

A person who knew nothing about horses inherited a thoroughbred colt whose disagreeable behavior made him a pest around the barn. The person sold the colt for \$1,500 to a buyer who was an experienced racehorse-trainer and knew of the person's ignorance about horses. At the time of sale, the person said to the buyer, "I hate to say it, but this horse is bad-tempered and nothing special." Soon after the sale, the colt won three races and earned \$400,000 for the buyer.

Which of the following additional facts, if established by the person, would best support his chance of obtaining rescission of the sale to the buyer?

- A. At a pre-sale exercise session of which the buyer knew that the person was not aware, the buyer clocked the colt in record-setting time, far surpassing any previous performance.
- B. At the time of the sale, the person was angry and upset over an incident in which the colt had reared and thrown a rider.
- C. The colt was the only thoroughbred that the person owned, and the person did not know how to evaluate young and untested racehorses.
- D. The person did not know until after the sale that the buyer was an experienced racehorse-trainer.

Explanation:

Mistake as grounds for rescission

Mutual mistake	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
Unilateral mistake	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

Rescission is a remedy that allows the court to cancel a contract and discharge the parties' contractual obligations. This remedy is available to a party who entered into a contract based on a **unilateral mistake** if:

the mistake relates to a **basic assumption** of the contract (eg, the person thought the colt was "nothing special" and so agreed to sell it for \$1,500)

the mistake **materially affects** the agreed-upon **exchange of performances** (eg, the colt was actually worth much more, as evidenced by its winning three races and earning \$400,000)

the adversely affected party **did not assume** the **risk of the mistake** (eg, the person knew nothing about horses)

AND

either (1) the mistake would make **enforcement** of the contract **unconscionable** or (2) the **nonmistaken party** caused, or **knew or had reason to know** of, the mistake.

Therefore, the fact that the buyer had clocked the colt in record-setting time at a pre-sale exercise session, of which the buyer *knew* that the person was not aware, would best support the person's chance of obtaining rescission.

(Choices B, C & D) None of these additional facts show that (1) enforcement of the sale would be unconscionable or (2) the buyer (nonmistaken party) caused, or knew or had reason to know of, the person's mistake. As a result, these facts do not support the person's chance of obtaining rescission of the sale to the buyer.

Educational objective:

A party's unilateral mistake is grounds for rescission only if (1) the mistake would make enforcement of the contract unconscionable or (2) the nonmistaken party caused, or knew or had reason to know of, the mistake.

References

Restatement (Second) of Contracts § 153 (Am. Law Inst. 1981) (unilateral mistake making contract voidable).

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