

13-1 Transfer of Contractual Rights

Hot Debate

June was an accomplished opera singer. She contracted to sing for the San Francisco Opera over Labor Day weekend for \$5,000. About a month before her performance, she was offered another role that paid twice as much. June offered to pay the \$5,000 to her friend Sara, an equally accomplished opera singer, to fill in for her on Labor Day weekend. Sara agreed. When June told the San Francisco Opera, they said they wouldn't pay the money.

- Why should the San Francisco Opera have to pay June? Why shouldn't they have to?



Assigning Contractual Rights

What's Your Verdict?

Whippet bought a high-powered sports coupe from Oriental Motors for \$32,000. After a down payment of \$2,000, the balance, plus a finance charge, was to be paid in installments over the following 48 months. Oriental Motors needed cash to restore its inventory of new cars. Therefore, it immediately sold Whippet's contract to the finance company and told Whippet to make all installment payments to the finance company. Is such a transfer of contractual rights legal?

People often have **contractual rights** (things they will receive under a contract) that they transfer to others. Such transfer is called an **assignment**. The party who transfers the contractual right to another is the **assignor**. The party who receives this contractual right is the **assignee**.

Assignable Rights

Generally, a party may assign contractual rights to another, provided performance will not be materially changed. Performance is the fulfillment of contractual promises as agreed. A right to collect a debt is assignable because performance remains the same after assignment.

In What's Your Verdict? when Whippet was notified of the assignment, he became obligated to pay the finance company instead of Oriental Motors. Retailers and restaurants assign to issuers of credit cards the right to collect the amounts due from customers who have used the cards. In exchange, the credit card companies immediately pay the retailers and restaurants the face amount of the credit slips, less an agreed percentage.

Non-Assignable Rights

Contractual rights may not be assigned if performance would be materially changed (changed in an important way). Additionally, contractual rights may not be assigned if performance becomes substantially more difficult. For example, Chris has a claim against Ted for \$1,000. Chris may not assign that claim in 1,000 parts to the 1,000 students at Central High because such an assignment would make Ted's paying off the debt substantially more difficult.

Rights that may **NOT** be transferred include:

1. a right created under a contract that prohibits transfer of the contractual rights
2. claims for damages for personal injuries
3. claims against the United States
4. rights to personal services, especially those of a skilled nature, or when personal trust/confidence are involved
5. assignments of future wages.

While an assignment is usually valid whether oral or written, a written assignment is always wiser. No consideration is necessary to make a valid assignment.

In This Case

Ford, a dentist, owed Bentin \$5,000 for office furniture. Bentin agreed to accept \$1,000 in cash and \$4,000 in orthodontic services for his children as payment for the debt. Soon after, Bentin needed the money, so he assigned his right to receive the dental services to Lakely. Unless Ford consented, this assignment would not be valid because it included rights to personal services of a skilled, professional nature.

Delegating Contractual Duties

What's Your Verdict?

Ramirez hired Norton to come to her home and care for her two young children while she was at work. Could Norton legally delegate the child-care duties to a well-qualified third party?

Contractual duties are legal obligations created by a contract. If you order a shirt and promise to pay \$60, you have the duty to pay and the seller has the right to collect. Routine duties can often be transferred to another party. This is known as **delegation** of duties.

A person cannot delegate to another any duty where performance requires unique personal skill or special qualifications. In *What's Your Verdict?* Norton cannot delegate the duty of caring for the children. The task involves special qualifications of trust and skill. Similarly, a contract creating a duty can prohibit delegation.

A person who delegates contractual duties remains legally obligated and responsible for

proper performance even though someone else may actually do the required work. Thus, a general contractor who agrees to build a house is responsible for providing the finished structure as promised. However, general contractors typically delegate most of the work to independent subcontractors.

Subcontractors lay foundations and do masonry, carpentry, plumbing, electrical, painting, and other work. The general contractor makes individual contracts with them and pays them. The subcontractors are responsible to the general contractor for proper performance. But the general contractor remains responsible to the buyer for the finished job. Sometimes contracting parties will assign rights *and* delegate duties.

