



# CHAPTER 15: MISTAKES & FRAUD

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# MISTAKES

- × **Mistake of Fact:** When both parties enter a contract agreement with different understandings on one or more material fact relating the contract's performance.
  
- × **There are 2 types of Mistakes ...**
  - **Bilateral Mistakes:** If both parties are mistaken about a material fact, such as the identity of the subject matter, either party can void contract. If the mistake relates to the value or quality of the subject of matter, either party can rescind the contract.
  
- × **Example:** A customer goes to the sample room of an interior decorator to select a carpet. Then asks the clerk to show him the navy blue carpet, which he subsequently purchased thinking it was the correct color. When the customer examines the carpet at home, he discovers it is black, however the sales note description states it is navy blue. Since both parties were in error, either party can rescind the contract.

# MISTAKES


- **Unilateral Mistakes:** A mistake by one contracting party about the terms or subject-matter contained in the contract cannot be voidable.
- × It will not excuse the mistaken party's performance unless:
  - + 1. The other party to the contract knew or should have known of the mistake
  - + 2. Mechanical calculation or business error.
- × **Example:** A contractor's was significantly bid low because he or she made a mistake in addition when totaling the estimated cost, any resulting from the bid normally may rescind.
- × **Anti-Unilateral Example:** A lady found a stone and sold it as a Topaz for \$25. It was a raw uncut diamond worth \$17,000. The contract is not voidable. There was no mistake because neither party knew what the stone was at that time.



# FRAUDULENT MISREPRESENTATION

× In order for fraudulent misrepresentation liability to arise, misrepresenting party to a contract must know and intend to make a material falsehood (misstated or omitted a fact). The innocent must actually rely on the false statement of the fact. Thus, the intent to deceive is the defining element of fraudulent misrepresentation. In addition, if a party is harmed as the result of misrepresentation, the victim can avoid the contract or recover damages.

× Types of Misrepresentation:

- × 1. Misrepresentation by conduct
  - × 2. Statements of opinion
  - × 3. Misrepresentation of law
  - × 4. Misrepresentation by silence
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# SCIENTER OR GUILTY KNOWLEDGE

- × **Scienter or Guilty Knowledge** - misrepresenting party's knowledge of the wrongness/illegality of an act or conduct with the intention of deceit by mis-stating or omitting material facts.
  
- × Remedies for Fraudulent misrepresentation:
  - × 1. Recession- the contract is voided and anything received must be returned.
  - × 2. Damages
  - × 3. Punitive damages

# UNDUE INFLUENCE

× **Undue Influence:** Influence by which a person is induced to act otherwise than by their own free will or without adequate attention to the consequences.

× **Undue influence is grounds for cancelling a contract.**

× **Example:**

John Doe lands in jail for a night. He calls his girlfriend, Jane Smith, to bail him out. She does so only on the condition that John signs a contract agreeing to purchase 40% of her pizza parlor business for \$100,000.

John, wanting to get out of jail and not lose Jane Smith's affections, signs the contract. He does not do so with reasonable care because he is being pressured by the other party.

# DURESS

- × **Duress:** Compelling an innocent party to enter 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 cancellation (rescission). *However, the party who was forced into the contract may choose to continue to exercise the contract.***

