, or any damages based on any type of multiple). For a more aggressive approach, the buyer should consider expressly including some or all..."

"..." Company IP Agreements" means all licenses, sublicenses, consent to use agreements, settlements, coexistence agreements, covenants not to sue, waivers, releases, permissions and other Contracts, whether written or oral, relating to Intellectual Property to which the Company is a party, beneficiary or otherwise bound..."

"..." Losses" means losses, damages, Liabilities, deficiencies, Actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers; provided, however, that " Losses" shall not include punitive damages, except to the extent actually awarded to a Governmental Authority or other third party..."

### Merger Agreement (Private Company, Pro-Seller)

Standard documents • **Maintained** • Delaware, National/Federal

A long-form agreement for the acquisition of a US private corporation by merger, drafted in favor of the target company and stockholders (or pro-seller). Pro-seller agreements are often used in auctions where a target company seeks competing bids from potential bidders. This Standard Document assumes, among other things,

that the merger is structured as a reverse triangular merger and the target company and merger subsidiary are Delaware corporations. It also assumes that the signing and closing of the transaction are not simultaneous. This Standard Document has integrated notes with important explanations and drafting and negotiating tips. For mergers involving a public target company, see Standard Document, Merger Agreement (All-Cash, Pro-Buyer).

"... 'Indebtedness' means, without duplication and with respect to the Company, all (a) indebtedness for borrowed money; (b) obligations for the deferred purchase price of property or services (other than Current Liabilities taken into account in the calculation of Closing Working Capital), (c) long or short-term obligations evidenced by notes, bonds, debentures or other similar instruments; (d)..."

"... ['In- Money Option' means any Option other than an Out-of- Money Option.]..."

"... The terms used in the agreement should be consistent throughout the document. Where a capitalized term is used in the document, do not introduce it without capital letters later or use a different word or phrase to mean the same thing..."

"... This merger agreement assumes that the relevant plan documents permit options with an exercise price greater than the closing per share merger consideration (referred to as underwater options or out-of- money options) to be cancelled for no consideration. If the plan documents do not clearly provide the administrator the right to cancel underwater options for no consideration, the parties may need to obtain the consent of these optionholders or accept the risk that some optionholders may claim that they were denied the intrinsic value of their options..."

## Contracts: Equitable Remedies

Practice notes • **Maintained** • National/Federal

This Practice Note discusses the application of equitable remedies under US contract law. It covers types of equitable remedies (including specific performance, injunction, reformation, and rescission), limitations and defenses, the use of contractual provisions expressly addressing the availability of equitable relief, and the availability of equitable remedies under major commercial contract types.

"... When a contracting party suffers loss due to an opposing party's breach of the contract, the aggrieved party can sue for damages. Judicial remedies for breach of contract are either..."

"... Right to obtain equitable remedies (see Right to Obtain Equitable Remedies)..."

"... To rescind a contract, each party must make restitution, by restoring to the other party, any goods, property, or monies received. In certain cases, courts may award restitution as a separate remedy without rescinding the contract..."

"... Under certain commercial arrangements, the award of equitable relief might so unfairly prejudice the breaching party that the contract instead includes a negative prohibition against the award of equitable damages. For example, a product owner may license a work of intellectual property from a third party. Even if the licensee were to breach a material term of the agreement, an award of injunctive relief that restrained the distribution of the product would jeopardize the licensee's entire investment. This type of license agreement typically includes a provision that expressly prohibits the right..."

## Current awareness

### COVID-19 roundup: Court closures and procedural changes

WESTLAW TODAY Covid-19 Briefing • 2020 WL 6791468

Some courts around the country are starting to reopen amid the coronavirus pandemic, while others remain closed or have restrictions in place. Below is a roundup, updated weekly, of measures taken by federal and state courts.

"...ADR proceedings may take place by any remote means agreed upon by the parties...."

"...Hearings where appearance by alternate means has already been made available to the parties will proceed as scheduled using that alternate mode of appearance...."

"...The Level Three restrictions on operations — in effect until further notice by Justice Walters — include high-risk persons, such as people 65 and older; people with high-risk conditions including chronic lung disease, moderate to severe asthma or serious heart conditions; people with underlying medical conditions such as liver disease, renal failure and diabetes; people with weakened immune systems; people with severe obesity (body mass index over 40); people..."

"...No more than two people may occupy an elevator at one time...."

### COVID-19 roundup: Court closures and procedural changes

WESTLAW TODAY Covid-19 Briefing • 2021 WL 118086

Some courts around the country are starting to reopen amid the coronavirus pandemic, while others remain closed or have restrictions in place. Below is a roundup, updated weekly, of measures taken by federal and state courts. (Editor's Note: The court roundup will not be published Wednesday, Dec. 30. Publication will resume Jan. 6.)

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"...No more than two people may occupy an elevator at one time...."

### COVID-19 roundup: Court closures and procedural changes

WESTLAW TODAY Covid-19 Briefing • 2021 WL 194180

Some courts around the country are starting to reopen amid the coronavirus pandemic, while others remain closed or have restrictions in place. Below is a roundup, updated weekly, of measures taken by federal and state courts.

"...ADR proceedings may take place by any remote means agreed upon by the parties...."

"...Hearings where appearance by alternate means has already been made available to the parties will proceed as scheduled using that alternate mode of appearance...."

"...The Level Three restrictions on operations — in effect until further notice by Justice Walters — include high-risk persons, such as people 65 and older; people with high-risk conditions including chronic lung disease, moderate to severe asthma or serious heart conditions; people with underlying medical conditions such as liver disease, renal failure and diabetes; people with weakened immune systems; people with severe obesity (body mass index over 40); people..."

"...No more than two people may occupy an elevator at one time...."

## Follow-up question

2. But, even if the parties accept what ever is used as currency or money it is still based on a belief that it has that value, and a belief can be wrong. When you say, “medium of exchange” that requires two people to agree to the terms of that exchange. Terms for example that product A has the declared value and product b that is given for the exchange has the same value. That by definition is a contract between to parties.

The use of items such as tulips or sea shells as currency can be considered a contract under the principles of contracts, as it involves an agreement between two parties on the medium of exchange and its value. This is supported by several legal principles and cases:

1. Parties are not legally obligated to use the legal standards of value at the time and place of the contract. They may contract with reference to foreign money or a medium of exchange not recognized as money by any system of laws, as long as it possesses value capable of being measured ([Neely v. McFadden, 2 S.C. 169 \(1870\)](#)) [1].
2. The New York Uniform Commercial Code (UCC) recognizes that in currency exchanges, the money is not the medium of exchange but rather the object of exchange, thus constituting "goods" within the meaning of the UCC. This means that a contract to exchange currencies is subject to the UCC ([In re Koreag, Controle et Revision S.A., 961 F.2d 341 \(1992\)](#)) [2].
3. Historical cases have shown that contracts can be based on various forms of currency or items of value, even if those items are not recognized as legal tender. For example, during the Civil War, contracts were often made with reference to Confederate currency or other items that served as a medium of exchange at the time ([Parker v. Wilson, 5 S.C. 485 \(1875\)](#)) [3].
4. The value of the consideration in a contract can be determined by the agreed-upon standard of value, even if that standard is not the legal currency. This principle is illustrated in cases where the value of Confederate currency was used as the basis for contracts, and the courts recognized the agreed-upon value despite the currency's lack of legal status ([Neely v. McFadden, 2 S.C. 169 \(1870\)](#)) [1].
5. The inherent risk of fluctuation in the value of the chosen medium of exchange is recognized in contracts. Parties assume the risks of appreciation or depreciation in the value of the medium of exchange they have agreed upon ([Shanghai Power Co. v. Delaware Trust Co., 316 A.2d 589 \(1974\)](#)) [4].

