

**Diagram 6C** explains why it matters whether a mistake makes a contract void or voidable.

1. The typical problem arises where A makes an apparent contract with B, believing B to be C (usually because of B's fraud); A then passes **property** to B under this contract. If that is all there is to it, then it doesn't matter whether a qualifying mistake makes the contract void or voidable.
2. In both cases, A can set aside the contract against B and claim the return of the property (if that is physically possible).
3. The problem starts when a **third party** gets involved. This happens when B passes the property on to D in a subsequent transaction. Typically, B is a rogue who then disappears or is not worth suing. What A wants to know, is whether she can recover her property directly from D? The real issue is how to allocate the risk of B's fraud as between two relatively innocent parties A and D. However, this issue is not addressed head on, but rather, is largely suppressed by a technical approach which answers A's question according to the status of B's transaction with A- whether void or voidable.
4. Where A's *contract with B* is **void**, no *legal* title to it passes to B, even A can physically transfer the property to B. and Since B has no legal title, B cannot pass legal title to D (B can give no better title than he has).
5. The *legal title* to the property remains with A, and A can recover the property from D, who is left unprotected.
6. If the contract between **A and B is voidable**, the voidable contract remains valid *until A rescinds it*.
7. *Until that point*, B acquires good legal title from A
8. and B can validly pass it on to D.
9. If D is a co-called '*bona fide purchaser for value*' (that is, D gave B consideration for the property without knowledge of the defect in B's title), *and* if D acquires title **before** A manages to rescind the contract, then D gets to keep the property.  
A can't recover from D; A's only action is against B, if B can be found and is worth suing.
10. Again, If A and B's contract is voidable
11. but, *before* B transfers the property to D as a *bona fide purchaser*,

A rescinds the contract, then the legal title to the property bounces back from B to A from the time of A's rescission.

**12.** After that time, D cannot obtain legal title from B, although he obtains physical possession of it.

**13.** A is entitled to recover the property from D.