

A property owner hired an arborist to cut down all the trees on her property and to transport the trees to a lumber company. The owner agreed to pay the arborist \$10,000 when the work was complete. The arborist said that the work would take him three days.

On the first day, the arborist cut down all the trees. That evening, a fire caused by vandals completely destroyed the trees, making them unfit for use by the lumber company.

What, if anything, must the owner pay the arborist?

- A. The arborist's expectation interest, \$10,000 less any costs the arborist avoided by not completing his performance.
- B. The arborist's restitutionary interest, which would be the reasonable value of the services he rendered.
- C. Nothing, because the contract was discharged by frustration of purpose.
- D. Nothing, because the arborist did not complete the work.

Correct

Collecting Statistics

02 mins, 36 secsTime Spent

2023Version

## Explanation:

Parties to a contract have an absolute duty to perform unless that duty is discharged. The duty to perform can be discharged due to **impracticability** if:

an **unforeseeable event** occurred

the contract was formed under the **basic assumption** that the **event would not occur** *and* the **party seeking discharge** is **not at fault**.

When the duty to perform is discharged by impracticability, both parties are no longer required to perform. However, a party may seek **restitution damages** for any **benefit conferred** on the other party since it would be unfair to allow the other party to be unjustly enriched.

Here, the arborist contracted to cut down all the property owner's trees and to transport them to a lumber company. However, a fire destroyed the trees one day after the arborist cut them down. The fire was unforeseeable since it was caused by vandals, and the contract was formed under the basic assumption that this would not occur. The arborist was not at fault, so his duty to perform was discharged by impracticability (**Choice D**). And the owner must pay the arborist his restitutionary interest, which would be the reasonable value of the services he rendered.

**(Choice A)** A party is generally entitled to [expectation damages](#) when the other party breaches the contract. However, the property owner did not breach the contract, so the arborist is only entitled to restitution.

**(Choice C)** The frustration-of-purpose doctrine applies when an unexpected event destroys one party's purpose in entering a contract. This doctrine likely does not apply here since neither party's contractual purpose was frustrated, as the property owner's purpose was to have the trees removed while the arborist's purpose was to get paid.

## Educational objective:

A contractual duty to perform can be discharged by impracticability if (1) an unforeseeable event has occurred, (2) the contract was formed under the basic assumption that the event would not occur, and (3) the party seeking discharge is not at fault. In cases of impracticability, a partially performing party may seek restitution damages.

## References

Restatement (Second) of Contracts § 261 (Am. Law Inst. 1981) (defining a discharge by impracticability).

Restatement (Second) of Contracts §§ 272 & 377 (Am. Law Inst. 1981) (explaining when restitution is available for a discharge by impracticability).

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## Examples of impracticability



Incapacity or death



Destruction of thing needed  
for performance



Prohibition or law