Based on these principles, the use of items like tulips or sea shells as currency can be seen as a valid contractual agreement, provided that both parties agree on their value and use them as a medium of exchange. The value is based on mutual belief and agreement, which is a fundamental aspect of contract law.

The above response is AI-generated and may contain errors. It should be verified for accuracy.

## Cases, statutes, and regulations

### 1. Neely v. McFadden

Supreme Court of South Carolina. • November 26, 1870 • 2 S.C. 169 • 1870 WL 3508

"...One or two propositions may assist this enquiry. In the first place, parties are under no legal obligation to employ the legal standards of value at the time and place of contract. They may contract with reference to foreign money, or a medium of exchange not recognized as money by any system of laws. They may base their contracts on pounds sterling, or Mexican dollars, or anything else possessing value capable of being measured, that is to say, of being compared with other objects of known value. Although the policy of laws of this class is to induce uniformity in contracts, they have never attempted to compel it. In the next place, it is not an invariable rule that parties are to be held to be familiar with the technical force and effect of legal terms and expressions...."

"...The extent of evidence to which parties may resort in such cases, it is not for us to consider. It may be proper now to add that, in addition to such proof as may tend to show what commodity or representative of value fulfilled the part of money in commercial dealings, proof of the value of the consideration may be, in many cases, important as a means of showing according to what standard of values the parties acted. If it should appear, for instance, that the sale of an article of merchandise constitutes the consideration, and it should further appear that the price to be paid reasonably agreed with the market rates for that class and quality of goods, as adjusted to the value of Confederate notes, and it further appeared that, regarded as United States currency, the price agreed to be paid is grossly in excess of the value of the commodity sold, it would lead to the inevitable conclusion that the parties had reference to the actual rather than the legal representative of value current at the time of sale...."

### 2. In re Koreag, Controle et Revision S.A.

United States Court of Appeals, Second Circuit. • April 09, 1992 • 961 F.2d 341 • 1992 WL 68987

"...2. New York Uniform Commercial Code. As pertinent here, N.Y.U.C.C. S 2-105 (McKinney 1964) defines "(g)oods" as "all things . which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid " (emphasis added). This definition indicates that money is excluded only when it is used as the medium of exchange. In a currency exchange contract, however, the money is not the medium of exchange, but rather the object of exchange. Such currency thus constitutes "goods" within the meaning of section 2-102, and accordingly a contract to exchange currencies is subject to the Code. This view has recently been approved by the New York Court of Appeals, which applied the Code to a contract to exchange U.S. dollars for Italian lire. See *Intershoe, Inc. v. Bankers Trust Co.*, 77 N.Y.2d 517, 521, 571 N.E.2d 641, 643, 569 N.Y.S.2d 333, 336 (1991) ("There seems no question that the UCC applies to foreign currency transactions (see, UCC 2-105 Official Comment 1, McKinney's Cons.Laws of N.Y., Book 621/212, UCC 2-105, at 96; Buerger & O'Connor, Practice Commentary, op. cit., at 94).")...."

"...2. New York Uniform Commercial Code. Since currency exchanges involve the simultaneous trading of money qua goods, a participant in such an exchange is both a seller with respect to the currency it is delivering, and a buyer with respect to the currency it is receiving. N.Y.U.C.C. S 2-304(1) (McKinney 1964) provides that payment under a contract can be made "in money or otherwise," and that if the price "is payable in whole or in part in goods each party is a seller of the goods which he is to transfer." Therefore, in any exchange of currencies, the



parties are both sellers of the currencies that they transfer. It follows that they are both buyers of the currencies that they receive...."

### 3. Parker v. Wilson

Supreme Court of South Carolina. • January 28, 1875 • 5 S.C. 485 • 1875 WL 5346

"...Where a debt was contracted with reference to Confederate currency as a basis of value, its amount should be determined by the value such currency bore to lawful money of the United States at the time of the contract...."

### 4. Shanghai Power Co. v. Delaware Trust Co.

Court of Chancery of Delaware, New Castle County. • January 17, 1974 • 316 A.2d 589

"...I. As To The 6 Tael Stock. 'When parties name a specified currency for the payment of an obligation, they know that such a currency falls under the control of the government that issues it, and they realize, too, that the currency is therefore subject to fluctuation. The pages of economic history are filled with the annals of fallen currencies of the past and with the accounts of the rise and demise of media of exchange. Inherent in the idea of money itself lies the power of the sovereign to change its value. Implied in the terms of the parties' contract fixing a designated media for payment lies the correlative recognition that they assume the risks of appreciation or depreciation in the value of the media...."

### 5. Slaughter v. Culpepper

Supreme Court of Georgia. • December 01, 1866 • 35 Ga. 25 • 1866 WL 1192

"...As we interpret this Section of the Ordinance, the Convention meant to authorize the jury, from all the evidence by it permitted, to ascertain, fairly and honestly, what was, or must have been, the contract the parties made. Let us attempt to illustrate this idea. If it was a contract expressed to be paid in Confederate currency at a distant time, or if without any specification on its face to be paid in currency, but simply for the payment of so many dollars and cents, the jury should enquire into the consideration, what was sold, and its supposed fair value at the time of sale, in a currency at or near at par with gold or silver, or in gold or silver, so long as they furnish a fair standard of value, and have not become a mere marketable commodity, increasing in value from their scarcity, the increase of price stipulated for in consequence of the then existing depreciation of currency at the time of the contract, and from these, and all othes facts, or circumstances, which can assist them in getting at the truth of the contract, should consider and equitably apply them in making up their verdict...."

"...It occurs to me (and I utter this only as my individual opinion) that no man, in making a sale of property on time, or by annual installments, during the late civil war, ever thought or intended to take the risk of a currency swelling daily in volume, and resting upon no metallic or other solid basis, and that risk to be incurred for legal interest only. A man so acting could be classed only with the insane. A person selling on time, no doubt, either agreed or meant to receive the currency existing at the time of payment, but at its then market value, as compared with the value of the currency when the contract was made. The creditor is fairly entitled to that difference, upon every principle

of equity prescribed. The natural equity which the understanding approves, the impulse of an honest heart which prompts man to do as he would be done by, alike unite in sanctioning this measure of justice...."

