



# Business/Marketing Virtual Learning

# 10-12 grade Business Law

**April 30, 2020**



Lesson: [April 30, 2020]

**Objective/Learning Target:**

List the criteria for a statement to be treated as a misrepresentation.

# Let's Get Started

Review This Video:

[Misrepresentation](#)



# Misrepresentation

In many contract negotiations, the parties make statements that turn out to be untrue. For example, in the sale of a car, a seller, unaware that a previous owner replaced the odometer, might say that it has 70,000 miles on it when in fact it has 150,000 miles on it. This is an **innocent misrepresentation**. If the seller had known the statement was untrue, the seller would have engaged in **fraudulent misrepresentation**. In both of these situations the contract that results is voidable by the party to whom the misrepresentation is made. Statements are treated as misrepresentations by the law only if:

- 1) the untrue statement is one of fact or there is active concealment
- 2) the statement is material to the transaction or is fraudulent
- 3) the victim reasonably relied on the statement

# I. Untrue Statement of Fact

In misrepresentation, the statement must be one of fact rather than opinion. Therefore the statement must be about a past or existing fact. If someone says, “This car will suit your needs well for at least the next year,” this is a statement about the future and therefore must be an opinion. It cannot be the basis for misrepresentation. A seller’s statement that, “I’m sure land values will increase at least 15 percent a year for the next three years,” is a statement of opinion.

Opinions also can be distinguished from facts based on how concrete they are. Saying, “It really runs well,” is a statement of opinion about the condition of the car. Statements like “This is the best tasting cola on the market” are mere sales talk. In contrast, if the seller said, “The engine was rebuilt 7,000 miles ago,” this is the expression of a concrete fact. If untrue, it would be considered a misrepresentation.

Note, however, that when an expert expresses an opinion, the law will treat the statement as a statement of fact which can be the basis for misrepresentation. If an expert auto mechanic says, “The engine is in A-1 shape,” and this is not true, it is a misrepresentation and the buyer could avoid the contract.

# I. Untrue Statement of Fact (continued)

**Active Concealment** - Active concealment is a substitute for a false statement of fact. If the seller of a house paints the ceiling to cover stains which indicate the roof leaks, this is active concealment. Similarly, if a seller places the price sticker on the TV screen to cover a wide scratch, this is active concealment.

**Silence** - While in many situations the seller may remain silent about defects, there are three important situations where the seller must disclose (tell) is required:

- 1) A statement about a material fact omits important information. If a seller says, "I only drove this car once a week," then the seller also must disclose that this occurred while racing the car at the local drag strip. Half-truths cannot be used to conceal or mislead.
- 2) A true statement is made false by subsequent events. A seller says, "No, the roof of the house doesn't leak." Later that night, it begins leaking and the seller ends up sleeping under an umbrella. This seller must break silence and disclose the defect to correct the buyer's misimpression.
- 3) One party knows the other party has made a basic mistaken assumption. For example a buyer may assume that a foundation is solid, but the seller knows of a defect allowing water to flood the basement each spring. The seller knows repairs will cost 25 percent of the sale price. This mistaken assumption must be corrected.

## II. Materiality

There are three ways an untrue statement can be determined to be material:

- 1) A statement is material if the statement would cause a reasonable person to contract. Statements about total miles on a car and the number of miles since an engine was rebuilt probably would cause a reasonable person to enter the contract. A statement that a star's signature on a baseball card is his authentic autograph, is a statement that would be material to a reasonable person who collects such memorabilia.
- 2) A statement can be material if the defendant knew this plaintiff would rely on the statement. An innocent misrepresentation would be deemed material and would allow a contract to become void.
- 3) If the defendant knew the statement was false, this makes the statement material. Therefore, if a seller lies about an otherwise non-material fact, this is material. If a seller says, "I always had the car serviced at the local Chevrolet dealership," when in fact he had it serviced at the local gas station, this statement would be material.

### III. Reasonable Reliance

Even though the statement is material, there is no misrepresentation unless the victim reasonably relied on it. A buyer may be told by an art gallery owner that an oil painting was created by “one of the great masters of the Renaissance era.” She then learns from an art appraiser that it is a mere imitation. If the buyer still completes the sale, the buyer isn’t relying upon the statement. If a car dealer says the tires are new, but the buyer responds, “Two are as bald as you,” there is no reliance.



# ACTIVITY #19 support your answers in Journals

- 1) What are the three criteria for a statement to be treated as a misrepresentation?
  
- 2) Bambett had to relocate and sold Tracy her nearly new Tantric tanning bed for \$700. In their negotiations for the sale, Tracy asked Bambett if the bed could use the new vitamin D3 lights that had just come on the market, as her doctor had ordered her to use them. Bambett had just examined the new lights in a store a week earlier to see if they would fit in her bed's light sockets. She assured Tracy they would fit. A few days after the sale, Tracy discovered that, although the D3 lights would fit in the sockets, the voltage supplied to the lights in the Tantric bed was not high enough to use the D3 lights effectively.
  - a) Can Tracy avoid the sale as a consequence?
  - b) Why or why not?
  
- 3) You are told by a jewelry store salesperson that the diamond you are looking at is a perfect stone. After you purchase the diamond, you learn from an appraiser that it is not perfect after all.
  - a) Would you have relied on the salesperson's statement in making your purchase decision?
  - b) Did a misrepresentation occur as a consequence?