

A businesswoman entered into a contract with a painter by the terms of which he was to paint the businesswoman's office for \$1,000 and was required to do all the work over the following weekend so as to avoid disruption of her business.

The painter commenced work on Saturday morning and had finished half the painting by the time he quit work for the day. That night, without the fault of either party, the office building was destroyed by fire.

Which of the following is an accurate statement?

- A. Both parties' contractual duties are discharged, and the painter can recover nothing from the businesswoman.
- B. Both parties' contractual duties are discharged, but the painter can recover in quasi-contract from the businesswoman.
- C. Only the painter's contractual duty is discharged, and the painter can recover his reliance damages from the businesswoman.
- D. Only the painter's contractual duty is discharged, because the businesswoman's performance (payment of the agreed price) is not impossible.

Explanation:

Ways to discharge contractual obligations

Full performance of contractual obligations

Impossibility, impracticability, or frustration of purpose

Release (in writing only)

Mutual rescission

Substituted contract

Contract or covenant not to sue

Accord & satisfaction

Novation

Mnemonic: **FIRM SCAN**

The occurrence of an **unexpected or extraordinary event** results in the **rescission** (ie, cancellation) of a contract if:

that event (1) makes it **impossible or impracticable** for one or both parties to perform their duties or (2) **frustrates the purpose** of the contract

the contract was formed under a **basic assumption** that the event would not occur *and* **neither party was at fault** in causing the event to occur.

Rescission **discharges both parties' duties**, so they cannot sue on the contract (eg, for breach). However, a party can still **recover in quasi-contract** for the value of any work done prior to rescission.

Here, the painter contracted to paint the businesswoman's office. After one day of painting, the office building was destroyed by fire, which made it impossible for the painter to finish and frustrated the purpose of the contract. A basic assumption of the contract was that the building would not be destroyed. And since neither party was at fault, both parties' contractual duties are discharged. However, the painter can still recover in quasi-contract from the businesswoman for finishing half the painting before the fire **(Choice A)**.

(Choices C & D) Although the businesswoman could still pay the agreed price, the impossibility of the painter's duty discharges the duties of *both* parties. And although the painter could recover reliance damages (ie, costs) under a theory of promissory estoppel, he may be able to recover a larger amount under a theory of quasi-contract, which compensates for costs *and* expected profits.

Educational objective:

The duties of both parties to a contract are discharged if (1) an unexpected event makes it impossible for one or both parties to perform their duties or frustrates the purpose of the

contract, (2) the contract was formed under a basic assumption that the event would not occur, and (3) neither party was at fault in causing the event to occur.

References

Restatement (Second) of Contracts §§ 237, 267 (Am. Law Inst. 1981) (explaining that an unexpected event can discharge a party's duty due to impossibility or impracticability, which then discharges the other party's duty).

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