

VITIATING FACTORS THAT UNDERMINE THE CONTRACT



SETTING ASIDE THE CONTRACT

Four different ways

- VOIDNESS:** never come into existence
- VOIDABILITY:** one or both parties may declare the contract ineffective at their wish
- UNENFORCEABILITY:** neither party may have recourse to a court for a remedy
- INEFFECTIVENESS:** terminates by order of the court

VOIDNESS

- MISTAKE
- ILLEGALITY
- INCAPACITY

VOIDABILITY

- MISREPRESENTATION
- DURESS and UNDUE INFLUENCE
- INCAPACITY



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MISREPRESENTATION

false statement of fact or law which induces the other party to enter into the agreement



SILENCE

- turns statement made in half truth
- conceals relevant change of circumstances

LIABILITY EXCLUDED

- if contract satisfied the test of reasonableness

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FRAUDULENT MISREPRESENTATION

made with knowledge of falsity and reckless disregard as to its truth

REMEDIES

- rescission
- damages
- no limitation of remoteness



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NEGLIGENT MISREPRESENTATION

IN COMMON LAW

arises where there is a special relationship between the parties giving rise to a duty of care

REMEDIES

- damages

IN MISREPRESENTATION ACT 1967

arises where the representee cannot prove to have had reasonable grounds for believing that statement was true

REMEDIES

- rescission
- damages



INNOCENT MISREPRESENTATION

arises where the representor can prove that he had reasonable grounds for believing that the statement was true

REMEDIES

- rescission
- damages



MISTAKE

incorrect understanding by one or more parties to a contract and it may be used as ground to invalidate the agreement

1. COMMON MISTAKE

occurs when both parties hold the same mistaken belief of the facts

REMEDIES

- void the contract -> if the mistake of the subject-matter is sufficiently fundamental to render the contract different from what was contracted, making the performance of the contract impossible

2. MUTUAL MISTAKE

occurs when both parties of contract are mistaken as to the terms



3. UNILATERAL MISTAKE

occurs when only one party to a contract is mistaken as to the terms or subject matter

NO IF the non-mistaken party was aware of the mistake and tried to take advantage of it

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DURESS AND UNDUE INFLUENCE

- DURESS -> modern doctrine requires that the victim be subject to pressure which affected her will and that the pressure was illegitimate

- economic duress



- UNDUE INFLUENCE -> one person taking advantage of a position of power over another person

- it is to be presumed irrebuttably where certain relationship exist



REMEDIES

- voidable contract
- rescission



INCAPACITY

restricted capacity of either natural or artificial persons to either enforce contracts or have contracts enforced against them



- children
- errant employees or directors
- people who are mentally incapacitated

REMEDIES

- void or voidable contract



ILLEGALITY

contract based on illegal purpose or contrary to public policy

REMEDIES

- void contract
- money or property transferred are not recoverable

