

Vitiating Factors – Misrepresentation

Nature of a Misrepresentation	A misrepresentation only occurs during the formation of a contract. The effect of a misrepresentation is that the contract voidable. This means the contract remains valid until the party who has suffered the misrepresentation seeks to end the contract. This is called rescission and is a discretionary remedy available the courts. Rescission treats the contract as if it never existed.	
False Statement	A statement is usually written/ verbal but does not have to be as in Spice Girls Ltd. Silence cannot be a misrepresentation. To be a misrepresentation the statement must be false. There is no obligation to make a statement but what is said must be true. However there are exceptions to the rule where the D might be obliged to make a statement.	
	Exceptions to the rule regarding silence	Change of circumstances – if a statement is true but becomes false because of a change in circumstances it can become a misrepresentation.
		The making of a half truth – what is not said is a misrepresentation as the person making the offer has a responsibility to tell the full situation
		Confidential relationship – where a relationship is based on trust there may be a requirement to disclose all information.
Of material fact	The misrepresentation must be of material fact – it must lead the person to enter into the contract	
	Statement of opinion	A statement of opinion is not generally dishonest if the maker of the statement believes it to be true. If the opinion proves to be false it will not support a claim of misrepresentation. If the person who makes the statement knows it to be untrue then this a statement of fact not opinion as in Smith v Land and House Property Corp (1884)
	Statement of intention	A statement of intention/ to something in the future is not a statement of fact unless there is evidence that the D had no intention to carry out the statement/ knew it would not happen.
Made by a party to the contract	A person is not liable for the statements of others unless the third party is his/her agent. A newspaper review of an item cannot be a misrepresentation.	
That induces the other party to enter the contract	The statement must be a critical part of the decision making. The statement must have been relied on and they must not have sought information elsewhere	
	It doesn't matter if the C could have easily found the information elsewhere. The fact the statement is untrue and D relied on it.	
Misrepresentations – omissions in a consumer contract	S.12 Consumer Right Act 2015 includes information that must be included in a contract to supply goods	It is considered misleading if a trader <ul style="list-style-type: none"> • Omits material information that the average consumer needs, according to the context, to make an informed transaction decision • Hides or provides material information in an unclear, unintelligible, ambiguous or untimely manner • Fails to identify the commercial intent of the commercial practice if not already apparent from the context
Different Types of Misrepresentation		
Innocent Misrepresentation	Misrepresentation Act 1967 defines innocent misrepresentation as a false statement made honestly. The person making the statement needs to believe it to be true and there needs to be no evidence of negligence	
Negligent Misrepresentation	Common law of negligence	Established in Hedley Byrne v Heller (1964) – refer to your notes on negligent misstatement
	Misrepresentation Act 1967	S.2(1) creates a statutory liability for negligent misrepresentation. There does not need to be a special relationship between the parties. All that is needed is for there to be a contract and for C to suffer loss. Once the C has proved there was a misrepresentation it is up to D to prove the belief was reasonably held. Howard Marine v Ogden and Sons (1978)
Fraudulent Misrepresentation	Origins in the Tort of Deceit, this covers situations where the person making the statement knows it to be untrue or is reckless as to whether or not it is untrue. To avoid being found liable for fraudulent misrepresentation the person making the statement must believe it to be true. An over optimistic statement can also be a fraudulent misrepresentation.	
Remedies	Innocent Misrepresentation	Rescission or Damages – not both Rescission will not apply when
		Restitution to the original pre-contract position is not possible
		The contract is affirmed – where the innocent person decides to carry on with the contract even though they are aware of the misrepresentation
		Delay
		A third party has gained rights over the property
	Negligent Misrepresentation	Rescission and/or damages
Fraudulent Misrepresentation	Rescission and damages in the Tort of Deceit. The aim of damages is to put the C in the position they would have been in before the misrepresentation took place.	
Damages and Misrepresentation	Although the normal remedy is rescission damages can be awarded in some circumstances	
	Misrepresentation Act 1967 – s.2(1) gives a right to damages for negligent misrepresentation	
	Misrepresentation Act 1967 – s.2(2) gives a court the discretion to make an award for damages in lieu of rescission for a negligent or innocent misrepresentation. This could be in addition to damages under s.291) The damages must be for losses specifically related to the misrepresentation	
	Damages in the Tort of Deceit where there is fraudulent misrepresentation.	

