

An architect agreed with a developer to design a large residential development. Because the architect had a history of substance abuse problems, the parties agreed that the developer's duty to accept and pay for the plans would be conditioned on the architect's abstaining from alcohol during the six months it would take to do the work. After two months, the architect began having several alcoholic drinks each day. The developer became aware of the architect's drinking before the architect showed the developer the preliminary plans. When the developer saw the preliminary plans, the developer told the architect that the concept was impressive and that he looked forward to seeing the final plans. The architect continued to have several alcoholic drinks each day and completed the plans within the specified contract period. However, the developer declined to review, accept, or pay for the final plans and stated that it was because of the architect's continued use of alcohol.

The architect has sued the developer for breach of contract.

Which of the following arguments best supports the architect's claim?

- A. The alcohol use was not a material breach of contract by the architect, since it did not affect the quality of the work.
- B. The developer waived the condition of no alcohol use.
- C. The no-alcohol term was functionally a penalty clause and therefore was unenforceable.
- D. The no-alcohol term would be interpreted as a promise and not a condition.

Explanation:

When nonoccurrence of condition is excused

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

Performance is generally due once a contract is formed but can be made **contingent upon** the occurrence of a **condition precedent**. In that case, performance will not become due until the condition occurs or its **nonoccurrence is excused**. One way for nonoccurrence to be excused is for the **party who benefits** from the condition to **waive the condition**—ie, indicate by words or conduct that the condition need no longer occur.

Here, the developer's duty to accept and pay for the plans was conditioned on the architect abstaining from alcohol while the plans were designed (condition precedent). Although the architect did not abstain from alcohol (nonoccurrence) and the developer was aware of this, the developer approved the preliminary plans (waiver). As a result, the condition's nonoccurrence was excused and the developer's performance became due. Therefore, waiver is the argument that best supports the architect's claim of breach of contract.

(Choice A) Express conditions such as the no-alcohol-use condition require strict compliance, so the fact that the architect's alcohol use did not affect the quality of the work is irrelevant.

(Choice C) A penalty is a liquidated damages clause so unreasonably large that it punishes a party for breach (as opposed to merely compensating the other party). But the no-alcohol term in this case is *not* a damages clause and is not meant to compensate the developer for breach.

(Choice D) Ambiguity about whether an event creates a promise or a condition is generally resolved in favor of a promise unless the event was within the obligee's control or he/she assumed its risk. There was no ambiguity here, however, because the developer's duty to pay was expressly conditioned on the architect's abstaining from alcohol.

Educational objective:

If the party who benefits from the condition waives the nonoccurrence of the condition—ie, indicates by words or conduct that the condition need no longer occur—then that party's performance will become due.

References

Restatement (Second) of Contracts § 224 (Am. Law Inst. 1981) (definition of condition).

Restatement (Second) of Contracts § 225 (Am. Law Inst. 1981) (effect of nonoccurrence of condition).

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