

An employer offered to pay a terminated employee \$50,000 to release all claims the employee might have against the employer. The employee orally accepted the offer. The employer then prepared an unsigned release agreement and sent it to the employee for him to sign. The employee carefully prepared, signed, and sent to the employer a substitute release agreement that was identical to the original except that it excluded from the release any age discrimination claims. The employer signed the substitute release without reading it. Shortly thereafter, the employee notified the employer that he intended to sue the employer for age discrimination.

Is the employer likely to prevail in an action seeking reformation of the release to conform to the parties' oral agreement?

- A. No, because the employer acted unreasonably by failing to read the substitute release prior to signing it.
- B. No, because the parol evidence rule will preclude evidence of the oral agreement.
- C. Yes, because the employee's fraudulent behavior induced the employer's unilateral mistake.
- D. Yes, because the parties were mutually mistaken regarding the contents of the signed release.

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 courts can use to rewrite a contract to reflect the parties' original intent. This remedy is always available when misrepresentation or mutual mistake occurs. But a **unilateral mistake** only serves as a basis for reformation if that mistake stemmed from **fraudulent misrepresentation**, which occurs when:

one party **intentionally misrepresents** the **content or legal effect** of a contract to induce the other party to enter into the contract *and* the other party **justifiably relies*** on that misrepresentation.

Here, the employer reduced the parties' oral agreement to writing and sent the unsigned release to the employee. The employee then *carefully* prepared, signed, and sent to the employer a substitute release that omitted age discrimination claims (intentional misrepresentation). Because the substitute release was otherwise identical to the original, the employer did not notice the omission and signed the release (justifiable reliance). And since the employee's fraudulent behavior caused the employer's unilateral mistake, the court will likely reform the release to reflect the parties' oral agreement (**Choice D**).

*This element is always met unless the misrepresentation was patently and obviously false.

(Choice A) The employer may have acted unreasonably by failing to read the substitute release prior to signing it. But a party's negligence in failing to read a writing does not preclude reformation if the writing does not accurately reflect the parties' prior agreement.

(Choice B) The parol evidence rule generally precludes extrinsic evidence of a prior oral or written agreement to modify or contradict the unambiguous terms of a final written agreement. But such evidence is **excepted** from this rule and is always admissible when it is used to establish a ground for granting or denying a contractual remedy like reformation (as seen here).

Educational objective:

A court can reform a contract to reflect the parties' original intent when one party's fraudulent misrepresentation caused the other party's unilateral mistake.

References

Restatement (Second) of Contracts § 166 (Am. Law Inst. 1981) (reformation based on fraudulent misrepresentation).

Restatement (Second) of Contracts § 172 (Am. Law Inst. 1981) (definition of justifiable reliance).

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