In This Case

Pyramid Builders, a ready-mix concrete company, received more orders than it could fill on schedule. Therefore it arranged to have a competitor, Gibraltar Inc., supply certain customers. Pyramid would bill the customers and turn over the proceeds to Gibraltar. If the concrete delivered was faulty, Pyramid remained liable to the customer for damages. In turn, Gibraltar would be liable to Pyramid if Gibraltar were at fault.

What Are The Obligations Of The Obligors?

What's Your Verdict?

Ginsburg, a concert violinist, purchased "a genuine Stradivarius" violin from Krone for \$250,000. Ginsburg paid \$50,000 down and agreed to pay the balance in 24 equal monthly installments. Krone knew the violin was not a Stradivarius. He immediately assigned his right to collect the balance of \$200,000 to Continental Finance for \$90,000 in cash. Continental notified Ginsburg of the assignment. Krone then disappeared. Shortly after, Ginsburg discovered the fraud. Can Ginsburg refuse to pay Continental if it tries to collect?

An **obligor** is the one who owes a duty under a contract. In *What's Your Verdict?* Ginsburg is the obligor who owes the duty to pay the balance of the money.

Notice to Obligor. Until notified that an assignment has occurred, the obligor may continue to pay the assignor. After notification, however, the obligor is liable to the assignee for performance. To protect newly acquired rights, the assignee should promptly notify the obligor of the assignment.

Obligor's Liability. Courts sometimes say that the assignee "stands in the shoes of the assignor." This means that the assignee receives exactly the same contractual rights and duties as the assignor had—no more and no less. If a contractual right is transferred, this does not change the legal rights of

Obligor's Breach. In all assignments, the assignor guarantees to the assignee that the assignor has a right to assign and that the assigned right is legally enforceable. However, the assignor typically does not

promise that the obligor will perform as promised in the original contract. If the obligor breaches, the assignee, not the assignor, must sue for the breach. Of course

the assignment may include specific language making the assignor liable for breach by the obligor.

Think Critically About Evidence

1. Your parents contract to have a new house built. Shortly thereafter, your father's employer promotes him. The new position requires a move to corporate headquarters in Atlanta, Georgia, which is 2,000 miles away. Can your parents transfer their rights and duties under the building contract to someone else for the construction of the same house in a different location?
2. Tori operated a graphic design and printing shop. Gerov contracted to have Tori design and print 25,000 brochures in full color promoting a variety of international tours. Under their contract, Tori also agreed to address and mail envelopes containing the brochures to a select list of prospects. Tori delegated the addressing, stuffing, and mailing of the envelopes. Is this a valid delegation? Does Tori remain liable to Gerov for proper completion of the entire job?
3. Zack bought an automobile insurance policy. The policy contained a clause prohibiting assignment of the policy without written consent of the insurer. Later, when his car was stolen, Zack notified the insurer. After six months, during which the car had not been recovered, Zack assigned to Pragg his claim for payment under the policy. The insurance company refused to pay because it had not given its written consent to the assignment. Must the insurance company pay? Was the insurance company ethical in refusing payment of Zack's claim?
4. Your school orders 50 new uniforms for its marching band. The contract is with Quality Uniforms Inc., a firm with whom the school has done business for 12 years. A week before the first public performance by the band, Quality states that it has overbooked its business and has delegated the sewing to New Era Uniforms. Can the school cancel the contract or must it accept the uniforms from the new company?

13-2 Performance of Duties

How Are Contracts Usually Discharged?

What's Your Verdict?

Wesley promised to loan Hudson \$900 within three months in return for Hudson's promise to paint Wesley's home. Hudson did not paint the house as promised. She did offer to give Wesleyan aquamarine ring that had a retail value of about \$1,000, and a wholesale value of \$500 instead of painting the house. Must Wesley accept the ring instead of the painting of his home?

When a contract is made, the parties take on certain duties. **Discharge** of a contract is a termination of duties that ordinarily occurs when the parties perform as promised. Most contracts are discharged by complete performance of the terms of the contract.

Failure to provide complete performance is a **breach of contract**. When one party commits a major breach, the other party may regard her or his obligation as discharged. In What's Your Verdict? Wesley need not accept the ring. Hudson is in major breach of the contract. Because of Hudson's major breach, Wesley need not loan the money.

