



Business/Marketing Virtual Learning

10-12 grade Business Law

May 4, 2020



Lesson: [May 4, 2020]

Objective/Learning Target:

Review and assess Genuineness of Assent in contracts.

Let's Get Started

Review This Presentation:

[Genuineness of Consent](#)



Duress and Undue Influence

1. A valid contract is legally binding and enforceable. A voidable contract's legal effect can be cancelled or avoided by one or more of the parties. A void contract has no legal effect whatsoever.
2. Genuine assent is at times shown to be lacking due to a variety of causes such as duress, undue influence, mistake, misrepresentation, and fraud.
3. Duress consists of either an improper act or threat that induces the victim to make an unwanted contract. Such contracts are voidable by the victim.
4. Undue influence exists when the dominating party in a confidential relationship uses that position to cause the victim to enter into a contract heavily favorable to the dominating party. The contract is voidable by the victim who acted without free will.

Mistake, Misrepresentation and Fraud

1. Generally a unilateral mistake of fact does not affect the validity of a contract.
2. Generally a mutual or bilateral mistake of material fact as to the identity, but not the value, of the subject matter makes the agreement void.
3. Generally a unilateral or mutual mistake concerning applicable law leaves the contract valid.
4. Misrepresentation occurs if a victim entered into a contract reasonably relying on an innocent misstatement of a material fact or its concealment. The resulting contract is voidable by the victim.
5. Fraud exists when there is a reckless or deliberate misrepresentation or active concealment of a material fact meant to induce the victim to enter into a contract and the victim, relying thereon, does so. Contracts induced by fraud are voidable by the victim who also may be allowed compensatory and/or punitive damages by the court.
6. After discovering a contract is voidable, the injured party must act promptly to avoid it and before any act of ratification or the right to cancel and rescind will be lost.

ACTIVITY #21

1. Of no legal effect.
 2. Consent not clouded by misrepresentation, fraud, duress, undue influence, or mistake.
 3. Contract which confers on the injured party the temporary right to avoid and rescind.
 4. One party holds an incorrect belief about the facts related to a contract.
 5. