

MISTAKE

- **Mistake of Fact:** The parties entered into a contract with different understandings of one or more *material* facts relating to the contract's performance.

- **Mutual Mistake:** A mistake by both contracting parties about one or more material facts generally entitles (but does not compel) either party to rescind.

- **Unilateral Mistake:** A mistake by one contracting party about one or more material facts generally will not excuse the mistaken party's performance unless:
 - (1) the **other party** to the contract **knew or should have known** of the mistake; or
 - (2) the mistake was purely **mathematical** and made inadvertently and not through gross negligence.

- **Fact, Not Opinion:** A party may not avoid a contract due to a mistake regarding a thing's value (unless due to a factual mistake about the thing), an opinion (unless falsely held), or a prediction that does not come true.

- **Voidable, Not Void:** Contracts entered into under a mistake of fact are not void; rather, the adversely affected party *may*, but need not, avoid the contract.

MATERIAL MISREPRESENTATION

- **Fraudulent Misrepresentation:** An innocent party induced to enter into a contract by a misrepresentation of material fact may avoid the contract because she did not genuinely assent. In order to do so, she must establish that the other party
 - (1) **knowingly**, or with **reckless disregard** for the truth, and
 - (2) with the **intent to deceive** the innocent party,
 - (3) **misstated or omitted a material fact** on which
 - (a) a **reasonable person would rely** in deciding whether and on what terms to enter into the contract and
 - (b) the **innocent party did rely** to her detriment.

- **Negligent Misrepresentation:** A material misrepresentation made *without knowledge* of or *reckless disregard* for its falsehood and *without intent* to deceive.

TYPES OF MISREPRESENTATION

- **Predictions and Expressions of Opinion:** Generally, these will not excuse the innocent party, unless the person making the prediction or stating the opinion
 - (1) has *superior knowledge of the subject matter* and knows or has reason to know that the innocent party *intends to rely* on the statement; or
 - (2) disbelieves the prediction or does not genuinely hold the stated opinion.

- **Misrepresentation by Conduct:** The conduct of a party – particularly a party’s concealment of some material fact from the other party – will support an excuse of misrepresentation.

- **Misrepresentation of Law:** Generally, this will not excuse the innocent party, unless the speaker is a judge, legislator, or attorney, or otherwise a member of a profession that requires greater knowledge of the law than possessed by the average citizen.

- **Misrepresentation by Silence:** Generally, neither party to a contract has a duty to come forward and volunteer facts unless the other party asks. However, common and statutory law create a duty to speak in certain situations (*e.g.*, where one is aware of a serious defect or serious risk of injury).

INTENT, RELIANCE, AND INJURY

- **Scienter:** A defendant acts with the *intent to deceive* if he:
 - (1) **knows** a statement to be false,
 - (2) makes a statement he **reasonably believes** to be false,
 - (3) makes a statement **recklessly**, without regard to its truthfulness or falsity, or
 - (4) implies that he bases the statement on information or expertise on which it is not, in fact, based.

- **Justifiable Reliance:** The innocent party must have acted **based on** (although not *solely* based on) the misrepresentation; and she must have had a **justifiable reason** for doing so.

- **Injury:** Most courts do not require the innocent party to prove an injury in order to **rescind** the contract (returning the parties to their pre-contractual positions). However, if the innocent party seeks to recover **damages**, she must prove that the misrepresentation caused her economic harm.

UNDUE INFLUENCE AND DURESS

- **Undue Influence** arises from relationships in which one party can influence another party to the point of *overcoming the influenced party's free will*.
 - The essential feature of undue influence is that the party being influenced does not genuinely assent of her own free will.
 - If a contract enriches a party at the expense of another whom the enriched party dominates or to whom the enriched party owes fiduciary duties, courts will often **presume** undue influence.
 - Undue influence is grounds for rescinding (or canceling) the contract.
- **Duress:** Compelling an innocent party to enter into a contract by threatening to harm him or another person, or his livelihood, if he does not agree to the contract.
 - Duress is grounds for rescission; although, a party forced to enter into a contract under duress *may* choose to perform the contract.

ADHESION CONTRACTS AND UNCONSCIONABILITY (REDUX)

- **Adhesion Contract:** A contract written exclusively by one party (the “dominant” party, usually the seller or creditor) and presented to the other party (the “adhering” party, usually the buyer or borrower) on a “take-it-or-leave-it” basis, such that the adhering party has **no opportunity to negotiate the terms** of the contract.

- To avoid enforcement of a contract based on adhesion, the adhering party must show that:
 - (1) the parties had *substantially unequal bargaining positions*, and
 - (2) enforcement against the adhering party would be *manifestly unfair or oppressive*.

- **Unconscionability:** A court may invalidate a clause or an entire contract if the court finds the clause or contract to be substantively unconscionable, the product of procedural unconscionability, or both.