

A life coach entered into a contract with an introverted woman to provide a weeklong course that served as an introduction to the life coach's yearlong program. Under the terms of the contract, the life coach would work with the woman full-time for a week to start teaching her to interact with people with more confidence. The woman would then participate in a speed-dating event as her "graduation" from the course. The contract also provided that unless the woman received an offer for a second date at the speed-dating event, she had no obligation to pay for the introductory course. If she received an offer for a second date at the speed-dating event, she would be required to pay the life coach \$1,000 within three days of the event.

After working with the life coach pursuant to the terms of the contract, the woman attended the speed-dating event. Four days after the event, when the woman still had not paid the life coach, the life coach brought a breach-of-contract action against the woman to recover \$1,000 under the contract.

Which of the following best states the burden of proof that will apply in this case?

- A. Because the contract involved a condition precedent, the life coach must prove that the woman received an offer of a second date at the speed-dating event to recover.
- B. Because the contract involved a condition precedent, the woman must prove that she did not receive an offer of a second date at the speed-dating event to avoid liability.
- C. Because the contract involved a condition subsequent, the life coach must prove that the woman received an offer of a second date at the speed-dating event to recover.
- D. Because the contract involved a condition subsequent, the woman must prove that she did not receive an offer of a second date at the speed-dating event to avoid liability.

## Explanation:

**Performance** is generally **due** once a **contract is formed**—eg, when a mutual agreement is supported by **valuable consideration**. 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 and requires the **plaintiff to prove** that the event occurred to prevail

**Condition subsequent** – **excuses performance** once a specified event occurs and requires the **defendant to prove** that the event occurred to avoid liability

Here, the contract provided that the woman would be required to pay the life coach for the introductory course only *if* she received an offer for a second date at the speed-dating event. This created a condition *precedent* that delayed the woman's obligation to make that payment (**Choices C & D**). Therefore, the life coach must prove that the woman received an offer of a second date at the speed-dating event (ie, that the specified event occurred) to recover in his breach-of-contract action (**Choice B**).

\*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).

## Educational objective:

A condition precedent *delays* performance until a specified event occurs and requires the *plaintiff* to prove that the event occurred to prevail. Conversely, a condition subsequent *excuses* performance once a specified event occurs and requires the *defendant* to prove that the event occurred to avoid liability.

## References

Restatement (Second) of Contracts §§ 224–30 (Am. Law Inst. 1981) (conditions related to performance).

## Delay or discharge of performance

