

A buyer agreed to purchase and took delivery of a telescope from a seller for a price of \$100. She promised to pay him \$100 "as soon as I am able."

What effect does the quoted language have on the enforceability of the buyer's promise?

- A. None.
- B. It makes the promise illusory.
- C. It requires the buyer to prove her inability to pay.
- D. It requires the seller to prove the buyer's ability to pay.

Explanation:

Performance is generally due once a contract is formed (eg, when a mutual agreement is supported by [valuable consideration](#)). However, performance can be delayed or discharged by a condition—ie, an uncertain future event that must occur before performance becomes due or is discharged. There are two types of conditions:

Condition precedent* – *delays performance* until a specified event occurs (eg, buyer's promise to pay as soon as she is able) and requires the *plaintiff to prove* that the event occurred to prevail

Condition subsequent – *excuses performance* once a specified event occurs (eg, buyer's promise to pay conditioned on delivery of telescope) and requires the *defendant to prove* that the event occurred to avoid liability **(Choice C)**

*A condition concurrent arises when each party's obligation to perform is a condition precedent to the other party's obligation to perform (ie, when performance is due simultaneously).

Here, a contract was formed when the buyer agreed to purchase the telescope from the seller for \$100. The buyer's promise to pay "as soon as I am able" created a condition *precedent* that delayed her obligation to make the promised payment. This language therefore requires the seller to prove the buyer's ability to pay (ie, that the specified event occurred) before he can prevail in his action for breach of contract **(Choice A)**.

(Choice B) A promise is illusory, and therefore unenforceable, if it is so indefinite that only one party is required to perform—eg, had the buyer promised to pay \$100 "if I want to." In contrast, the buyer's promise to pay \$100 "as soon as I am able" defines when she must perform and can be enforced once the condition precedent occurs.

Educational objective:

Performance is generally due when a contract is formed. However, the contract can contain a condition precedent that delays performance *until*—or a condition subsequent that will excuse performance *when*—a specified event occurs.

References

Restatement (Second) of Contracts §§ 224–230 (Am. Law Inst. 1981) (conditions related to performance).

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Delay or discharge of performance