## 6. Chesapeake Bank v. Swain

Court of Appeals of Maryland. • December 09, 1868 • 29 Md. 483 • 1868 WL 2326

"...It will, therefore, be observed that while the United States has made certain notes issued by itself a legal tender, as well as gold and silver, yet it has not, under its own laws, recognized the said notes as equivalent in value to gold, but does expressly recognize gold and silver and legal tender notes as having different values, though both are currency. If there are two species of currency, or if there may be two species of currency, it is as lawful to deal in one species, or to make a contract for dealing with one species, as it is to deal, or to make a contract for dealing with the other species. If the two species are of exactly the same value in the market, a person may lawfully contract in one or the other currency, in express terms. If they are of different values in the market, a person may lawfully contract for one or the other, in express terms. If they are of different values in the market, why then may not a person lawfully exchange one for the other, agreeing with the party with whom he contracts as to the particular currency which shall constitute the measure of value? The Secretary of the Treasury is expressly authorized by law to make such a contract; (Act of 1862, ch. 45;) therefore, such a contract is legally valid, and could be enforced against the United States in the Court of Claims...."

## 7. Taylor v. Turley

Court of Appeals of Maryland. • January 20, 1871 • 33 Md. 500 • 1871 WL 4120

"...The fact that articles of trade and merchandise, with the currency itself, are subject to great uncertainty of value, in the absence of fraud, does not affect contracts in relation thereto...."

## 8. Morris v. Edwards

Supreme Court of Ohio. • December 01, 1823 • 1 Ohio 189 • 1823 WL 15

"...The doctrine established by this case is, that if a contract be for a given sum, without describing the kind of money or currency, and there are two or more kinds of money or currency, varying in value, either party may prove which was intended; but if the contract designates the currency, such evidence is inadmissible, because the plaintiff must receive the kind of money or currency designated, or its value...."

"...The class to which the case before us belongs, has a strong resemblance to property contracts, but there are some points of difference that deserve consideration, and seem to require a variation in the rule. In property contracts, the parties are in the habit of estimating the probable value of the article at the time it is to be delivered, and govern themselves accordingly; but in the sale of property for current bank paper, they consider it as a species of money, and determine on the sum to be paid by a reference to its depreciation, compared with specie, at the time of the contract. If the price was set in specie and the payment agreed to be made in currency, an additional sum was charged equal to the depreciation; but when the price was set in currency, and the payment agreed to be in specie, a discount was made, equal to the difference in value, and these calculations were generally made with reference to the state of things at the time of the contract. They do not appear to have been considered as wagering contracts, nor does it seem to be good policy to place them on that footing. Property contracts are so considered, and great injustice is frequently done by unexpected changes in price, but not to the same extent, as

would be the case in contracts like the present; because the variations in price can rarely be as great or as certain. Equity seems to require that the value should be taken at the date of the contract; because on that principle the seller will receive, and the purchaser will pay, the precise value originally designed. If, at the date of a currency contract the paper designated was passing at a discount of thirty per cent., the payee would gladly have received specie at a proportionate advance, and such was every day's practice. Currency contracts were invariably made, with reference to the value of currency, at the time of the contract; and if, at a subsequent period, the payee should recover either more or less than that value, injustice would be done, and the original intent of the parties would be frustrated...."

## 9. Chalmers v. Jones

Supreme Court of South Carolina. • September 29, 1885 • 23 S.C. 463 • 1885 WL 3680

"...Owing, however, to the peculiar financial condition of this State, and of all the Southern States, during the recent war, with reference to the currency then in use, which currency was known to be the basis of many, if not of most, of the contracts entered into during that time, it became manifest at the close of the war that great injustice would be done if such contracts were enforced under the application of the rule above referred to. One of the first acts, therefore, of our first legislative assembly after the war (the convention) was an ordinance to relax this rule in cases of contracts made during the war, by which in such cases the intent of the parties as to the currency intended might be reached, not by the strict and grammatical interpretation of the word "dollars" and such similar words, as formerly, but by the surrounding circumstances and facts attending the transaction, to wit, the character of the consideration, its value, &c...."

## 10. Krigel v. U.S.

United States Court of Claims. • October 21, 1981 • 229 Ct.Cl. 73 • 662 F.2d 741

"...OPINION OF TRIAL JUDGE. As the basis for its substantive argument, plaintiff alleges that he had an implied-in-fact contract with the United States, which breached the contract by not redeeming the full amount of mutilated currency he delivered to the Treasury Department. Plaintiff contends that by accepting his currency the defendant, through its employees at the Mutilated Currency Branch, impliedly agreed to return to plaintiff an amount of money equal to the amount of mutilated currency plaintiff claimed to be turning in for redemption. Though plaintiff may well have believed that the defendant would accept his word as determinative of the value of the currency, it is clear that no one else shared this belief...."

## 11. Randall v. Pettes

Supreme Court of Florida. • January 01, 1868 • 12 Fla. 517 • 1868 WL 1398

"...This ordinance contemplated the accomplishment of two principal ends: the recognition of the currency, or the thing which supplied the place of currency during the war, and which really formed the standard of nominal values in the transaction of business during the war, not necessarily as a thing of real value, but as a medium of commercial transactions; and to provide the mode of ascertaining the actual money value of the consideration of the contract, whether such consideration were Confederate or State notes or any thing else. It was a measure of

relief extended to those who at the close of the war were found indebted upon contracts founded upon fluctuating and uncertain values. It was not intended to relieve from any and all liability to perform such contracts...."

"...Ordinance 8 of the convention of 1865 authorizes courts "to admit testimony as to the value of the property or consideration contemplated by the parties" to contracts made during the late war, provided that the defendant shall allege and prove that "the currency contemplated in payment of said contract was Confederate or state treasury notes, or upon what basis the consideration or the value of the property or its use, which was estimated at the time of the formation of said contract." Held, that testimony was only admissible as to the value of the consideration when the contract was made...."

## 12. **Calbreath v. Virginia Porcelain & Earthenware Co.**

Supreme Court of Appeals of Virginia. • September 25, 1872 • 22 Gratt. 697 • 63 Va. 697

"...We have already shown that there is nothing in the writing which expresses an intention that payment should in any event be made in United States currency. We will now inquire whether there is anything in the nature of the contract, or its phraseology, which repels the natural presumption that a contract for the sale and purchase of property, in which the price of the property was fixed with reference to Confederate currency, was intended to be solvable in the same kind of currency, and not in a foreign currency which, at the time of the contract, was the currency of an alien enemy, and which was prohibited by the laws of the State to which the contracting parties belonged. It is contended that the phraseology employed in the writing, "to be paid in the currency used in the common business of the country at the date of maturity," implies that it might be a different currency from that then in use. And so it may. But it does not imply that the parties meant United States currency. If it was shown by the paper, or the other evidence in the record, that it was a contract of hazard, contingent upon the termination of the war before its maturity, and the overthrow of the Confederacy with its currency, such evidence would be sufficient to repel the presumption, as natural and strong as it is, as well as the now prima facie presumption of the statute, that the parties intended payment to be made in the same kind of currency, with reference to which as the standard of value the contract was made. I cannot now conceive of any mere presumptive evidence which could repel that presumption. Nothing less than an express agreement shown by the writing, or implied in terms which would give it the force of an express agreement, or proved by the clearest and most unquestionable testimony, would be sufficient to repel the presumption of the statute and of the facts in the case...."

