

A seller contracted to manufacture 1,000 toasters for a buyer for a specified price. The contract contained a provision that clearly stated: "This contract may not be assigned, and any violation of this prohibition voids the contract." After the contract was signed, the seller informed the buyer that the toasters would be manufactured by a competitor of the seller. Citing the nonassignment provision, the buyer claimed that it was no longer bound by the contract. Toasters manufactured by the competitor were of equal quality to toasters manufactured by the seller.

Is the buyer bound by the contract?

- A. No, because the seller assigned a right despite the contractual prohibition.
- B. No, because "this contract may not be assigned" means that duties may not be delegated, and the seller delegated a duty.
- C. Yes, because even though the seller breached the contract, there are no damages since the competitor's toasters are of equal quality to the seller's toasters.
- D. Yes, because the nonassignment provision is not enforceable since public policy favors free assignment and delegation.

Explanation:

Contract provisions prohibiting assignments/delegations

Type of provision	Explicit prohibitions	Assignment of rights	Delegation of duties
None	N/A	Allowed	
Specific	Assignment of rights & delegation of duties	Barred	
	Assignment of rights only	Barred	Allowed
	Delegation of duties only	Allowed	Barred
General	Assignment of "the contract"		

Public policy favors the free assignment of contractual rights and the free delegation of contractual duties. Despite this public policy, contract provisions that prohibit assignment and/or delegation (ie, **nonassignment provisions**) are **enforceable (Choice D)**. However, a general provision that **prohibits assignment of "the contract"**—without specifying whether it applies to rights or duties—will be construed to (1) allow the assignment of rights and (2) **bar the delegation of duties**.

Here, the seller had a contractual duty to manufacture 1,000 toasters and sell them to the buyer. Since the nonassignment provision ("[t]his contract may not be assigned") did not specify whether it applied to rights or duties, it will be construed to mean that duties may not be delegated. But the seller informed the buyer that the seller had delegated its duty to the competitor. And since the contract stated that this violation of the nonassignment provision voided the contract, the buyer is no longer bound.

(Choice A) The seller delegated its *duty* to manufacture the toasters but did not assign its *right* to receive payment from the buyer. And since the contract provision did not specify whether it applied to rights or duties, it would have allowed the seller to assign its right (had the seller done so), and the buyer would still have been bound.

(Choice C) The buyer is no longer bound because the seller's violation of the nonassignment provision voided the contract. This is true regardless of whether the buyer suffered any damages.

Educational objective:

Nonassignment provisions are enforceable. But a general provision that prohibits assignment of "the contract" without specifying rights or duties will be construed to (1) allow the assignment of rights and (2) bar the delegation of duties.

References

- Restatement (Second) of Contracts § 322 (Am. Law Inst. 1981) (explaining that a contract term prohibiting assignment of "the contract" bars only the delegation of a duty).

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