

A sailor owns an exceptionally seaworthy boat that she charters for sport fishing at a \$500 daily rate. The fee includes the use of the boat with the sailor as the captain, and one other crew member, as well as fishing tackle and bait. On May 1, a customer agreed with the sailor that the customer would have the full-day use of the boat on May 15 for himself and his family for \$500. The customer paid an advance deposit of \$200 and signed an agreement that the deposit could be retained by the sailor as liquidated damages in the event the customer canceled or failed to appear. On May 15 at 1:00 a.m., the Coast Guard issued offshore "heavy weather" warnings and prohibited all small vessels the size of the sailor's boat from leaving the harbor. This prohibition remained in effect throughout the day. The customer did not appear at all on May 15, because he had heard the weather warnings on his radio.

Which of the following is an accurate statement of the parties' legal relationship?

- A. The contract is discharged because of impossibility, and the customer is entitled to return of his deposit.
- B. The contract is discharged because of mutual mistake concerning an essential fact, and the customer is entitled to return of his deposit.
- C. The contract is not discharged, and the customer is not entitled to return of his deposit, because the liquidated-damage clause in effect allocated the risk of bad weather to the customer.
- D. The contract is not discharged, because its performance was possible in view of the exceptional seaworthiness of the sailor's boat, and the customer is not entitled to return of his deposit.

## **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**

A contract is canceled or **rescinded** due to the occurrence of an **unexpected or extraordinary event** if:

that event makes it **impossible or impracticable** for one or both parties to perform their duties\*

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 excuses both parties' nonperformance of the contract (ie, discharges their obligations). This means that damages for breach cannot be recovered and any deposit or other benefit conferred on the other party must be returned.

Here, the customer contracted to use the sailor's boat and paid a \$200 deposit. But the Coast Guard issued a heavy-weather warning and prohibited all small vessels from leaving the harbor—making it objectively impossible to use the boat despite its exceptional seaworthiness (**Choice D**). The parties must have assumed that the Coast Guard would not prohibit the use of the boat, and neither party could control its decision to do so. Therefore, the contract is discharged because of impossibility, and the customer is entitled to return of his deposit.

\*Impossibility will generally be found only in these specific situations: (1) the death or incapacity of someone necessary for performance, (2) the destruction of the contract's subject matter, and (3) the prevention of performance by governmental regulation or order (as seen here).

**(Choice B)** In contract law, a mistake is an erroneous belief regarding the facts and/or law as they exist at the time of contracting. This could not be a case of mutual mistake since the Coast Guard prohibition was not in effect when the contract was entered.

**(Choice C)** A liquidated-damages clause is unenforceable as a penalty if the amount is so unreasonably large that it punishes the breaching party (as opposed to merely compensating the nonbreaching party). But this would not be a reason to discharge a contract.

**Educational objective:**

A contract is rescinded, and both parties' contractual obligations are discharged, when (1) an unexpected or extraordinary event makes performance impossible or impracticable, (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 § 261 cmt. d (Am. Law Inst. 1981) (explaining that an unexpected event can discharge a party's duty to perform due to impossibility or impracticability).

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