

In a single writing, a painter contracted with a farmer to paint three identical barns on her rural estate for \$2,000 each. The contract provided for the farmer's payment of \$6,000 upon the painter's completion of the work on all three barns. The painter did not ask for any payment when the first barn was completely painted, but she demanded \$4,000 after painting the second barn.

Is the farmer obligated to make the \$4,000 payment?

- A. No, because the farmer has no duty under the contract to pay anything to the painter until all three barns have been painted.
- B. No, because the painter waived her right, if any, to payment on a per-barn basis by failing to demand \$2,000 upon completion of the first barn.
- C. Yes, because the contract is divisible.
- D. Yes, because the painter has substantially performed the entire contract.

Explanation:

Order of performances*

Simultaneous performance possible	Condition <i>concurrent</i> implied (ie, performance due simultaneously)
One performance requires time	Condition <i>precedent</i> implied (ie, durational performance due <i>before</i> respective duty triggered)

*These rules apply unless express contractual language or circumstances indicate otherwise.

When a party performs one part of a **divisible contract**, the party is entitled to the agreed equivalent for that part—even if the party fails to perform the other parts of the contract. In other words, that party's **performance of the *entire* contract is not a condition precedent** to the other party's duty to perform. A contract is **divisible if:**

the parties' duties can be broken down into at least two **corresponding pairs of performances** *and*

those pairs of performances can fairly be regarded as **agreed (ie, bargained-for) equivalents**.

Although courts prefer to interpret contracts as divisible for reasons having to do with fairness, they will not do so if the contract expressly states that it is indivisible.

Here, the parties' contract provided that the farmer had no duty to pay the painter anything until she had painted all three barns. As a result, the contract was expressly *indivisible*, and the painter's completion of the work on all three barns was a condition precedent to the farmer's duty to pay. Therefore, the farmer is not obligated to pay the painter \$4,000 (ie, \$2,000 per barn for two barns) **(Choice C)**.

(Choice B) The painter did *not* have a right to expect payment for each barn, so she could not waive such a right.

(Choice D) The painter did *not* substantially perform the contract since she failed to paint one of the three barns—a significant part of the performance for which the farmer contracted.

Educational objective:

Although courts prefer to interpret contracts as divisible for fairness reasons, they will not do so in contradiction of the express terms of the contract.

References

Restatement (Second) of Contracts § 234 (Am. Law Inst. 1981) (order of performances).

Restatement (Second) of Contracts § 240 (Am. Law Inst. 1981) (part performances as agreed equivalents).

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