

In a written and signed contract, a buyer agreed to purchase Lot 1 in a subdivision from a developer. Unbeknownst to either party, there was an error in the subdivision's recorded plat, and two separate lots had each been designated as "Lot 1." The buyer intended to purchase the Lot 1 located in the southern half of the subdivision, while the developer intended to sell the Lot 1 located in the northern half of the subdivision. On the day of the closing, the developer presented the buyer with a deed for the northern Lot 1.

Which of the following statements concerning this exchange is accurate?

- A. The buyer can enforce the contract for the sale of the northern Lot 1 if he waives the misunderstanding and adopts the developer's understanding of "Lot 1."
- B. The buyer can enforce the contract for the sale of the southern Lot 1, because the risk of a plat error can be allocated to the developer that created the plat.
- C. The developer can enforce the contract for the sale of the northern Lot 1, because it did not know or have reason to know of the buyer's interpretation of "Lot 1" when the contract was made.
- D. The parties must seek reformation of the contract, and the court will decide which of the plats is the true "Lot 1."

Explanation:

Misunderstanding of material term

	General rule	Waiver
Neither / both parties know of misunderstanding	No contract formed	<i>Either party can enforce other party's understanding</i>
One party knows of misunderstanding	Contract formed based on <i>unknowing</i> party's understanding	<i>Unknowing party can enforce knowing party's understanding</i>

A **misunderstanding** arises when there is no meeting of the minds because the parties to a contract assign different meanings to the same term. Where the misunderstanding involves a **material term** and **neither party** (or both parties) **knew or had reason to know** of the misunderstanding, ordinarily there is **no contract**. However, either party can **waive** the misunderstanding and choose to **enforce** the contract in accordance with the **other party's understanding**.

Here, the buyer and the developer assigned different meanings to the term "Lot 1." Neither party was aware of the misunderstanding, and there is no indication that either of them had reason to know of the misunderstanding. Although this would ordinarily result in no contract, the buyer can waive his own misunderstanding to enforce the contract for the sale of the northern Lot 1—the developer's understanding of "Lot 1."

(Choice B) A court can allocate the **risk** of a *mistake*—ie, an erroneous belief of fact held by one or both parties—to a party upon a finding that it is reasonable in the circumstances to do so (eg, based on that party's culpability). But a court cannot allocate the risk of a *misunderstanding*—ie, the attachment of different meanings to the same term.

(Choice C) The developer cannot enforce the sale of the northern Lot 1 simply because he was unaware of the buyer's misinterpretation. And though the developer could waive the misunderstanding, this would allow the developer to enforce the contract based on the *buyer's* understanding (the southern Lot 1)—not the *developer's* understanding (the northern Lot 1).

(Choice D) When a writing fails to reflect the true meaning of the parties, either party *may* ask the court to **reform** the contract to accurately express the parties' agreement. But such reformation is generally a remedy for a *mistake*, not a misunderstanding.

Educational objective:

A misunderstanding involving a material term ordinarily results in no contract if neither (or both) parties knew or had reason to know of the misunderstanding. However, one party

can waive the misunderstanding and enforce the contract in accordance with the other party's understanding.

References

- Restatement (Second) of Contracts § 20 (Am. Law Inst. 1981) (effect of misunderstanding).

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