"...But the plaintiff and defendant in their contract valued it at \$3,600. What sort of dollars did they mean? Certainly not gold dollars. It is equally evident that they did not fix the price in greenbacks. There was no such currency in Virginia outside of the enemy's lines, and its circulation was prohibited by penal statute. The only currency that was in circulation was Confederate. And it being evident that the price was not fixed in gold dollars, or in greenback dollars, as the standard of value, the price must have been fixed with reference to Confederate currency as the standard of value...."

## 13. **Jones v. Jernigan**

Supreme Court of New Mexico. • January 26, 1924 • 29 N.M. 399 • 223 P. 100

"...If parties definitely settle upon and agree to the value of their respective properties for the purpose of sale one to the other, no inquiry concerning actual values is permissible, as these are put beyond question by those having to determine the worth thereof for themselves, and thereby fix the measure of damages in event of a breach. If, on the other hand, the agreement is a mere trading contract, by the terms of which one party is to exchange certain property belonging to him for that of the other upon or by the payment of the difference, and to this end and for

the purpose solely of accomplishing this result, but not to ascertain their actual values, estimates are placed on the respective properties, then neither party is bound by the values so estimated, and the measure of damages to be applied is that of quantum meruit. In other words, the values designated in the agreement to be binding on the parties must appear to have been specified as such, and not as merely incidental to some other purpose not involving the intention of deciding the true worth. The criterion in determining whether there has been a sale or exchange of personal property is whether there is a fixed price at which the things are to be exchanged. If there is such fixed price, the transaction is a sale; but, if there is not, the transaction is an exchange."..."

#### 14. **Halfacre v. Whaley**

Supreme Court of South Carolina. • April 08, 1873 • 4 S.C. 173 • 1873 WL 4824

"...Besides the declarations of the parties at the time of the contract, as to their purpose, it has been held competent to introduce testimony as to the value of the consideration, and any circumstances tending to show the agreement in regard to the currency in which the payment was to be made. In the case in hand the presiding Judge sustained the ruling of the Referee, allowing the defendant the benefit of the "Act to determine the value of contracts made in Confederate States notes or their equivalent," approved March 26, 1869.-14 Stat., 277...."

#### 15. **Earle v. Stokes**

Supreme Court of South Carolina. • June 06, 1873 • 4 S.C. 309 • 1873 WL 4835

"...This Court has held in several cases that neither the Ordinance of the Convention of 1865, nor the Act of the General Assembly entitled "An Act to determine the value of contracts made in Confederate States notes or their equivalent," is applicable, or can be applied to any contract, unless it first be shown that such contract was made with reference to such currency or its equivalent.-Neely vs. McFadden, 2 S. C., 169; Harmon vs. Wallace, lb., 208; Earle vs. Harrison, lb., 432; Detheridge vs. Earle, 3 S. C., 396...."

### Additional Research on This Topic

#### 16. **Dutch-American Mercantile Corp. v. Cotra Corp.**

Supreme Court, Appellate Division, First Department, New York. • December 07, 1954 • 285 A.D. 55 • 135 N.Y.S.2d 509

"...Since the meaning of the words accompanying the conditional delivery as understood in the trade is not disputed; and since the defendant, having received the dollars, has neither produced the proof required by its contract nor produced the proof required by the trade custom in response to a payment made for foreign currency 'under reserve', no triable issue is demonstrated upon the papers before us...."

#### 17. **§ 1010.100 General definitions.**

31 CFR § 1010.100

"...(m) Currency. The coin and paper money of the United States or of any other country that is designated as legal tender and that circulates and is customarily used and accepted as a medium of exchange in the country of issuance. Currency includes U.S. silver certificates, U.S. notes and Federal Reserve notes. Currency also includes official foreign bank notes that are customarily used and accepted as a medium of exchange in a foreign country...."

## 18. § 1-201. General definitions

LA R.S. 10:1-201

"...(24) "Money" means a medium of exchange that is currently authorized or adopted by a domestic or foreign government and is not in an electronic form. The term includes a monetary unit of account established by an intergovernmental organization, or pursuant to an agreement between two or more countries...."

"...(a) Unless the context otherwise requires, words or phrases defined in this Section, or in the additional definitions contained in other Chapters of this Title that apply to particular Chapters or Parts thereof, have the meanings stated. (b) Subject to definitions contained in other Chapters of this Title that apply to particular Chapters or parts thereof: (1) (Reserved.) (2) (Reserved.) (3) (Reserved.) (4) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company. (5) "Bearer" means a person in control of a negotiable electronic document of title or a person in possession of a negotiable instrument, negotiable tangible document of title, or certificated security that is payable to bearer or endorsed in blank. (6) "Bill of lading" means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the..."

## 19. § 1.3 Definitions.

17 CFR § 1.3

"...Futures contracts on certain foreign sovereign debt. The term security-based swap as used in section 3(a) (68) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(68)), as incorporated in section 1a(42) of the Commodity Exchange Act, does not include an agreement, contract, or transaction that is based on or references a qualifying foreign futures contract (as defined in rule 3a12-8 under the Securities Exchange Act of 1934 (17 CFR 240.3a12-8)) on the debt securities of any one or more of the foreign governments enumerated in rule 3a12-8 under the Securities Exchange Act of 1934 (17 CFR 240.3a12-8), provided that such agreement, contract, or transaction satisfies the following conditions:..."

## 20. Dennis v. JPMorgan Chase & Co.

United States District Court, S.D. New York. • November 26, 2018 • 343 F.Supp.3d 122 • 2018 WL 6169313

"...I. Derivatives and the Money Market. Another type of swap is a foreign exchange ("FX") swap, in which "two counterparties agree to exchange streams of interest payments in different currencies for an agreed-upon period of time and to exchange principal amounts in different currencies at an agreed-upon exchange rate at maturity." According to the amended complaint, "(t)here are two components to a foreign exchange swap: (1) a spot transaction in which the parties buy or sell a certain amount of one currency (e.g., Australian dollars) at the current market prices for immediate delivery (i.e., typically within two days); and (2) a foreign exchange forward,

which reverses the spot transaction by buying or selling an equivalent amount of a second currency (e.g., U.S. dollars) on some future maturity date (e.g., 14 days later)."

## Follow-up question

3. So, these principles technically apply to anything that is used as money and/or currency, whether it is fiat, metals, notes, commodities, etc.. At the end of it all, historically its all based on contract principles and the belief of the parties.

