

A woman purchased a car from a seller who had reset the car's odometer to read 25,000 miles. The seller was aware that the car's actual mileage was approximately 90,000. Unaware of the car's actual mileage, the woman resold the car to a friend seven months later. At the time of the resale, the friend looked at the odometer, which read 30,000 miles, and said, "Great!" By then, the actual mileage was 95,000. Immediately after buying the car, the friend took it to his mechanic, who completed minor repairs and told the friend that he estimated the car's actual mileage to be approximately 100,000.

Assuming no applicable statutes, is the friend likely to prevail in an action to rescind his purchase of the car from the woman?

- A. No, because the friend's reliance on the odometer reading was unreasonable, given that he did not have his mechanic check the mileage before he bought the car.
- B. No, because the woman was unaware of the car's actual mileage when she sold the car to the friend.
- C. Yes, because the car's actual mileage is a material fact that was not revealed to the friend before he bought the car.
- D. Yes, because the car's odometer reading constituted an express warranty.

Correct

Collecting Statistics

01 min, 20 secsTime Spent

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Explanation:

Misrepresentation is an **untrue assertion of fact** made in an affirmative statement, an act of concealment intended to prevent discovery of facts, or **nondisclosure** of a known fact. When misrepresentation occurs, a contract is **voidable** and **can be rescinded** by the adversely affected party **if**: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 car's odometer falsely stated the car's mileage. Although the woman was unaware of the car's actual mileage when she sold the car to the friend, the car's actual mileage is a material fact because a reasonable person would be induced to buy a used car with low mileage **(Choice B)**. This material misrepresentation induced the friend to purchase the car because he read the odometer and said, "Great!" And he **justifiably relied** on the odometer reading. Therefore, the friend is likely to prevail in an action to rescind his purchase of the car.

*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 friend's failure to have his mechanic check the car's mileage before he bought the car does not make his reliance on the odometer reading unreasonable or prevent him from rescinding the contract.

(Choice D) A seller creates an **express warranty** in a contract for the sale of goods (eg, car) by making an affirmation of fact or promise about the goods that becomes part of the basis of the bargain—ie, the buyer relies on the seller's affirmation or promise to purchase the goods. Even if the odometer reading is considered an express warranty here, the remedy for breach of warranty is money damages—not rescission of the contract.

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 § 162 (Am. Law Inst. 1981) (defining when misrepresentation is fraudulent or material).

Restatement (Second) of Contracts § 164 (Am. Law Inst. 1981) (explaining when misrepresentation makes a contract voidable).

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