

A retailer of guns in State X, U.S.A., received on June 1 the following signed letter from a gun wholesaler in another state: "We have just obtained 100 of the assault rifles you inquired about and can supply them for \$250 each. We can guarantee shipment no later than August 1."

On June 10, the wholesaler sold and delivered the same rifles to another merchant for \$300 each. Unaware of that transaction, the retailer on the morning of June 11 mailed the wholesaler a letter rejecting the latter's offer but, changing his mind an hour later, retrieved from his local post office the letter of rejection and immediately dispatched to the wholesaler a letter of acceptance, which the wholesaler received on June 14.

On June 9, a valid federal statute making the interstate sale of assault rifles punishable as a crime had become effective, but neither the retailer nor the wholesaler was aware until June 15 that the statute was already in effect.

As between the retailer and the wholesaler, which of the following is an accurate statement?

- A. If a contract was formed, it is unenforceable because of supervening impracticability.
- B. If a contract was formed, it is voidable because of mutual mistake.
- C. No contract was formed, because the retailer's June 11 rejection was effective on dispatch.
- D. No contract was formed, because the wholesaler's June 10 sale of the rifles to another merchant revoked the offer to the retailer.

## Explanation:

**Mutual mistake** occurs when both parties enter into a contract based on the same mistake. In such cases, the contract may be **voidable** by the **adversely affected party** 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, both the retailer and wholesaler entered the contract based on an erroneous belief that assault rifles could lawfully be sold across state lines—a basic assumption of the contract. That mutual mistake materially affected their agreed-upon exchange since performance would subject them to criminal liability under the federal statute. Additionally, neither party assumed the risk of mistake since they did not know that the statute was in effect when they entered the contract. As a result, either party can avoid the contract (if formed\*) because of mutual mistake.

\*This assumes that the wholesaler's offer was not **terminated by law** when the federal statute made the interstate sale of assault rifles a criminal offense.

**(Choice A)** A party's duty to perform can be discharged by impracticability if performance becomes illegal after the contract was entered. Impracticability does not apply here since the statute criminalizing the interstate sale of assault rifles was enacted before the contract was entered.

**(Choice C)** In contract **negotiations by mail**, a rejection is effective on receipt—not on dispatch.

**(Choice D)** The wholesaler's sale of the rifles to another merchant did not revoke the offer to the retailer since the retailer was unaware of this transaction and a revocation is not effective until communicated to the offeree.

## Educational objective:

Mutual mistake renders a contract voidable by the adversely affected party when (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 § 151 (Am. Law Inst. 1981) (definition of mistake).
- Restatement (Second) of Contracts § 152 (Am. Law Inst. 1981) (when mutual mistake makes a contract voidable).

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