Occasionally, **substantial performance** occurs. This happens when substantially all the duties are performed but a minor duty under the contract remains. Then there has been only a minor breach. A minor breach does not discharge the duties of the non-breaching party the way a major breach does. The party who has substantially performed can sue and recover what is due, less the cost of completing the remaining work. If the failure to perform is deliberate, the victim may treat it as a major breach.

Sometimes a party who defaults (fails to perform) notifies the other party to a contract before the time of performance has arrived

that he or she will not perform. This is called an anticipatory breach. The victim may wait until the promised time of performance, or the victim may treat the notice as evidence of a breach of contract and immediately sue for damages.

Contracts often identify a duty but don't say when it must be performed. In these cases, the duty must be performed within a reasonable time. If it is not performed within a reasonable time, this is a breach. A judge or jury determines a reasonable time after examining the circumstances in each case. Thus a contract to ship tomatoes (which rot quickly) might have a reasonable time for performance of several hours while a contract to ship used cars (which don't change in value quickly) might have a reasonable time of seven days.

In other instances, the contract identifies a date for performance. Most courts will rule that performance shortly after the date is only a minor breach. Again, the circumstance in each case will influence how much time after the specified date will be allowed before the delay is treated as a major breach.

When a contract states that performance is to occur by a specified date, and that "time is of the essence," failure to perform by that date is generally regarded as a major breach. If so, the duties of the non-breaching party are discharged. Time is "of the essence" when a contract deals with property that rapidly fluctuates in value or property that is perishable. Courts look to the subject matter of the contract and the individual circumstances of the case to determine whether time is "of the essence."

In This Case

On January 5, Graham Roofers contracted to remove the old shingles and to install a new fireproof roof on the home of the Sterlings. The job was to be completed "by March 30, at the latest," to be ready for anticipated heavy spring rains. Late in February, Graham notified the Sterlings that because of a rush of orders, his crews were "swamped" and he could not get to the Job until late April or early May. This was an anticipatory breach. The Sterlings have the choice of waiting for performance or immediately proceeding as though Graham had breached the contract.

How Else Can Contracts Be Discharged?

What's Your Verdict?

Diaz was the owner of a landscape service. He contracted to maintain the yard of Reingold while she sailed around the world in a 45-foot yacht. Reingold planned to write and take photographs for a national magazine and had no fixed itinerary or schedule for the journey. When would the contract with Diaz terminate?

In addition to complete performance, a contract may be discharged by:

1. agreement
2. impossibility of performance
3. operation of law

By Agreement

When the parties prepare their contract, they may agree that it will terminate:

- on a specified date or upon the expiration of a specified period of time (for example, a fresh food supply contract with a school district to terminate on the last day of school)
- upon the happening of a specified event (in *What's Your Verdict?* the contract to maintain the yard would terminate when

Reingold returned from her voyage around the world)

- upon the failure of a certain event to happen (for example, a construction loan contract upon failure to get a required building permit)
- at the free will of either party upon giving notice (for example, when one partner decides to retire from business and gives the required notice as specified in the partnership agreement with her associates).

The parties who have made a contract may later mutually agree to change either the terms of the contract or the nature of their relationship. They may do so without any liability for breach.

Rescission. By rescission the parties may agree to unmake or to undo their entire contract from its very beginning. Each party returns any consideration already received, and both are placed in their original positions in so far as possible.

Accord and Satisfaction. Parties may decide that the present contract is not what they want, and so replace it with a new contract. This discharges their original

contract by **substitution**. The parties may also agree to change the obligation required by the original contract. An agreement to make such a change is an **accord**. Performance of the new obligation is called a **satisfaction**. A compromise of a disputed claim or a composition of creditors is an accord. Carrying out the new agreement is the satisfaction. Thus, an accord and satisfaction discharge the previous obligation.

In This Case

Vanvoor borrowed \$650 from Banta. Vanvoor could not repay the loan on schedule. The parties then agreed that Vanvoor would work off the debt by doing 30 hours of painting, electrical, and plumbing work in Banta's home during the next three months. The agreement to change the required performance was an accord. Vanvoor's completion of the agreed-upon work was the satisfaction. Together, this accord and satisfaction discharged Vanvoor's original obligation to pay \$650.

