

An heir hired an appraiser to appraise various items of personal property that she had inherited, including an original oil painting. The appraiser told the heir that he had no expertise in appraising art and recommended that she hire an art appraiser to value the painting. The heir, doubting that the painting was valuable, declined to follow the appraiser's advice and decided to sell the painting at a yard sale. She set the price at \$100, assuming that this price reflected the painting's approximate value. A neighbor, who knew nothing about art, purchased the painting from the heir at the asking price. The neighbor and the heir later discovered that the painting was worth over \$900,000.

Would the heir be likely to prevail in an action to rescind the contract?

- A. No, because the heir bore the risk of any mistake as to the true value of the painting. (79%)
- B. No, because the neighbor possessed no specialized knowledge of the true value of the painting. (9%)
- C. Yes, because enforcement of the contract would be unconscionable, given its disadvantageous impact on the heir. (3%)
- D. Yes, because the parties were mutually mistaken as to the true value of the painting at the time of the sale. (7%)

Incorrect

Correct answer A

79% Answered correctly

01 min, 01 sec Time Spent

2023 Version

Explanation:

When party assumes risk of mistake

Express	Contract allocates risk to party
Conscious ignorance	Party enters contract despite conscious ignorance of facts related to mistake
Adjudication	Court allocates risk to party because reasonable under circumstances

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** (ie, bear) the **risk of the mistake**.

One way that a party assumes the risk of a mistake is by proceeding with **conscious ignorance** (ie, **awareness of** his/her **limited knowledge**) of the facts related to the mistake.

Here, both the heir and the neighbor entered the contract for the sale of the painting based on an erroneous belief that the painting was worth \$100—a basic assumption of the contract. That mutual mistake materially affected the agreed-upon exchange since the painting's actual worth was over \$900,000 (**Choice D**). However, the heir bore the risk of any mistake as to the painting's true value because she was *aware* that she had limited knowledge about the value of the painting. As a result, the heir is unlikely to prevail in an action to rescind the contract.

(Choice B) The heir will be unable to rescind the contract because she bore the risk of any mistake as to the painting's true value—not because the neighbor possessed no specialized knowledge of that value.

(Choice C) A contract may be rescinded as **unconscionable** when the contract's bargaining process and/or the contract terms were so unfair to one party that no reasonable person would have agreed to it. However, a contract is not unconscionable merely because enforcing it will have a disadvantageous impact on one party (as seen here).

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 § 152 (Am. Law Inst. 1981) (defining when mutual mistake makes a contract voidable).

Restatement (Second) of Contracts § 154 (Am. Law Inst. 1981) (explaining when a party bears the risk of a mistake).

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