

A landowner and a contractor entered into a written contract under which the contractor agreed to build a building and pave an adjacent sidewalk for the landowner for \$200,000. Later, while construction was proceeding, the landowner and the contractor entered into an oral modification under which the contractor was not obligated to pave the sidewalk but still would be entitled to \$200,000 upon completion of the building. The contractor completed the building. The landowner, after discussions with his landscaper, demanded that the contractor pave the adjacent sidewalk. The contractor refused.

Has the contractor breached the contract?

- A. No, because the oral modification was in good faith and therefore enforceable.
- B. Yes, because a discharge of a contractual obligation must be in writing.
- C. Yes, because the parol evidence rule bars proof of the oral modification.
- D. Yes, because there was no consideration for the discharge of the contractor's duty to pave the sidewalk.

Explanation:

Modifying existing contracts

Governing law		Requirements
Common law	Traditional view	Parties' agreement New consideration
	Modern view	Parties' agreement New consideration <i>unless</i> modification is fair & equitable due to unanticipated circumstances
UCC		Parties' agreement Good faith (ie, honesty & observance of reasonable commercial standards of fair dealing) New consideration <i>not</i> required

UCC = Uniform Commercial Code.

Contracts for services are governed by the **common law**. Under the common law, **contract modifications** must be supported by **new consideration**—ie, a bargained-for exchange of promises or performance—to be enforceable. This requirement is only met if **both parties alter their duties** in some way. As a result, the promise to perform, or the performance of, a **preexisting duty is insufficient** for new consideration and will not discharge the parties' duties under the initial (ie, unmodified) contract.

Here, the contractor agreed to build a building and pave a sidewalk for the landowner for \$200,000. The parties later agreed that the contractor did not have to pave the sidewalk. However, there was no consideration for this modification because the landowner's duty to pay the full \$200,000 contract price remained the same. This means that the modification is *not* binding and did not discharge the contractor's duty to pave. As a result, the contractor breached the contract by refusing to pave the sidewalk.

(Choice A) Under the UCC, contract modifications need only be made in good faith to be enforceable—new consideration is not required. But since the UCC only applies to contracts for the sale of goods, the common law applies here.

(Choice B) There is no rule requiring the discharge of a contractual obligation to be in writing.

(Choice C) The parol evidence rule generally bars evidence of a *prior* oral or written agreement to modify or contradict the terms of a final written agreement. But this rule does not bar evidence of *subsequent* agreements between the parties (eg, the oral modification that occurred after the contract was entered).

Educational objective:

Under the common law, contract modifications are only binding if they are supported by new consideration. This requires both parties to alter their duties in some way.

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