

A business contracted in writing with a shareholder who owned all of a corporation's outstanding stock to purchase the stock at a specified price per share. At the time this contract was executed, the business's contracting officer said to the shareholder, "Of course, our commitment to buy is conditioned on our obtaining approval of the contract from our parent company." The shareholder replied, "Fine. No problem." The parent company orally approved the contract, but the shareholder changed her mind and refused to consummate the sale on two grounds: (1) when the agreement was made there was no consideration for her promise to sell; and (2) the parent company's approval of the contract was invalid.

If the business sues the shareholder for breach of contract, is the business likely to prevail?

- A. No, because mutuality of obligation between the parties was lacking when the agreement was made.
- B. No, because the condition of the parent company's approval of the contract was an essential part of the agreed exchange and was not in a signed writing.
- C. Yes, because any possible lack of consideration for the shareholder's promise to sell was expressly waived by the shareholder when the agreement was made.
- D. Yes, because the business's promise to buy, bargained for and made in exchange for the shareholder's promise to sell, was good consideration even though it was expressly conditioned on an event that was not certain to occur.

Explanation:

Elements of valuable consideration

Bargained-for exchange Each party's willingness to enter agreement must be induced by other party's act/promise

Legal detriment Each party must relinquish legal right by either:
performing (or promising to perform) act that is not legally required *or*
refraining (or promising to refrain) from performing legally permissible act

A **contract** is a legally enforceable agreement that is created when a mutual agreement is supported by **valuable consideration**—ie, a **bargained-for exchange** of promises or performance. 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

Condition subsequent – *excuses performance* once a specified event occurs

Here, the business promised to purchase, and the shareholder promised to sell, all of the shareholder's stock in a corporation. This exchange of promises provided valuable consideration to form a valid contract. But the parties' performance of that contract was contingent upon the business obtaining approval of the agreement from its parent company—a condition precedent. Since that condition precedent was met when the parent company approved the purchase, the business would likely prevail in a breach-of-contract action based on the shareholder's refusal to sell.

*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).

(Choices A & C) Mutuality of obligation between the parties was *not* lacking, and their agreement *was* supported by consideration, because the business's promise to purchase stock was induced by the shareholder's promise to sell it (and vice versa).

(Choice B) There is no rule requiring that a condition be included in a signed writing.

Educational objective:

A contract is generally formed when a mutual agreement is supported by valuable consideration and may include conditions that delay (condition precedent) or excuse (condition subsequent) a party's promised performance.

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