

## CHAPTER 7 VITIATING FACTORS

After studying this chapter students should be able to:

### DEFINE STATEMENTS THAT CONSTITUTE ACTIONABLE MISREPRESENTATIONS

- A misrepresentation is a false statement of fact, made before or at the time of making a contract, by one party to the other, which induced the other party to enter into the contract.
- The statement may be written, oral, or by conduct and must be more than an opinion.

### DISTINGUISH BETWEEN FRAUDULENT, NEGLIGENT, AND INNOCENT MISREPRESENTATION AND BE AWARE OF THE REMEDIES AVAILABLE FOR EACH TYPE OF MISREPRESENTATION

- Fraudulent misrepresentation is where a party makes a false statement that he does not believe is true. The innocent party is entitled to damages for all losses he has suffered, and rescission of the contract.
- Negligent misrepresentation is a false statement made by a person who believes that the statement is true, but has no reasonable grounds for that belief. The innocent party is entitled to damages and rescission, or, if fairer, only damages.
- Innocent misrepresentation is a false statement made by a person who has an honest and reasonable belief in its truth. The innocent party is entitled to rescission or damages.

### EXPLAIN THE TYPES OF MISTAKE AND THEIR EFFECT ON A CONTRACT

- Only where a mistake is fundamental to the contract will the courts regard it as an 'operative' mistake, making the contract void.
- A common mistake is where both parties make the same mistake.
- A mutual mistake is where the parties are at cross purposes.
- A unilateral mistake is where only one of the parties to the contract is mistaken and the other party is aware of the mistake.

### DESCRIBE HOW DURESS AND UNDUE INFLUENCE MAY ARISE AND THEIR EFFECT ON CONTRACTS

- Duress is where a party has entered into a contract after the other party has threatened physical violence or serious economic coercion.
- Undue influence is where a party has entered into a contract after excessive persuasion has been applied by the other party. It is presumed where there is a relationship of trust and confidence.
- The presence of duress or undue influence will make a contract voidable.

### OUTLINE THE TYPES OF CONTRACT THAT ARE ILLEGAL

- A contract may be illegal because of the type of contract, its purpose, or because of the manner in which the contract is to be performed.
- A contract which does not actually break the law but is against public interest may also be illegal.
- The courts will not enforce an illegal contract.