

A fugitive was wanted for murder. The authorities offered the following reward: "\$20,000 to anyone who provides information leading to the arrest and conviction of this fugitive." A private detective knew of the reward, located the fugitive, and brought him to the authorities, who arrested him. The authorities then determined that although the fugitive had, in fact, committed the crime, he had been directed to do so by his boss. The authorities and the fugitive then agreed that in exchange for the fugitive's testimony against his boss, all charges against the fugitive would be dropped. The fugitive testified and was released. The authorities refused to pay the reward to the private detective on the ground that the fugitive was never convicted.

Would the private detective be likely to prevail in a breach of contract action against the authorities?

- A. No, because the express conditions set out in the reward offer were not met.
- B. No, because the private detective failed to notify the authorities that he had accepted the reward offer.
- C. Yes, because the authorities' agreement with the fugitive was against public policy.
- D. Yes, because the authorities themselves prevented the conviction of the fugitive.

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

A party may generally avoid performance until a **condition precedent**—ie, an uncertain future event that must occur before either or both party's performance becomes due—has occurred. The **nonoccurrence of a condition** may be **excused**, however, if the party protected by the condition **wrongfully prevents or interferes** with its occurrence (eg, through a breach of the implied duty of good faith and fair dealing).

Here, the authorities' duty to pay the reward was subject to two conditions precedent—the arrest *and* conviction of the fugitive. The implied duty of good faith and fair dealing imposed a duty on the authorities to refrain from hindering either condition's occurrence. However, they breached that duty by agreeing to drop all charges against the fugitive despite their determination that he had committed the crime, thus excusing the express condition of conviction that was not met **(Choice A)**. Therefore, the detective's suit will likely prevail.

(Choice B) In a **unilateral contract**, an offeree who accepts by completing the requested performance must give notice if he/she has reason to know that the completed performance will *not* come to the offeror's attention within a reasonable time. Here, there was no need for the detective to notify the authorities that he had accepted their reward offer because they learned of his performance when he brought the fugitive to them.

(Choice C) Whether the authorities' agreement with the fugitive was against public policy goes to the enforceability of the agreement between the fugitive and the authorities; it has no bearing on the outcome of this dispute.

Educational objective:

The nonoccurrence of a condition may be excused if the party protected by the condition wrongfully prevents or interferes with its occurrence (eg, through a breach of the implied duty of good faith and fair dealing).

References

Restatement (Second) of Contracts §§ 224–25 (Am. Law Inst. 1981) (conditions and effect of non-occurrence).

Restatement (Second) of Contracts § 245 (Am. Law Inst. 1981) (when a party's wrongful interference excuses a condition).

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