

During negotiations to purchase a used car, a buyer asked a dealer whether the car had ever been in an accident. The dealer replied: "It is a fine car and has been thoroughly inspected and comes with a certificate of assured quality. Feel free to have the car inspected by your own mechanic." In actuality, the car had been in a major accident, and the dealer had repaired and repainted the car, successfully concealing evidence of the accident. The buyer declined to have the car inspected by his own mechanic, explaining that he would rely on the dealer's certificate of assured quality. At no time did the dealer disclose that the car had previously been in an accident. The parties then signed a contract of sale. After the car was delivered and paid for, the buyer learned that the car had been in a major accident.

If the buyer sues the dealer to rescind the transaction, is the buyer likely to succeed?

- A. No, because the buyer had the opportunity to have the car inspected by his own mechanic and declined to do so.
- B. No, because the dealer did not affirmatively assert that the car had not been in an accident.
- C. Yes, because the contract was unconscionable.
- D. Yes, because the dealer's statement was intentionally misleading and the dealer concealed evidence of the accident.

Explanation:

Misrepresentation is an **untrue assertion of fact** often made in an **affirmative statement**. It can also be asserted through **conduct**—ie, an act of concealment intended to prevent discovery of facts or **nondisclosure (Choice B)**. When either form of misrepresentation occurs, a contract is **voidable and can be rescinded** by the adversely affected party **if**:

- the misrepresentation was **fraudulent** (ie, made knowingly or recklessly with intent to induce the other party's assent to the contract) OR **material** (ie, likely to induce a reasonable person's assent)
- the misrepresentation **induced assent** to the contract *and*
- the adversely affected party **justifiably relied*** on the misrepresentation.

Here, the dealer repaired and repainted the car to conceal accident damage. This fraudulent misrepresentation, along with the dealer's misleading statements about the car's history, induced the buyer to purchase the car. And since the dealer's misrepresentations were not obviously false (eg, had the accident damage been visible) or known by the buyer to be false, he **justifiably relied** on them. Therefore, his action to rescind the contract is likely to succeed.

*This element is met unless the misrepresentation was patently and obviously false or the adversely affected party knew that it was false.

(Choice A) The buyer's failure to have the car inspected by his own mechanic does not make his reliance on the dealer's misrepresentations unjustified or prevent him from rescinding the contract.

(Choice C) A contract is unconscionable when (1) the contract terms are one-sided or create unfair surprise or (2) the bargaining process provides no meaningful choice to a party (neither of which is seen here).

Educational objective:

A contract is voidable for misrepresentation if (1) the misrepresentation was fraudulent or material, (2) it induced assent to the contract, and (3) the adversely affected party justifiably relied on it.

References

- Restatement (Second) of Contracts § 164 (Am. Law Inst. 1981) (when misrepresentation makes a contract voidable).
- Restatement (Second) of Contracts §§ 168–72 (Am. Law Inst. 1981) (when reliance on assertions of fact or opinion is justified).

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Types of misrepresentation



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