

A contractor agreed to build a wood-frame house for a landowner for \$300,000. The parties agreed that the price would increase by the amount that the cost of lumber for the job exceeded the then-current cost of \$30 per 100 board feet. The landowner reduced the agreement to writing but inadvertently failed to include in the written contract the price-escalation clause relating to the cost of lumber. Both parties signed the contract without noticing the omission.

When the contractor purchased lumber for the job, the price of the lumber had risen to \$60 per 100 board feet. When the contractor submitted a final bill that included the increased price of lumber, the landowner refused to pay the increased price for the lumber on the grounds that the price-escalation clause was missing from the written contract.

If the contractor sues the landowner to recover the additional cost, will the contractor be likely to prevail?

- A. No, because the contractor's remedy for mistake is avoidance of the contract. (2%)
- B. No, because the parol evidence rule will bar introduction of evidence of the price-escalation clause. (30%)
- C. Yes, because since the parties were both mistaken as to the content of the writing, the court will reform the writing to express their agreement. (62%)
- D. Yes, because the contract will be construed against the landowner, who drafted it. (5%)

Correct

62% Answered correctly

01 min, 52 secs Time Spent

2023 Version

## Explanation:

### Availability of reformation as a remedy

<b>Misrepresentation</b>	One party makes untrue assertion of fact that is fraudulent or material Adversely affected party justifiably relies on that misrepresentation
<b>Mutual mistake</b>	Both parties are mistaken as to contract's contents or legal effect
<b>Unilateral mistake</b> (from fraudulent misrepresentation)	One party is mistaken because other party intentionally misrepresented contract's content or legal effect Adversely affected party justifiably relies on that misrepresentation

A court can **reform** (at a party's request) a **written contract** that fails to accurately express the parties' initial intent due to a mistake by both parties **when**:

the parties had a **prior agreement** (either oral or written)

the parties **put that prior agreement into writing** *and*

the parties' **mistake caused a difference** between the prior agreement and the written agreement.

Here, the parties previously agreed that the price owed under the contract would increase by the amount that the cost of lumber for the job exceeded the then-current cost of \$30 per 100 board feet. The parties inadvertently failed to include this provision in their written contract, which caused a difference between the agreements. And since the parties were both mistaken as to the content of the writing, the court will reform the writing to accurately express their agreement. Therefore, the contractor will likely prevail in a suit to recover the additional cost.

**(Choice A)** When a written contract fails to express the actual agreement of the parties, reformation (not avoidance) is the appropriate remedy.

**(Choice B)** The [parol evidence rule](#) generally bars the admission of extrinsic evidence of a prior or contemporaneous agreement that supplements or contradicts the terms of a completely integrated written contract. However, it does not bar the introduction of evidence to establish a ground for reforming a contract—eg, to prove that an agreed-upon term was mistakenly omitted from the writing.

**(Choice D)** The proper remedy to correct the omission of the parties' agreement concerning the price of lumber is for the court to reform the writing to express their agreement—not to construe the terms against the party who drafted it (here, the landowner).

**Educational objective:**

A written contract that fails to accurately express the parties' initial intent due to a mistake of both parties may be reformed when (1) the parties had a prior agreement, (2) the parties put that agreement into writing, and (3) the parties' mistake caused a difference between the prior agreement and the written agreement.

**References**

Restatement (Second) of Contracts § 151 (Am. Law Inst. 1981) (defining mistake).

Restatement (Second) of Contracts § 155 (Am. Law Inst. 1981) (explaining when a contract may be reformed due to parties mistakenly omitting provision from written contract).

Copyright © 2021 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.