

On January 5, a creditor loaned \$1,000 to a debtor under a contract calling for the debtor to repay the loan at the rate of \$100 per month payable on the first day of each month. On February 1, at the debtor's request, the creditor agreed to permit payment on February 5. On March 1, the debtor requested a similar time extension and the creditor replied, "Don't bother me each month. Just change the date of payment to the fifth of the month. But you must now make the payments by cashier's check." The debtor said, "Okay," and made payments on March 5 and April 5 by cashier's check. On April 6, the creditor sold the loan contract to a bank but did not tell the bank about the agreement permitting payments on the fifth of the month. On April 6, the bank wrote to the debtor: "Your debt to [the creditor] has been assigned to us. We hereby inform you that all payments must be made on the first day of the month."

Can the debtor justifiably insist that the payment date for the rest of the installments is the fifth of each month?

- A. No, because a contract modification is not binding on an assignee who had no knowledge of the modification.
- B. No, because although the creditor waived the condition of payment on the first of the month, the bank reinstated it.
- C. Yes, because although the creditor waived the condition of payment on the first of the month, the creditor could not assign to the bank his right to reinstate that condition.
- D. Yes, because the creditor could assign to the bank only those rights the creditor had in the contract at the time of the assignment.

## Explanation:

### Assignment of contractual rights

#### Limitations

- Assignment permitted unless it:
  - materially increases obligor's contractual duties or risks
  - materially reduces obligor's chance of obtaining performance *or*
  - is void (not merely prohibited) under contract provision

#### Requirements

- Present intent to immediately assign right
- Consideration generally required to make assignment irrevocable
  - Exceptions: promissory estoppel, delivery of document symbolizing assigned right (eg, stock certificate), delivery of written & signed assignment

#### Assignee's rights

- Assumes all of assignor's rights as contract stands at time of assignment, subject to claims/defenses that:
  - accrued before obligor received notice of assignment *or*
  - stem from assignor's present or future failure to perform
- Assignor loses rights & therefore cannot enforce contract

An **assignment** is the **transfer of rights** under a contract to another (ie, assignee). The assignee takes all of the rights of the assignor as the contract stands **at the time of the assignment**.

Here, the contract between the debtor and the creditor called for the debtor to make payments on the first day of each month. The parties effectively **modified** that contract when the creditor promised to accept payments on the *fifth* day of each month in exchange for the debtor's promise to make the payments by cashier's check.\* Since this occurred *before* the creditor assigned his rights under the loan contract to the bank, the debtor can justifiably insist that the payment date for the rest of the installments is the fifth of each month.

\*Note that there was **consideration** for the creditor's promise to accept payment at a later date (and the modification was effective) because the debtor altered his preexisting duty to pay the debt by promising to make future payments by cashier's check.

**(Choice A)** There is no rule that makes a contract modification ineffective as to an assignee simply because the assignee had no notice of it. As such, the assignee (here, the bank) is bound by the modification.

**(Choices B & C)** It is true that if a party waives a condition, that party may reinstate the condition with respect to future acts of performance. However, that rule is not applicable

here because the parties modified the contract by mutual agreement and the opportunity to reinstate a condition was no longer available.

**Educational objective:**

An assignee (ie, one to whom rights under a contract are transferred) takes all of the assignor's rights as the contract stands at the time of the assignment.

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