On December 1, a broker contracted with a coin collector to sell her one of a certain type of rare coin for $12,000, delivery and payment to occur on the next March 1. To fulfill that contract, and without the collector's knowledge, the broker contracted on January 1 to purchase for $10,000 a specimen of that type coin from a man, delivery and payment to occur on February 1. The market price of such coins had unexpectedly fallen to $8,000 by February 1, when the man tendered the coin and the broker repudiated.

On February 25, the market in such coins suddenly reversed and had stabilized at $12,000 on March 1. The broker, however, had failed to obtain a specimen of the coin and repudiated his agreement with the collector when she tendered the $12,000 agreed price on March 1.

Later that day, after learning by chance of the broker's dealing with the collector, the man telephoned the collector and said: "Listen, the broker probably owes me at least $2,000 in damages for refusing to buy my coin for $10,000 on February 1 when the market was down to $8,000. But I'm in good shape in view of the market's recovery since then, and I think you should sue the broker."

If the collector immediately sues the broker for his breach of the broker-man contract, which of the following will the court probably decide?

A. The broker wins, because as of March 1 neither the man nor the collector had sustained any damage from the broker's repudiation of both contracts.

B. The broker wins, because the collector, if a beneficiary at all of the broker-man contract, was only an incidental beneficiary.

C. The collector wins, because she took an effective assignment of the man's claim for damages against the broker when the man suggested that the collector "sue the broker."

D. The collector wins, because she was an intended beneficiary of the broker-man contract, under which damages for the broker's repudiation became fixed on February 1.

**Explanation:**

**Third-party beneficiaries**

(ie, nonparties who benefit from contract)

| Type | Definition | Right to enforce |
|---|---|---|
| Intended | • Receive *direct* benefit from contract because contracting parties intended to benefit them<br>• Eg, A promises to paint B's house if B promises to pay $500 to C | Yes |
| Incidental | • Receive *indirect* benefit from contract even though there was no contractual intent to benefit them<br>• Eg, A promises to buy B a car manufactured by C | No |

A **third-party beneficiary** is a nonparty to a contract who receives some advantage or benefit from that contract. There are two types of third-party beneficiaries:

- **Intended** – who receive a ***direct*** **benefit** from the contract because the **contracting parties so intended** and, therefore, have a **right to enforce** the contract
- **Incidental** – who receive some ***indirect*** **benefit** from the contract even though there was **no contractual intent** to benefit them and, therefore, have ***no*** **right to enforce** the contract.

Here, the collector may be a third-party beneficiary of the broker-man contract since the broker will sell the man's rare coin to the collector. However, the collector was only an *incidental* beneficiary since the broker-man contract does not show an intent to directly benefit her **(Choice D)**. As a result, the broker will likely win since the collector has no right to sue for breach of the broker-man contract.

**(Choice A)** The man likely sustained damages on February 1 since he would have made a $2,000 profit on his contract with the broker—ie, the contract price ($10,000) minus the market price ($8,000). Although the collector likely has not sustained damages, she can sue under her contract with the broker if she sustains damages in the future—eg, buys an equivalent coin for more than her $12,000 contract price.

**(Choice C)** A party assigns his/her rights under a contract when he/she manifests a present intent to immediately transfer those rights. Here, the man did *not* assign his right to damages because he merely suggested that the collector sue the broker.

**Educational objective:**

An intended beneficiary receives a *direct* benefit from a contract because the contracting parties so intended. An incidental beneficiary receives some *indirect* benefit from the contract even though there was no contractual intent to benefit them.  And only an intended (not incidental) beneficiary has a right to enforce the contract.

**References**

- Restatement (Second) of Contracts § 302 (Am. Law Inst. 1981) (intended and incidental beneficiaries).
- Restatement (Second) of Contracts § 315 (Am. Law Inst. 1981) (no right to enforce for incidental beneficiaries).