

A professional race car driver decided to retire and sell his drag racing car. An amateur driver approached him about buying the car. The amateur driver explained that she needed a car that could complete a quarter-mile race in less than nine seconds, and the professional driver boasted that his car could do so in eight to nine seconds. Unbeknownst to the professional driver, there was a calibration error in his timing equipment, and the car had never completed a quarter-mile race in less than 10 seconds.

The two drivers settled on a price and signed a fully integrated, written contract. The amateur driver paid the sales price, took delivery of the car, and entered the next drag race. The car was unable to complete a quarter-mile race in less than 10 seconds, so the amateur driver contacted the professional driver and demanded her money back.

Is the professional driver obligated to return the amateur driver's money?

- A. No, because the professional driver's assertion was an unintentional misrepresentation.
- B. No, because the sales contract was memorialized in a fully integrated writing.
- C. Yes, because the professional driver's assertion was a fraudulent misrepresentation.
- D. Yes, because the professional driver's assertion was a material misrepresentation.

Explanation:

A **misrepresentation** is an untrue assertion of fact made during contract negotiations. This renders the **contract voidable** by the adversely affected party if:

- the misrepresentation was **fraudulent or material**
- the misrepresentation **induced assent** to the contract (presumed for material misrepresentations) *and*
- the adversely affected party **justifiably relied** on the misrepresentation.

The justifiable-reliance element is essentially always met unless the misrepresentation was obviously false or known by the adversely affected party to be false.

Here, the professional driver falsely stated that his car could complete a quarter-mile race in eight to nine seconds. This misrepresentation was material and presumably induced the amateur driver to enter the contract since she had told the professional driver that she was looking for a car with that capability. The amateur driver's reliance on the misrepresentation was justifiable since it was not obviously false or known by her to be false. Therefore, the contract is voidable, and the professional driver is obligated to return the amateur driver's money.

(Choices A & C) A misrepresentation is fraudulent when it is made knowingly or recklessly, with intent to induce assent to the contract. Here, the professional driver's misrepresentation was *nonfraudulent* since he had timed his car and knew nothing about the calibration error in his timing equipment. But even an unintentional, nonfraudulent misrepresentation may be grounds to avoid a contract when, as here, the misrepresentation was material.

(Choice B) The parol evidence rule generally bars evidence of prior or contemporaneous agreements to modify or contradict the terms of an integrated writing. But such evidence is **excepted** from this rule and is admissible when it is offered to prove defenses to enforcement (eg, misrepresentation—as seen here).

Educational objective:

A misrepresentation renders a contract voidable by the adversely affected party 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 §§ 159, 162, 164 (Am. Law Inst. 1981) (defining material misrepresentation and explaining when it makes a contract voidable).

Misrepresentation