The principles of contract law do apply to agreements involving various forms of money or currency, including fiat, metals, notes, and commodities, as long as the value is agreed upon between the parties. This is supported by several cases and statutes:

1. [Neely v. McFadden](#) : This case establishes that parties are not legally obligated to use the legal standards of value at the time and place of the contract. They can base their contracts on any form of value, such as foreign money or other mediums of exchange not recognized as money by any system of laws ([Neely v. McFadden, 2 S.C. 169 \(1870\)](#)) [1].
2. [Calbreath v. Virginia Porcelain & Earthenware Co.](#) : This case discusses the presumption that contracts are intended to be fulfilled in the currency referenced at the time of the contract. It emphasizes that the specific terms of the contract, including the type of currency, are crucial in determining the parties' intentions ([Calbreath v. Virginia Porcelain & Earthenware Co., 22 Gratt. 697 \(1872\)](#)) [2].
3. [In re Koreag, Controle et Revision S.A.](#) : According to the New York Uniform Commercial Code, money is excluded as "goods" only when used as the medium of exchange. In a currency exchange contract, money is treated as "goods," and such contracts are subject to the Code, indicating that contract law principles apply to currency exchanges ([In re Koreag, Controle et Revision S.A., 961 F.2d 341 \(1992\)](#)) [3].
4. [Holyoke Water Power Co. v. American Writing Paper Co.](#) : This case highlights that the intention behind the contract terms is critical. It discusses how currency can be treated as a commodity in contracts, and the specific terms of the contract will determine whether it is treated as money or a commodity ([Holyoke Water Power Co. v. American Writing Paper Co., 300 U.S. 324 \(1937\)](#)) [4].
5. [Cook v. Lovett](#) : This case underscores that private contracts cannot subvert the established standard of value set by the government. However, it acknowledges that parties can agree to barter or stipulate payment in a specific commodity, which will be recognized as binding if it excludes the recognition of legal money ([Cook v. Lovett, 17 Pa. D. 347 \(1908\)](#)) [5].
6. [Shollenberger v. Brinton](#) : This case explains that contracts payable in specific currency, such as silver, can be enforced as special contracts, even if the currency is not legal tender. The specific terms agreed upon by the parties are crucial in determining the enforceability of the contract ([Shollenberger v. Brinton, 3 Am. Law Reg. \(N.S.\) 591 \(1866\)](#)) [6].

These cases collectively demonstrate that contract law principles do apply to agreements involving various forms of money or currency, provided the terms are clearly defined and agreed upon by the parties. The value agreed upon between the parties, even if based on belief, is enforceable under contract law.



The above response is AI-generated and may contain errors. It should be verified for accuracy.

## Cases, statutes, and regulations

### 1. **Neely v. McFadden**

Supreme Court of South Carolina. • November 26, 1870 • 2 S.C. 169 • 1870 WL 3508

"...One or two propositions may assist this enquiry. In the first place, parties are under no legal obligation to employ the legal standards of value at the time and place of contract. They may contract with reference to foreign money, or a medium of exchange not recognized as money by any system of laws. They may base their contracts on pounds sterling, or Mexican dollars, or anything else possessing value capable of being measured, that is to say, of being compared with other objects of known value. Although the policy of laws of this class is to induce uniformity in contracts, they have never attempted to compel it. In the next place, it is not an invariable rule that parties are to be held to be familiar with the technical force and effect of legal terms and expressions...."

### 2. **Calbreath v. Virginia Porcelain & Earthenware Co.**

Supreme Court of Appeals of Virginia. • September 25, 1872 • 22 Gratt. 697 • 63 Va. 697

"...We have already shown that there is nothing in the writing which expresses an intention that payment should in any event be made in United States currency. We will now inquire whether there is anything in the nature of the contract, or its phraseology, which repels the natural presumption that a contract for the sale and purchase of property, in which the price of the property was fixed with reference to Confederate currency, was intended to be solvable in the same kind of currency, and not in a foreign currency which, at the time of the contract, was the currency of an alien enemy, and which was prohibited by the laws of the State to which the contracting parties belonged. It is contended that the phraseology employed in the writing, "to be paid in the currency used in the common business of the country at the date of maturity," implies that it might be a different currency from that then in use. And so it may. But it does not imply that the parties meant United States currency. If it was shown by the paper, or the other evidence in the record, that it was a contract of hazard, contingent upon the termination of the war before its maturity, and the overthrow of the Confederacy with its currency, such evidence would be sufficient to repel the presumption, as natural and strong as it is, as well as the now prima facie presumption of the statute, that the parties intended payment to be made in the same kind of currency, with reference to which as the standard of value the contract was made. I cannot now conceive of any mere presumptive evidence which could repel that presumption. Nothing less than an express agreement shown by the writing, or implied in terms which would give it the force of an express agreement, or proved by the clearest and most unquestionable testimony, would be sufficient to repel the presumption of the statute and of the facts in the case...."

"...Can it be possible that where both parties have solemnly stipulated in writing the kind of currency in which the contract is to be fulfilled or performed, and have indicated in writing the currency, with respect to which, as a standard of value, it was entered into, and that currency is not Confederate currency, can it be possible that such a contract is to be declared a Confederate contract, and subject to be scaled?..."

### 3. In re Koreag, Controle et Revision S.A.

United States Court of Appeals, Second Circuit. • April 09, 1992 • 961 F.2d 341 • 1992 WL 68987

"...2. New York Uniform Commercial Code. As pertinent here, N.Y.U.C.C. S 2-105 (McKinney 1964) defines "(g)oods" as "all things . which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid " (emphasis added). This definition indicates that money is excluded only when it is used as the medium of exchange. In a currency exchange contract, however, the money is not the medium of exchange, but rather the object of exchange. Such currency thus constitutes "goods" within the meaning of section 2-102, and accordingly a contract to exchange currencies is subject to the Code. This view has recently been approved by the New York Court of Appeals, which applied the Code to a contract to exchange U.S. dollars for Italian lire. See *Intershoe, Inc. v. Bankers Trust Co.*, 77 N.Y.2d 517, 521, 571 N.E.2d 641, 643, 569 N.Y.S.2d 333, 336 (1991) ("There seems no question that the UCC applies to foreign currency transactions (see, UCC 2-105 Official Comment 1, McKinney's Cons.Laws of N.Y., Book 621/212, UCC 2-105, at 96; Buerger & O'Connor, Practice Commentary, op. cit., at 94).")...."

"...2. New York Uniform Commercial Code. Since currency exchanges involve the simultaneous trading of money qua goods, a participant in such an exchange is both a seller with respect to the currency it is delivering, and a buyer with respect to the currency it is receiving. N.Y.U.C.C. S 2-304(1) (McKinney 1964) provides that payment under a contract can be made "in money or otherwise," and that if the price "is payable in whole or in part in goods each party is a seller of the goods which he is to transfer." Therefore, in any exchange of currencies, the parties are both sellers of the currencies that they transfer. It follows that they are both buyers of the currencies that they receive...."

