

A landowner entered into a single contract with a builder to have three different structures built on separate pieces of property owned by the landowner. Each structure was distinct from the other two, and the parties agreed on a specific price for each. After completing the first structure in accordance with the terms of the contract, the builder demanded payment of the specified price for that structure. At the same time, the builder told the landowner that the builder was "tired of the construction business" and would not even begin the other two structures. The landowner refused to pay anything to the builder.

Is the builder likely to prevail in a suit for the agreed-upon price of the first structure?

- A. No, because substantial performance is a constructive condition to the landowner's duty to pay at the contract rate.
- B. No, because the builder's cessation of performance without legal excuse was a willful breach of the contract.
- C. Yes, because the contract is divisible, and the landowner will be required to bring a separate claim for the builder's failure to complete the other two structures.
- D. Yes, because the contract is divisible, but the landowner will be able to deduct any recoverable damages caused by the builder's failure to complete the contract.

Explanation:

Divisible contracts

Definition	Contract composed of multiple bargained-for exchanges that can be separately enforced
Recovery after breach	Breaching party entitled to return performance for any completed or substantially performed promise Nonbreaching party entitled to damages stemming from breach

Divisible contracts contain **two or more bargained-for exchanges**, each of which can be **enforced separately**. Under such a contract, a party is **entitled to return performance** (eg, payment) for any **completed or substantially performed promise**. This is true even if that party breaches the other, separately enforceable agreement. However, the nonbreaching party may deduct from any payment made to the breaching party damages stemming from the breach.

Here, the builder-landowner contract was divisible because it consisted of three bargained-for exchanges—ie, three distinct structures, each at a specified price—that could be enforced separately. Since the builder completed the first structure, it is entitled to the agreed-upon price for that structure despite its failure to complete the others. However, the landowner will be able to deduct any recoverable damages caused by the builder's failure to complete the contract.

(Choice A) A party is entitled to return performance for completing or substantially performing a divisible part of the contract—even if that party failed to substantially perform the *entire* contract.

(Choice B) The builder's cessation of performance without legal excuse *was* a willful breach of the contract. And willfulness is a factor in determining whether a breach is material—ie, significant enough to deprive the other party of the substantial benefit of the bargain. But willfulness does not affect recovery in this case.

(Choice C) The nonbreaching party to a divisible contract need not bring separate actions for damages stemming from each breach. That is because it is still a single contract.

Educational objective:

Divisible contracts contain two or more bargained-for exchanges that can be separately enforced. Under a divisible contract, a party is entitled to return performance for a completed or substantially performed promise—even if that party breaches another part of the contract.

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