



CHAPTER 6—GENUINE AGREEMENTS

Student Note Sheet



OBJECTIVE: Develop understanding of when you can avoid a contract based on the existence or nonexistence of certain facts
NBEA STANDARDS II: Analyze the relationships between contract law, law of sales, and consumer law.

DEFECTIVE AGREEMENT

_____ of one of the parties to the contract may not have been _____, _____, or _____ given which means a _____ has been made.

ASSENT

defined as _____.

MISTAKE

_____ fact (fact important to _____ of the parties) or mistake in _____, _____, or _____.

The nature of the mistake determines whether the _____ will help you.

UNILATERAL MISTAKE

____ of the parties make a mistake because of _____.
 ex: not reading a contract before you sign it.

MUTUAL MISTAKE

aka _____ mistake.
 _____ parties are mistaken. Contract can be voided by _____ party. ex: both parties misinterpreting what the other intended

MISREPRESENTATION Can be _____ or _____ (fraud.)

INNOCENT MISREPRESENTATION _____ parties believe information they provided to be _____ but the information is in fact _____.

If the information given was believed to be true by _____ parties, the contract _____ but damages _____ be collected.

UNDUE INFLUENCE

When a party in a _____ relationship takes _____ advantage, thus causing a contract to be _____ ex: doctor/patient; teacher/student; lawyer/client
 ex: stronger will substitutes their will for the will of the weaker person

DURESS _____ a person's will by use of _____ or _____ of force or _____ harm.
 ex: party is coerced into entering a contract because of wrongful use of force

ECONOMIC DURESS _____ to a person's business/income that force his to enter contract.

FRAUD _____ misrepresentation, _____ deception.
 Two types of fraud:

FRAUD IN THE INDUCEMENT Fraud in the inducement is the _____ of fraud.
 Consists of four parts.

1. _____ of material fact.
 ex: mileage lowered on car
 _____ - misrepresentation by not revealing important information ---aka _____.
2. _____ with intent to deceive
 ex: knew what doing and why
 Scierter – to _____ make a _____ statement
3. _____ relied upon
 ex: buyer led to believe false statements
4. With resulting _____
 ex: because of false info, buyer will suffer

FRAUD IN THE EXECUTION Party _____ and the act itself is _____.
 ex: signing pages to contract, slipped in page to sign something else

I always turn to the sports page first, which records people's accomplishments. The front page has nothing but man's failures."

Earl Warren

(1891-1974) born on Mar 19

US "politician, jurist". "He was Chief Justice, 1953-69; presided changes in civil rights and headed the investigation of the JFK assassination."

CHAPTER 6

GENUINE AGREEMENT class notes

People enter contracts believing certain facts exist when they don't or that certain facts don't exist when they do.

Whether you can avoid a contract based on the existence or nonexistence of these facts is the issue of this chapter.

DEFECTIVE AGREEMENT

Assent (agreement) by one of the parties to the contract may not have been real, genuine, or voluntarily given which means a mistake has been made. Assent is consent

MISTAKE

As humans we tend to make mistakes.

The nature of the mistake determines whether the courts will help you.

If both parties involved had something different in mind, the court will generally let them out of the contract.

The mistake: Material fact or mistake in judgment, value, or quality.

UNILATERAL MISTAKE

One of the parties makes a mistake. Carelessness is generally the cause.

Unilateral mistakes deal a lot with not reading contracts.

An example: A construction company makes a bid to build a tower for \$1.5 million. The bid is accepted. The construction company manager reviews the bid and realizes the bid should have been \$2 million.

Is the company bound to the contract for 1.5M even though it will lose half a million in the process or was this an oversight thus voiding the contract?

They are bound—they should have read the contract. You are responsible for what you sign – always take the time to read a contract. If you don't read the contract, you generally have only yourself to blame.

MUTUAL MISTAKE OR BILATERAL MISTAKE (bilateral means two-sided, mutual)

Both parties are mistaken. They are mistaken about an important fact. In this case, the contract can be voided by either party.

EX: I am selling 3 cars—I think you want one car when in reality you are inquiring about another car—this would be a mutual mistake.

EX: I agree to sell you my car for \$3,000. Unknown to both of us, it was totaled the

night before and could not be repaired. This would be a bilateral/mutual mistake and either party can void the contract.

REMEMBER:

It depends on the type of mistake you make as to whether the court will help you out.

Ex: I am an antique dealer and you come into my store and see an old chair. I sell you the chair for \$5. You take it home, scrape it off and realize it is a chair from the Ford Theatre where Lincoln was shot. The papers get a hold of this store and publish it. The chair is worth millions. I approach you and request the chair back and agree to repay your money—it was a mistake.

What type of mistake? Unilateral or Bilateral/Mutual? Unilateral mistake.

Can I get the chair back? NO. This was a mistake of judgment, value and quality. You win. I lose.

MISREPRESENTATION

Misrepresentation can be innocent or intentional which is known as fraud—you intentionally cheated someone.

INNOCENT MISREPRESENTATION

Misrepresentation: both parties believed information they provided or were provided was true but in fact it was not correct.

A person tells you something that you believe to be true but it was not.

You can get your money back. The person believed what you were told was true and you relied upon what they said.

ex: Maytag is No. 1 appliance in the country. You believe it and so does the person selling Maytag.

