

A seller and a buyer, standing on a 10-acre tract of land, orally agreed to its sale and purchase for \$5,000, and orally marked its bounds as "that line of trees down there, the ditch that intersects them, the fence on the other side, and that street on the fourth side."

In which of the following is the remedy of reformation most appropriate?

- A. As later reduced to writing, the agreement by clerical mistake included two acres that are actually beyond the fence.
- B. The buyer reasonably thought that a dilapidated shed backed up against the fence was to be torn down and removed as part of the agreement, but the seller did not. As later reduced to writing, the agreement said nothing about the shed.
- C. The buyer reasonably thought that the price orally agreed upon was \$4,500, but the seller did not. As later reduced to writing, the agreement said \$5,000.
- D. The buyer reasonably thought that two acres beyond the fence were included in the oral agreement but the seller did not. As later reduced to writing, the agreement included the two acres.

Explanation:

Availability of reformation as a remedy

Misrepresentation	One party makes untrue assertion of fact that is fraudulent or material Adversely affected party justifiably relies on that misrepresentation
Mutual mistake	Both parties are mistaken as to contract's contents or legal effect
Unilateral mistake (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

Reformation is an equitable remedy that courts can use to rewrite a contract to reflect the parties' original intent. This remedy is available when a **writing** that embodies an agreement **fails to express the agreement** because of a **mistake by both parties** as to its **content or legal effect**. When reformation is available to cure a mutual mistake, neither party can avoid the contract.

Here, the parties agreed to the sale and purchase of a 10-acre tract of land and orally marked its bounds, including "the fence on the other side." Due to a clerical mistake, the written agreement included two acres *beyond* the fence (ie, two acres neither party intended to include as part of the transaction). Therefore, at the request of either party, the court may reform the writing to cure their mutual mistake.

(Choices B, C & D) The buyer and seller did not agree to the same terms, so it would be impossible to reform the writing to reflect their actual agreement. Instead, no contract exists because there was no meeting of the minds.

Educational objective:

A court may reform a contract that fails to accurately express the parties' agreement because of a mistake by both parties as to its content or legal effect.

References

Restatement (Second) of Contracts § 155 (Am. Law Inst. 1981) (mistake of both parties justifying reformation).

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