

MISREPRESENTATION

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LEARNING OBJECTIVES

BY THE END OF THIS SESSION, YOU SHOULD BE ABLE TO . . .

- ▶ Define what misrepresentation is
- ▶ Explain the consequences of misrepresentation of contract

QUESTION

**WHAT IS AN INVALIDATING
FACTOR IN RELATION TO A
CONTRACT?**

We will discuss

- ▶ The effect that an invalidating factor might have on an otherwise valid contract
- ▶ The requirements for establishing a misrepresentation
- ▶ The different types of misrepresentation recognised by the courts
- ▶ The available remedies in the event of misrepresentation occurring; and
- ▶ The effects of the **Misrepresentation Act 1967** on actions for misrepresentation.

EFFECT OF INVALIDATION

VOID: A contract is treated as if it never existed. This means that no rights or duties can be passed under a void contract.

VOIDABLE: A voidable contract is one which does exist and will continue to exist unless one of the parties decides to bring it to an end (**rescind**).

Normally, a contract is rescinded by telling the other party that you want to end the contract. What if the other party cannot be traced?

*Car and Universal Credit
v Caldwell [1964]*



THIS APPLIES TO
MISREPRESENTATION

MISREPRESENTATION DEFINED

A misrepresentation is an untrue statement of fact or law, made by one contracting party to another, which is intended to induce and does induce the other party to enter into the contract by reliance on the statement.



VS



STATEMENT OF FACT OR LAW

Originally a misrepresentation was a false statement of FACT.

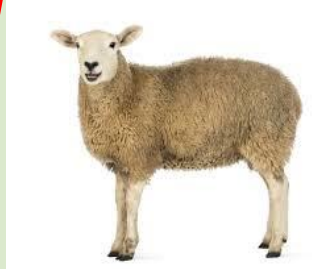
Since *Panhkhanian v Hackney London Borough Council [2002]* – Statements of FACT & LAW can now be misrepresentation.

- The statement does not necessarily have to be in words; it can be conduct. *Gordon v Selico [1985]*, *Spice Girls Ltd v Aprilia World Service [2002]*

The following matter are NOT normally misrepresentations . . .

STATEMENT OF OPINIONS

Bissett v Wilkinson [1927]



However,
If the person making the statement is in a better position to know the facts on which his opinion is based, there may be IMPLICIT REPRESENTATION.

Smith v Land House Property Corp [1884]
Cherrilow Ltd v Butler-Creagh [2011]

STATEMENTS OF INTENTION

Statements of intention do not normally constitute misrepresentation, unless you state the intention of doing something that you do not intend to do.



NON-DISCLOSURE



It is the buyers responsibility to find out about the goods before buying

*Skyes v Taylor Rose
[2004]*

*Hardy v Griffiths
[2014]*

Caveat Emptor: EXCEPTIONS

1. When one party has told a “half-truth” which he knows will give a false impression to the other party: *Nottingham Patent Brick & Tile Co v Butler* [1886]

2. If a statement is accurate when it is made, but circumstances change before the contract is finally settled. *With v O’Flanagan* [1936]

3. Contracts of utmost good faith.

4. Where the parties have a **fiduciary relationship**

5. *Hamilton v Allied Domecq* [2007]



WHAT IS A

- a) REPRESENTOR
- b) REPRESENTEE

IN RELATION TO MISREPRESENTATION?

INDUCEMENT

- i) The representor must **intend** that this false statement will induce the other party to enter into the contract; **and**
- ii) The false statement must **actually induce** the representee to enter into the contract.

INDUCEMENT . . .

The following circumstances do not therefore lead to misrepresentation:

1. The C was unaware of the existence of false statements

Re Northumberland & Durham Banking Co [1858]

2. A statement was not relied upon because the representee had checked the facts for himself.

Attwood v Small [1838]

3. If the representee knows the statement is false, but decides to contract anyway.

Redgrave v Hurd [1881]

TYPES OF MISREPRESENTATION

1. FRAUDULENT
2. NEGLIGENCE
3. INNOCENT

MISREPRESENTATION
ACT 1967

1. FRAUDULENT MISREP



Defined in *Derry v Peek [1889]*: fraudulent misrepresentation arises where:

- A knowingly false statement is made; or
- The statement is made without belief in its truth; or
- The statement is made with reckless carelessness as to whether it is true or false.

1. Fraudulent misrepresentation: REMEDIES

- ▶ Sue for **DAMAGES** and/or seek **RESCISSION** of the contract.

DAMAGES

- Tort of deceit: aims at putting the claimant in the position he would have been but for the misrepresentation.
- *Smith & New Court Securities Ltd v Scrimgeour Vickers [1996]*

Fraudulent misrepresentation: REMEDIES

RESCISSION (cancel)

Aim: to put the parties back in the position they were in before the contract was made

The remedy will not be allowed in the following circumstances:

- Contract has been affirmed
- If the parties cannot be restored to their original positions
- If a third party has acquired rights

2. Negligent Misrepresentation

- ▶ **S2(1) MA 1967**
- ▶ The person making the statement must prove that he had reasonable grounds to believe, and did believe, that the statement was true.

Cannot prove this = **negligent misrep**

Can prove this = **innocent misrep**

- ▶ *Howard Marine & Dredging Co Ltd v A Ogden & Sons (Excavations) Ltd [1978]*



2. Negligent misrepresentation: REMEDIES

► Damages and Rescission are available

► DAMAGES

S2(1) MA 1967 –provides little guidance

Royscot Trust Ltd v Rogerson [1991] – the same measure of damages will apply to fraudulent and negligent misrepresentation.

► RESCISSION

As with fraudulent misrepresentation, the award of rescission will be barred in some circumstances.

3. INNOCENT misrepresentation

**TASK: WHAT IS INNOCENT
MISREPRESENTATION?**

3. Innocent misrepresentation: REMEDIES

- ▶ Traditionally, only rescission was allowed.
- ▶ NOW: Under **s2(2)MA 1967** – Courts may award **DAMAGES IN LIEU (in place) OF RESCISSION**
- ▶ MA 1967 instructs the courts to consider:
‘That it would be equitable to do so, having regard to the nature of the misrep and the loss that would be caused by it if the contract were upheld, as well as to the loss that rescission would cause the other party’
- ▶ Court cannot award both remedies – the right to damages will also be lost if the power to rescind is lost.

Summary of remedies for misrepresentation

TYPE	RESCISSION	DAMAGES
FRAUDULENT Derry v Peek [1889]	Available: subject to usual restrictions	Available: awarded on a tortious basis Smith & New Court Securities Ltd v Scrimgeour Vickers (Asset Management) Ltd [1996]
NEGLIGENT S2(1) MA 1967	Available: subject to usual restrictions	Available: awarded on a tortious basis Royscot Trust Ltd v Rogerson [1991]
INNOCENT S2(2)MA 1967	Available: subject to usual restrictions	Only available in lieu of rescission - s2(2)MA 1967

[illegible]

1. Representation or term?
2. Is the statement FALSE?
3. Has the representor intended inducement and the representee been induced?
4. Type of misrepresentation?
5. Remedies?

SELF-ASSESSMENT QUESTIONS

1. What is the difference between a voidable contract and a contract that is void?
2. Define misrepresentation
3. What are the different types of misrepresentation?
4. What is the difference between damages that are awarded on
 - a) A tortious basis
 - b) A contractual basis
5. List some bars to awarding rescission.