Consumer report comes out and says Maytag is No. 5 in the country.

Could you get your money back? Yes – innocent misrepresentation.

If the information given was believed to be true by BOTH parties, the contract can be rescinded and money can be returned but DAMAGES cannot be collected.

UNDUE INFLUENCE: When a party in a dominating relationship takes unfair advantage, thus causing the contract to be voidable.

We are talking about unfair and improper persuasive pressure exercised by one person in a relationship of trust with another person. It usually exerted by a stronger person in the relationship over a weaker person.

ex: ill health, mental immaturity, old age puts a person in a weaker position.

The stronger person substitutes his will for the will of the weaker person.

ex: Doctor/Patient—doctors gain confidence of their patients. Older patients are frightened and trust their doctor and would do whatever doctor prescribed. Psychiatrists have been known to take advantage of younger attractive female patients because they are going to help them through an emotional crisis and it becomes sexual manipulation of the patient.

You have heard of Teacher/Student attractions.

Lawyer/Client stories: An old spinster can't sleep at night wondering what to do with her fortune. She has no family. She goes to her lawyer and tells him her problem. He agrees to take care of it. She can now sleep and is at peace. Two years later, she dies. The will is read—all of her money goes to the lawyer's two kids who she had only met for 10 minutes. Would you say this was a case of undue influence? She trusted her lawyer and the lawyer took advantage of the woman's trust in him to persuade her to give him all her money. The contract can probably be voided.

DURESS: Overcoming a person's will be use of **force** or **threat** of force or **bodily harm**.

ex: You sell your 2002 El Dorado for \$1. That sounds real good until it is found that a gun was at your head. Is that duress? YES.

Economic duress---forcing someone to enter a contract against their will by threats, of harm to self or business.

FRAUD: Intentional misrepresentation

There are two types of fraud: fraud in the inducement, fraud in the execution.

FRAUD IN THE INDUCEMENT is the most common type of fraud. It falls into four parts.

1. **False Representation** of material fact.

ex: You just bought a used car. The odometer of the car read 43,000 miles.

The car actually had 59,000 miles. The person who changed the odometer did this to get more money for the car, the lower the mileage, the more money the car is worth. So the crook misrepresented material fact (mileage of the car)

Concealment is also a misrepresentation by not revealing important information, maybe not saying anything when some information should be revealed--aka nondisclosure

2. **Knowingly** made with intent to deceive.

ex: The crook knowingly changed odometer reading to deceive the buyer. What is the first thing a person asks---how many miles on the car. This intent to deceive is known in law as SCIENTER (SI ENTER)—To **knowingly** make a **false** statement.

3. **Justifiably** relied upon.

The buyer relied upon this false information

4. With resulting damages.

and because of it will suffer damages—a car with more miles, plus more wear and tear on it than believed and worth less than what paid.

So fraud in the inducement:

- Must be material fact—if you knew about it, would you have changed your mind? Probably. Material fact in this car is the odometer being changed—the mileage.
- Must be knowingly made to deceive. The person changing the mileage knew what they were doing and did it for a reason—to make money
- The buyer was led to believe false information—they relied upon information given
- Damages?? Yes. A junk car with more wear, tear, mileage and worth less than paid for.

So what happens now? Not only can this buyer get their money back but the law can and should punish this person for fraud==the intent to cheat you. In some states you can sue up to 3 times the amount they cheated you plus legal fees.

FRAUD IN THE EXECUTION: A party secretly substitutes one document for another and the act itself is fraud.

ex: I ask you to sign your lease. I say sign, here and here. You think you are signing your lease where in reality you are signing your lease on the first page, and signing your will giving me everything on the second page. I never let you see that second page.

Fraud in the execution: a party secretly substitutes one document for another.

What is this a case of?

Audrey Vokes is a widow age 51. She lost her husband and is lonely. She decided to take dance lessons and checks out Arthur Murray Dance Studio taking some introductory lessons. 8 ½ hours of dance lessons -- \$14.50. She goes and loves it.

While dancing her instructor tells her how good she is and did she ever think of going for the bronze medal – what is it she asks. For 545 hours, she could be awarded the bronze medal.

After 10 hours into working toward her bronze, another dance instructor tells her how great she dances and have you every thought about the silver medal. what is it?? for 926 hours of dance instruction, she could be awarded the silver.

We're teaching the cha cha in our studio in Miami—you pay your way and for 126 additional hours, you could learn the cha cha in Miami.

This goes on and on. The Somba in Trinidad for 151 hours, Rhomba in Mexico City for 175 hrs and finally the ultimate GOLD BAR FOR 481 HOURS.

She totaled up 2,302 hours. She was signing up for all of this and paying as she went. She ultimately discovered that she was not a great dancer—only average and she would never be Ginger Rogers.

She was presented a bill for \$31,090 for dance lessons received and had on credit to receive.

She goes to court. Does she have a case? Of what? Undue Influence. Did they take advantage of her. YES Did the dance instructors egg her on? YES

She wanted companionship and a desire to learn to dance but she never had the ability they led her to believe she had. She won. She was reimbursed for unused dance lessons but was not reimbursed for trips or used dance lessons.