

A man who knew nothing about horses inherited a thoroughbred colt whose disagreeable behavior made him a pest around the barn. The man sold the horse for \$1,500 to a buyer who was an experienced racehorse-trainer and knew of the man's ignorance about horses. At the time of sale, the man said to the buyer, "I hate to say it, but this horse is bad-tempered and nothing special."

Which one of the following scenarios would best support an action by the buyer to rescind the sale?

- A. A week after the sale, the horse went berserk and inflicted injuries upon the buyer that required his hospitalization for six months and a full year for his recovery.
- B. After the horse had won three races for the buyer, it was discovered that by clerical error, unknown to either party, the horse's official birth registration listed an undistinguished racehorse as the sire rather than the famous racehorse that in fact was the sire.
- C. In his first race after the sale, the horse galloped to a huge lead but dropped dead 100 yards from the finish line because of a rare congenital heart defect that was undiscoverable except by autopsy.
- D. The horse won \$5 million for the buyer over a three-year racing career but upon being retired was found to be incurably sterile and useless as a breeder.

## Explanation:

### Mistake as grounds for rescission

<b>Mutual mistake</b>	Adversely affected party can rescind contract if:  mistake relates to basic assumption of contract mistake materially affects agreed-upon exchange of performances AND  adversely affected party did not assume risk of mistake
<b>Unilateral mistake</b>	In addition to above elements for mutual mistake, either:  mistake makes enforcement of contract unconscionable OR  nonmistaken party caused, or knew or should have known of, mistake

When both parties enter into a contract based on the same mistake (ie, **mutual mistake**), the **adversely affected party** can **rescind** (ie, cancel) the contract if:

the mistake relates to a **basic assumption** of the contract  
the mistake **materially affects** the agreed-upon **exchange of performances** (ie, the adversely affected party cannot fairly be required to carry it out) *and*  
the adversely affected party **did not assume** the **risk of the mistake**.

Here, the parties most likely entered the contract based on an erroneous belief that the horse was healthy and fit to race—a basic assumption of the contract. That mutual mistake materially affected the agreed-upon exchange since the horse that actually had been born with a rare congenital heart defect. And since that defect was undiscoverable except by autopsy, the buyer did not assume the risk that the horse would turn out to be unhealthy and unfit to race. As a result, the buyer can likely rescind the sale.

**(Choice A)** The grounds for rescission must have existed when the contract was made. Because the horse went berserk a week *after* the sale, the buyer cannot seek rescission on this basis.

**(Choice B)** Although both parties were mistaken as to the colt's true sire (a famous racehorse), the buyer would not be able to rescind the contract on this basis since the mistake made the colt *more* valuable to the buyer.

**(Choice D)** Because the horse (which was sold for a mere \$1,500) won \$5 million for the buyer over three years, the buyer cannot successfully claim that it would be unfair to enforce the sale (ie, no material effect).

**Educational objective:**

Rescission is available due to a mutual mistake if (1) the mistake relates to a basic assumption of the contract, (2) the mistake materially affects the agreed-upon exchange of performances, and (3) the adversely affected party did not assume the risk of the mistake.

**References**

Restatement (Second) of Contracts § 152 cmt. c (Am. Law Inst. 1981) (material effect of mutual mistake making contract voidable).

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