Mutual mistakes in contract law

In contractual law, a mutual mistake is: “ Where a mistake of both parties at the time of contract was made as to a basic assumption on which the contract was made has a material effect on the agreed exchange of performances, the contract is voidable by the adversely affected party unless he bears the risk of the mistake under the rule stated in 154.” (Rasmusen, 1993)4-3 Mutual Mistakes in Contract Law This case is a perfect example of mutual mistake since both parties were ignorant to the proper facts. Josh Hartly and the salesperson were both uninformed of the fact that a 3.

2 liter V-6 engine was no longer manufactured by that manufacturer, thus making them parties to a mutual mistake contract. What do you think about this situation? Josh wanted the salesperson to show him a vehicle with an engine that was no longer being manufactured. Since Josh and the salesperson did not know that this arrangement would be impossible and had a contract been formed, I feel that it would have been completely voidable. Should parties to a sales contract be able to rescind a contract because of mutual mistake of fact? Why or why not? After researching the web and reading relevant court cases, I believe that parties to a sales contract that is based on a situation of mutual mistake should in fact be able to rescind. In the famous Michigan case of Sherwood v. Walker, this very topic was at hand.

Sherwood had bought a cow from Walker under the pretense that it was a barren cow.“ Sherwood agreed to purchase the cow for $80. If the cow had been fertile it would have been worth $750 to $1000. Walker later

discovered that the cow was with calf and refused to complete the transaction.” (Sherwood v. Walker, n.

d.) Though the case was won by Sherwood and he was allowed to keep the cow, it was later reversed because, ” the mistake went to the whole substance of the agreement. This mistake was not about the mere quality of the cow but to its very nature, i. e. a fertile cow as opposed to a barren cow.

” (Sherwood v. Walker, n. d.)In the case of Josh and the salesman, the contract was based in whole on the fact that Josh wanted a 3. 2 liter V-6 and it turned out that it was no longer manufactured. It only makes sense that there agreement had it ended up in a contract would be rescindable.

Did either party act unethically in this case? Why or why not? I don’t believe that either party acted unethically in this case. The two were completely ignorant of the fact that the 3. 2 liter V-6 engine was no longer manufactured. Had the car salesman known that the engine was no longer manufactured and attempted to sell Josh a vehicle under false pretenses, this could have been deemed unethical and possibly led to a lawsuit.