### 4. Holyoke Water Power Co. v. American Writing Paper Co.

Supreme Court of the United States. • March 01, 1937 • 300 U.S. 324 • 57 S.Ct. 485

"...By the first term of the alternative, there may be payment of the rent in the form of 'a quantity of gold which shall be equal in amount to \$1500 of the gold coin of the United States of the standard of weight and fineness of the year 1894.' In this form there is no call for a stated number of ounces of fine gold, as if a goldsmith were providing for the uses of his business. The call is for gold that shall be as heavy and as fine as a stated number of gold dollars, with the result that delivery in such dollars is a payment in strict accordance with the letter of the contract. We must consider the situation of the parties, their business needs and expectations, in gauging their intention. When these are kept in view, the gold is seen to be a standard with which to stabilize the value of the dollar; the dollar not a yardstick with which to measure the quantity of the gold. To read the leases otherwise is to permit the realities of the transaction, its substance and essential purpose, to be obscured by forms and phrases. Long ago it was said by a distinguished member of this court, commenting upon a different statute, but one analogous in purpose: 'If the contract is for the delivery of a chattel or a specific commodity or substance, the law does not apply. If it is bona fide for so many carats of diamonds or so many ounces of gold as bullion, the specific contract must be performed (assuming, of course, that contracts for the delivery of bullion are not prohibited by law). But if terms which naturally import such a contract are used by way of evasion, and money only is intended, the law reaches the case.' Per Bradley, J., in *Legal Tender Cases*, 12 Wall. 457, 566, 20 L.Ed. 287. Here what was intended was to assure the payment of a money debt in dollars of a value as constant as that of gold. *Norman v. Baltimore & Ohio R. Co.*, supra, 294 U.S. 240, at page 302, 55 S.Ct. 407, 413, 79 L.Ed. 885, 95 A.L.R. 1352; cf. *Feist v. Socie te Intercommunale Belge D'Electricite* (1934) A.C. 161, 172, 173. The fact is of little moment that currency is characterized as a commodity in the verbiage of the covenant as long as it is currency. Cf. *Lipke v. Lederer*, 259 U.S. 557, 561, 562, 42 S.Ct. 549, 550, 551, 66 L.Ed. 1061. Weasel words will

not avail to defeat the triumph of intention when once the words are read in the setting of the whole transaction. So read, the end to be achieved is shown forth unmistakably as a payment, not a sale...."

"...'Approved, June 5, 1933, 4.40 p.m.' 3. The argument is made that in the case now before us the currency called for by the contract is stated too indefinitely to be translated, dollar for dollar, as required by the Resolution, into the legal tender of the hour. But the difficulty is quite imaginary. Things that are equal to the same thing are equal to each other. There is application for the maxim here. If the currency to be paid by the lessee is to be the equivalent of gold, and if the gold is to be the equivalent of a stated number of gold dollars of a particular weight and fineness, then the covenant to pay the currency is tantamount to a covenant to pay the dollars, and dollars of the stated standard. This is the obligation that respondent took upon itself when it became a party to these leases. It is, however, the very obligation that has been outlawed by the statute as a menace to the maintenance of our monetary system. *Norman v. Baltimore & Ohio R. Co.*, supra, 294 U.S. 240, at pages 306, 311, 55 S.Ct. 407, 415, 417, 79 L.Ed. 885, 95 A.L.R. 1352. 'Dollar for dollar' the obligation for the payment of money conforming to the standard of the covenant is to be discharged with money of the standard established by the law...."

## 5. Cook v. Lovett

Court of Common Pleas of Pennsylvania, Philadelphia County. • January 01, 1908 • 17 Pa. D. 347 • 1908 WL 3152

"...My conclusion in this case is founded upon what I regard as a cardinal principle of our government, that legitimate commerce depends upon an unflinching respect for the established standard of value. In a case where it is shown that the sovereignty has attached the quality of what is commonly called money, and sometimes known as legal tender, to a specifically described coin or form of instrument in writing, no convention of private parties—in other words, no private contract between man and man—shall be recognized in the law as subverting this act of sovereignty so long as the parties pretend to deal with money. Men may agree to barter, and one may stipulate to pay while the other binds himself to accept a return in a described article. If the contract is such as expressly to exclude the recognition of anything but a return in commodity, it will be recognized as binding the obligor to tender the designated objects and the obligee to accept them; but if, on the other hand, whilst, as at bar in this contention, there is in the terms of the contract an indication of a payment in a commodity, coupled, however, with a reference by way of description to legal money in any form, in such case it would be in contravention of the act of sovereignty to adjudicate that the obligee was bound to accept what was admitted not to be the money of the country to the derogation of the liquidating power of the latter...."

"...In conclusion, I will note that I do not regard this as a case of necessary choice between one means of payment and another. The covenantors did not provide for a return, or rent, in silver dollars of a certain character and weight, or alternatively in lawful money of the United States; nor did they affect to provide for legal tender money in any form; what they did stipulate for was a coin of the description given, because it was lawful money of the United States. The inference is logical that it was thus assented to because in the United States it was in fact lawful, and therefore available to the covenantee. Money, and not a commodity, was the object. The element of legal recognition was as much a feature of the description as that of weight and metal. The element of legal tender was not within the import of the clause. In point of fact, at the time of the reservation, this coin was current money, passing from merchant to merchant, and it was agreed to for this reason. Nor can we overlook the stipulation for the weight, short by one grain, which was designed to allow for wear or clipping. There was no coinage then of dollars precisely as specified here; a Spanish milled silver dollar weighing seventeen pennyweights and six grains was turned out by no mint; it was a Spanish milled silver dollar weighing seventeen pennyweights and seven grains after not more than one grain of its bulk had been lost by handling and use. It was good because it was lawful. When this money ceased to be lawful, the agreed rent lost an element as radically as if it had ceased to be Spanish silver, or to maintain the covenanted weight, and lawful money had to be substituted for it, unless the

law could sanction the result here contended for by the defendant, to wit, an admitted depreciation in an obvious breach of contract. I concur that the rule be made absolute...."