Novation. A party entitled to receive performance under a contract may release the other party from the duty of performance and accept a substitute party. This is a

novation. In effect, a new contract is formed by agreement of the three parties who are involved.

In This Case

Revell had contracted to install a skylight in the roof of Sinclair's workshop. Because of pressures to complete other jobs before the rainy season began, Revell asked Sinclair if she would accept a qualified substitute carpenter named Lowry, who was willing to do the job for the same price. All three parties were agreeable. By novation, Lowry took Revell's place in the original contract, thus releasing him from all duties to perform and depriving him of all rights to be paid.

By Impossibility of Performance

Impossibility of performance refers to external conditions rather than an obligor's personal inability to perform. For example, the fact that a borrower does not have the money to repay a debt does not make the contract impossible to perform. A contract is considered discharged by impossibility of performance in such cases as destruction of the subject matter of the contract through no fault of the parties or a change of law that makes a contract illegal to perform.

As a general rule, a contract is not discharged when unforeseen events make

performance more costly or difficult. For example, increased prices of needed supplies, a strike of needed workers, difficulty in obtaining materials or equipment, or a natural disaster (such as a flood or earthquake) may delay performance. Generally, these events do not discharge the contractual obligations. These events should be anticipated as possibilities and be provided for in the contract when it is made. Otherwise a party who fails to perform because of such events could be held liable for major breach of contract.

In This Case

Sundstrum, a wholesaler, contracted to supply various airplane parts to Arcadia Airport at a price of \$17,686. However, Sundstrum later defaulted. He claimed that it was impossible to deliver at the contract price because the manufacturers had increased their prices to him by more than \$8,600. The court held him to the contract. The fact that the contract was no longer economically profitable did not mean that it was legally and physically impossible to perform.

Destruction of the Subject Matter.

Sometimes performance depends on the continued existence of some specific thing. Destruction of that thing terminates the contract if the destruction was not the fault of the parties to the contract.

The result of destruction of the subject matter is different if the seller has other sources of supply and the parties did not

specify one and only one source as acceptable. For example, suppose that because of a fire, a wholesale lumber broker loses her main supply source. If the broker has access to other sources of lumber, and if her contract does not limit her to one particular source, she is legally bound to deliver the lumber. This is true even if the broker's resulting cost is much higher than she had anticipated.

In This Case

Blitz was a famous jockey. He contracted to ride the thoroughbred White Flash in the Kentucky Derby. A week before the race, the horse stumbled during a workout, broke a leg, and had to be destroyed. Blitz's employment contract was discharged. He was free to contract to ride another horse in the Derby.

Performance Declared Illegal. A contract that is legal when made is discharged if and when it later becomes illegal. A new statute,

a court ruling, or an administrative decision might cause illegality.

In This Case

Tippner contracted with Barnell to build a warehouse on land owned by Barnell. Before construction began, the city council passed a zoning ordinance restricting the site to residential dwellings. The construction contract was thereby discharged.

Death or Disability. If the contract requires personal services, death or disability of the party who was to provide such services terminates the agreement. This rule does not apply when others are available to perform, as in partnerships or corporations that continue to do business. Likewise, it does

not apply where the contract simply calls for payment of money, delivery of goods, or transfer of title to land by the decedent. In each of these cases, the decedent's personal representative can and is required to perform.

In This Case

The Daily Tribune contracted for the consulting services of Chi Liang, an expert in computer networks, at a rate of \$600 a day. Liang agreed to supervise the installation of a computer system with integrated software programs. The Tribune's newsroom, pressroom, circulation and advertising departments, and business office were all included. After Liang had completed his work linking the newsroom and pressroom, he suffered a stroke and was unable to continue. Liang's contractual obligation was discharged by impossibility.

By Operation of Law

A contract may be discharged or the right to enforce it may be barred by operation of law. This happens when the promisor's debts are discharged in bankruptcy. It also happens when the time allowed for enforcement of the contract has elapsed because of the statute of limitations.

Alteration of a written agreement also usually discharges the agreement by operation of

law. **Alteration** is a material change in the terms of a written contract without consent of the other party. To discharge the contract, the alteration must be:

- material, thus changing the obligation in an important way
- made intentionally, and not by accident or mistake
- made by a party to the agreement, or by an authorized agent
- made without consent of the other party.

