

A homeowner and a planner signed a detailed writing in which the planner, a landscape architect, agreed to landscape and replant the owner's residential property in accordance with a design prepared by the planner and incorporated in the writing. The owner agreed to pay \$10,000 for the work upon its completion. At the owner's insistence, the written agreement contained a provision that neither party would be bound unless the owner's law partner, an avid student of landscaping, should approve the planner's design. Before the planner commenced the work, the owner's law partner, in the presence of both the owner and the planner, expressly disapproved the landscaping design. Nevertheless, the owner ordered the planner to proceed with the work, and the planner reluctantly did so. When the planner's performance was 40% complete, the owner repudiated his duty, if any, to pay the contract price or any part thereof.

If the planner now sues the owner for damages for breach of contract, which of the following concepts best supports the planner's claim?

- A. Irrevocable waiver of condition.
- B. Promissory estoppel.
- C. Substantial performance.
- D. Unjust enrichment.

## Explanation:

### When nonoccurrence of condition is excused

<b>Waiver</b>	Party waives condition by words or conduct
<b>Wrongful interference</b>	Party wrongfully prevents or interferes with condition's occurrence
<b>Estoppel</b>	Party indicates condition will not be enforced AND Other party reasonably & detrimentally relies on belief that condition has been waived
<b>Disproportionate forfeiture</b>	Party substantially performed & will be significantly harmed if condition is enforced

A contracting party may generally avoid performance if a **condition precedent**—ie, an uncertain future event that must occur before either or both parties' performance becomes due—has not occurred. The **nonoccurrence of a condition** may be **excused**, however, if the party who benefits from the condition **waives it by words or conduct**. And the waiving party **cannot retract the waiver** if the **other party** has **detrimentally relied** on it.

Here, the agreement provided that it would be binding *if* the owner's law partner approved the planner's landscape design (condition precedent). The law partner disapproved the design (nonoccurrence), but the owner ordered the planner to proceed with the work anyway (waiver). And because the planner detrimentally relied on that waiver by completing 40% of the work, the owner could not retract it (ie, the waiver was irrevocable). Therefore, the concept of irrevocable waiver of condition best supports the planner's breach-of-contract claim.

**(Choice B)** Under the doctrine of **promissory estoppel**, a party can enforce a promise on which it reasonably and detrimentally relied when *no* valid contract was formed. But because a contract was formed here, this doctrine does not apply.

**(Choice C)** The planner did *not* substantially perform under the contract since his performance was only 40% complete.

**(Choice D)** The doctrine of unjust enrichment applies in the *absence* of a valid contract to prevent one party from receiving a benefit from another that was not rightfully earned and would be unfair to keep.

## Educational objective:

Nonoccurrence of a condition precedent may be excused if the party who benefits from the condition waives it by words or conduct. The waiving party cannot retract the waiver if the other party has detrimentally relied on it.

Copyright © 1995 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.