## 6. Shollenberger v. Brinton

Supreme Court of Pennsylvania. • January 01, 1866 • 3 Am. Law Reg. (N.S.) 591 • 52 Pa. 9

"...But the analogy is delusive in this, that neither oats, nor coal, nor iron, nor any other commodity of commerce, not even gold and silver in bullion, has ever been declared a legal tender in payment of debts. The Constitution made the "coins" of gold and silver a legal tender, and these Acts of Congress have made treasury notes a legal tender, establishing thus a final and irreversible standard of all values. If Congress had said that oats at thirty pounds to the bushel should be a legal tender in payment of all debts, what would your contract for thirty-two pounds avail against the supreme power? Such a contract would be included in "all debts," and so would be solvable by the legal standard of values. Weights and measures are regulated by statutes, and may be adjusted between parties by private contracts, but currency and legal tenders belong only to the supreme power in the State to regulate, and cannot be controlled by private contract. A promise to pay in a better currency than the legal standard is not an unlawful contract, and a moral obligation may result from it, but the law accounts this obligation an imperfect one because it cannot be enforced at law. It is enforceable only in foro conscientiae. When parties come into courts of law with their contracts, they must accept the rule the law-making power has prescribed. The legal obligation of money contracts can never rise higher than the legal standard of money. Debtors will pay their debts in the cheapest currency they can, and when Congress declares that all private debts shall be payable in a depreciated paper currency, and the courts hold such legislation constitutional, it signifies nothing that a particular debtor stipulated to pay in specie; his creditor must take that which the law has authorized the debtor to tender. Had the plaintiff below contracted for gold or silver as articles of commerce, he would have been entitled to recover their value, the same as if any other commodity had been contracted for; but he contracted for specie which is currency and a legal tender, and the legislative power has provided an equivalent in a certain form of paper, and has authorized every debtor to pay in that, and in this exercise of legislative power the contract rights of the creditor were sacrificed...."

"...MERVINE v. SAILOR. The suggestion that the stipulation as to weight was to meet the diminution in the value of the coin by abrasion, is not satisfactory as accounting for the specification in the contract. It would be entitled to consideration, if the payment had been provided to be in dollars of the mint weight, but it was not, as shown. Besides, coins reduced below legal weight by clipping, sweating, abrasion or any other process, are not legal tenders; it was therefore a provision not necessary to guard the rights of the plaintiff, if the contract was intended simply to be dischargeable in ordinary legal coin. There is no accounting for the terms of the contract, excepting that they were intended to be special, and to produce so much silver annually. To give it this construction works out the intentions of the parties, and is attended with no more difficulty than if it had been made payable in so many bushels of wheat or tons of iron. The articles or their equivalent would in such cases be the rule. We have no right to assume that the plaintiff would have parted with his property, or the defendants could have acquired it, excepting on the very terms agreed upon; but if we affirm this judgment, we disregard the stipulation to pay in silver of such weight and amount as the parties agreed upon, and we adopt a principle alien to the contract, and that it is an ordinary debt; as much so as if secured by due-bill or note, and payable not only not in silver of any weight, but in promises to pay, being notes of the United States. This is not an execution in any sense in my judgment of the contract. It was not paper, no matter how good, the plaintiff contracted for, but silver. He is entitled to a substantial compliance with his contract on this basis and this alone, for such is the contract. There are many cases of contracts payable in specific currency, called "money" and "dollars," which have been enforced as special contracts, the word dollar not carrying the contract into constitutional currency or legal-tender money. In 7 Mo. 597, is the case of Farwell v. Fay. It was a case of this kind, and there is a single remark by Scott, J., so applicable to the case in hand, that I cannot forbear to quote it. "The parties," says the judge, "must have had

this"--the difference between the currency of the law and the contract--"in mind, or they would not have deviated from the usual course, but would simply have made the bill payable in dollars." The case of *Pilmer v. Branch Bank at Des Moines*, Law Reg. (1865) 336, is an interesting case on the subject of contracts payable in currency, to which a collection of all the cases on the subject in a note is appended, and goes far to prove the ground herein contended for...."

## 7. *Murray v. Harrison*

Supreme Court, New York. • January 01, 1867 • 33 How. Pr. 90 • 47 Barb. 484

"...The result of the legal tender act is, that gold and silver coins have practically ceased to be currency, and have become, except as to the government, practically exclusively a commodity, and are bought and sold and speculated in, and commonly viewed and treated as such. Why should a court ignore this state of things, unless compelled to do so by the terms of the contract or by force of the legal tender act? Why should not A. B. and C. D. be presumed to have made the supposed agreement, in view of the fact that gold and silver coin has, as between individuals, become exclusively a commodity--in view of the fact that a gold eagle is worth fourteen or fifteen dollars in legal tender notes? Why should not the court consider A. B. and C. D. as having by their supposed agreement, treated the coin to be paid for the commodity or services as a commodity, and the words one hundred dollars, as used by them for the purpose of designating the quantity or number of pieces of coin, at their stamped or coined value as money, to be delivered or paid? And if A. B. and C. D. have so treated it by their supposed agreement, why should not the court so treat it, and consider C. D.'s agreement as substantially an agreement to deliver a certain quantity or number of pieces of coin, as a commodity, for a certain other commodity, or for certain services?..."

"...Now the thing, the coins, which by the contract is to be valued in money, can not by the contract be treated as money. Money and the thing which it is to measure, and express the value of, can not both be viewed or treated as money, even though that thing be gold or silver coin...."

## 8. Legal Tender Cases

Supreme Court of the United States • December 01, 1870 • 79 U.S. 457 • 1870 WL 12742

"...Repeated decisions of this court, of recent date, have established the rule that contracts to pay coined dollars can only be satisfied by the payment of such money, which is precisely equivalent to a decision that such notes as those described in the acts of Congress in question are not the money recognized and established by the Constitution as the standard of value, as the money so recognized and established, if the contract is expressed in dollars, will satisfy any and every contract between party and party. Beyond all question the cases cited recognize 'the fact accepted by all men throughout the world, that value is inherent in the precious metals; that gold and silver are in themselves values, and being such, and being in other respects best adapted to the purpose, are the only proper measures of value; that these values are determined by weight and purity, and that form and impress are simply certificates of value, worthy of absolute reliance only because of the known integrity and good faith of the government which' put them in circulation...."

"...All writers upon political economy agree that money is the universal standard of value, and the measure of exchange, foreign and domestic, and that the power to coin and regulate the value of money is an essential attribute of national sovereignty. Goods and chattels were directly bartered, one for another, when the division of labor was first introduced, but gold and silver were adopted to serve the purpose of exchange by the tacit concurrence of all nations at a very early period in the history of commercial transactions. Commodities of various

kinds were used as money at different periods in different countries, but experience soon showed the commercial nations that gold and silver embodied the qualities desirable in money in a much greater degree than any other known commodity or substance. Daily experience shows the truth of that proposition, and supersedes the necessity of any remarks to enforce it, as all admit that a commodity to serve as a standard of value and a medium of exchange must be easily divisible into small portions; that it must admit of being kept for an indefinite period without deteriorating; that it must possess great value in small bulk, and be capable of being easily transported from place to place; that a given denomination of money should always be equal in weight and quality, or fineness to other pieces of money of the same denomination, and that its value should be the same or as little subject to variation as possible. Such qualities, all agree, are united in a much greater degree in gold and silver than in any other known commodity, which was as well known to the members of the Convention who framed the Constitution as to any body of men since assembled, and intrusted to any extent with the public affairs. They not only knew that the money of the commercial world was gold and silver, but they also knew, from bitter experience, that paper promises, whether issued by the States or the United States, were utterly worthless as a standard of value for any practical purpose...."