In This Case

Carey's Complete Cleaners contracted to clean all rooms and public spaces of Dahl's office building. A contractual clause in small print allowed a 10 percent discount if the charges were paid in advance in one lump sum instead of in 12 monthly installments. After the contract had been signed by both parties, and before giving Dahl her copy, Carey secretly crossed out the clause referring to the discount. This material alteration discharged Dahl from any obligation under the contract. Dahl could thereupon insist on inclusion of the clause or seek damages through court action.

What Is The Effect Of Tender Of Performance?**What's Your Verdict?**

Zamorsky, a professional artist, agreed to paint Quincy's portrait for \$5,000. Five sittings of two hours each were scheduled at times selected by Quincy, but he failed to appear for any of them. To accommodate her client, Zamorsky then offered to come to Quincy's home or office for rescheduled sittings at his convenience. Quincy rejected this proposal. Is Zamorsky's legal obligation discharged? Is Quincy liable for damages?

An offer to perform an obligation is a **tender**. If the duty requires the doing of an act, a tender that is made in good faith but is rejected will discharge the obligation of the one offering to perform. In *What's Your Verdict?* Quincy refused Zamorsky's offer to perform as agreed. Thus, Zamorsky's obligation was discharged, and Quincy is liable for damages. If the obligation requires the payment of money, rejection of an offer to pay the money does not discharge the

debt nor does it prevent the creditor from collecting later. It merely relieves the debtor of court costs or future interest charges that might otherwise become due. To be valid, the tender of money must consist of the exact amount due in legal tender. **Legal tender** is currency. A tender of only part of the debt is not a valid tender. If the debtor offers less than the amount due, the creditor may refuse it without losing the right to later collect the entire amount due.

Think Critically About Evidence

1. Your school orders 50 new uniforms for its marching band. The contract states that "time is of the essence," and if the goods are not received in time for the first performance by the band on September 1, the old uniforms will be used for another year. The manufacturer does not deliver the uniforms until September 3. Can the school cancel the contract? Would it be ethical for the supplier to delay the delivery until October 10 because of a rush order from another school that provided a higher profit?
2. In January, Doolan Construction Company promised to remodel Kemper's kitchen during July when Kemper would be visiting relatives in Canada. Their written contract called for work to start on July 1, and to be completed before August 2. In April, Doolan phoned and said he could not start the job before July 20, if then. What can Kemper do?
3. Tina, age seven, was playing accountant at her father's desk in his absence. When she found a stack of interesting papers, she "corrected" all of them, adding zeros to numbers ("500" thus became "5000") and drawing lines through words. The "interesting papers" were promissory notes, owned by her father, representing claims against debtors totaling about \$17,000. Have these contractual claims been discharged by Tina's changes?
4. Ferrazzi, a distinguished Italian sculptor, contracted to create a large bronze abstract design for the lobby of the Martindale Mart. He was to receive \$75,000 upon completion and installation of the sculpture. Shortly thereafter, Ferrazzi was injured in an accident. Unable to fulfill his agreement, he asked his friend Drinano to do the work for him. Drinano was an equally competent sculptor. Must Martindale Mart accept Drinano's services?
5. Ohler Oil Company contracted to sell and to deliver 500 barrels of fuel oil on the first of each month for one year to the Monson Mushroom Factory (an indoor farm). Ohler delivered the oil for the first two months, but none during the third month. Ohler said there was unprecedented demand and it was allocating available supplies to all customers. Monson notified Ohler that it was canceling the contract because of Ohler's breach. Was Monson justified in its action?

CONCEPTS IN BRIEF

1. A party may generally assign rights under a contract as long as the performance will not be materially changed. One is not released from contractual duties by making an assignment.
2. Duties may not be delegated when they involve personal judgment or skill, as with artists and professional experts.
3. An assignee acquires only such rights as the assignor has under the contract.
4. Until notification of assignment is received, performance may still be properly made to the original contracting party.
5. A material breach of contract generally permits the other party to regard his or her obligation to perform as discharged.
6. The obligation of one party is discharged when a written contract is materially and intentionally altered by the other party without the consent of the former.
7. An obligation calling for an act is discharged by a tender of performance that corresponds exactly to the agreement. A tender of payment does not discharge an obligation to pay money.