## 9. Green v. Sizer

High Court of Errors and Appeals of Mississippi. • October 01, 1866 • 40 Miss. 530 • 1866 WL 1900

"...In coming to this conclusion we cannot disregard the fact that a vast amount of the rights and property of our citizens depends on contracts founded on considerations like that of the case before us; nor can we overlook the circumstances under which such contracts were made. The currency on which they were founded was, for upwards of four years, almost exclusively the circulating medium of the country-issued by governments having, in fact, complete power over the people, and exercising undisturbed political functions. It was the representative of their rights and property in all pecuniary transactions of a private character, and was, at the time, valuable and convertible into gold or silver to a considerable value. It answered all the purposes of a circulating medium among the people, and immense interests were acquired by means of it, under circumstances of the greatest good faith by both parties, and of large profit to the parties who received it; contracts of the highest obligation were entered into in consideration of it, and by it food and clothing and other absolute necessities were obtained...."

## 10. Chalmers v. Jones

Supreme Court of South Carolina. • September 29, 1885 • 23 S.C. 463 • 1885 WL 3680

"...Owing, however, to the peculiar financial condition of this State, and of all the Southern States, during the recent war, with reference to the currency then in use, which currency was known to be the basis of many, if not of most, of the contracts entered into during that time, it became manifest at the close of the war that great injustice would be done if such contracts were enforced under the application of the rule above referred to. One of the first acts, therefore, of our first legislative assembly after the war (the convention) was an ordinance to relax this rule in cases of contracts made during the war, by which in such cases the intent of the parties as to the currency intended might be reached, not by the strict and grammatical interpretation of the word "dollars" and such similar words, as formerly, but by the surrounding circumstances and facts attending the transaction, to wit, the character of the consideration, its value, &c...."

## 11. Murray v. Gale

Supreme Court of New York, First District, General Term. • November 01, 1867 • 5 Abb.Pr.N.S. 236 • 52 Barb. 427

"...Now the thing, the coin, which by the contract is to be valued in money, cannot by the contract be treated as money. Money and the thing which it is to measure and express the value of, cannot both be viewed or treated as money, even though that thing be gold or silver coin...."

"...Why should not A. B. and C. D. be presumed to have made the supposed agreement in view of the fact that gold and silver coin has, as between individuals, become exclusively a commodity-in view of the fact that a gold eagle is worth fourteen or fifteen dollars in legal tender notes? Why should not the court consider A. B. and C. D. as having, by their supposed agreement, treated the coin to be paid for the commodity or services as a commodity, and the words ""one hundred dollars," as used by them for the purpose of designating the quantity or number of pieces of coin, at their stamped or coined value, as money to be delivered or paid? And if A. B. and C. D. have so treated it, by their supposed agreement, why should not the court so treat it, and consider C. D.'s agreement as substantially an agreement to deliver a certain quantity or number of pieces of coin as a commodity, for a certain other commodity, or for certain services?..."

## 12. **Krigel v. U.S.**

United States Court of Claims. • October 21, 1981 • 229 Ct.Cl. 73 • 662 F.2d 741

"...OPINION OF TRIAL JUDGE. As the basis for its substantive argument, plaintiff alleges that he had an implied-in-fact contract with the United States, which breached the contract by not redeeming the full amount of mutilated currency he delivered to the Treasury Department. Plaintiff contends that by accepting his currency the defendant, through its employees at the Mutilated Currency Branch, impliedly agreed to return to plaintiff an amount of money equal to the amount of mutilated currency plaintiff claimed to be turning in for redemption. Though plaintiff may well have believed that the defendant would accept his word as determinative of the value of the currency, it is clear that no one else shared this belief...."

## 13. **Echols v. Grattan**

Supreme Court of Georgia. • January 01, 1871 • 42 Ga. 547 • 1871 WL 2457

"...2. Held again, That, while the legal intendment of the party may be inferred to mean currency, in the expression dollars in the note, such intendment is qualified by the terms of the contract; and the words, "the said sum to be paid in currency, at the present rates, 148 to 100," which was the value of gold at the time, bears intrinsic evidence that this provision for payment in currency, at a stipulated rate, was based upon a gold standard in the sum fixed to be paid in such currency:..."

## 14. **Summitt v. C.I.R.**

United States Tax Court. • May 20, 2010 • 134 T.C. No. 12 • 134 T.C. 248

"...V. Respondent's Contentions. Because certain contracts may call for a cash settlement by reference to the value of the foreign currency rather than actual delivery of the currency, the bill provides that the delivery of a

foreign currency requirement is met where the contract provides for a settlement determined by reference to the value of the foreign currency. (H. Rept. 98-432 (Part 2), at 1646 (1984); emphasis added.)..."

## 15. Parker v. Wilson

Supreme Court of South Carolina. • January 28, 1875 • 5 S.C. 485 • 1875 WL 5346

"...Where a debt was contracted with reference to Confederate currency as a basis of value, its amount should be determined by the value such currency bore to lawful money of the United States at the time of the contract. In such a case the value of the consideration may be shown as evidence upon the point whether the contract was made with reference to Confederate currency, as a basis of value, but not to authorize the jury to adopt the value of the consideration as the amount of the debt...."

## Additional Research on This Topic

### 16. § 5-701. Agreements required to be in writing

NY GEN OBLIG § 5-701

"...b. Notwithstanding paragraph one of subdivision a of this section: 2. For purposes of this subdivision, a "qualified financial contract" means an agreement as to which each party thereto is other than a natural person and which is: (a) for the purchase and sale of foreign exchange, foreign currency, bullion, coin or precious metals on a forward, spot, next-day value or other basis;..."

"...a. Every agreement, promise or undertaking is void, unless it or some note or memorandum thereof be in writing, and subscribed by the party to be charged therewith, or by his lawful agent, if such agreement, promise or undertaking: 1. By its terms is not to be performed within one year from the making thereof or the performance of which is not to be completed before the end of a lifetime; 2. Is a special promise to answer for the debt, default or miscarriage of another person; 3. Is made in consideration of marriage, except mutual promises to marry; 4. Repealed 5. Is a subsequent or new promise to pay a debt discharged in bankruptcy; 6. Notwithstanding section 2-201 of the uniform commercial code, if the goods be sold at public auction, and the auctioneer at the time of the sale, enters in a sale book, a memorandum specifying the..."

### 17. § 2. Jurisdiction of Commission; liability of principal for act of agent; Commodity Futures Trading Commission; transaction in interstate commerce

7 USCA § 2

"...(c) Agreements, contracts, and transactions in foreign currency, government securities, and certain other commodities (2) Commission jurisdiction (C)(i)(I) This subparagraph shall apply to any agreement, contract, or transaction in foreign currency that is-- (aa) offered to, or entered into with, a person that is not an eligible contract participant (except that this subparagraph shall not apply if the counterparty, or the person offering to be the



counterparty, of the person that is not an eligible contract participant is a person described in any of item (aa), (bb), (ee), or (ff) of subparagraph (B)(i)(II)); and..."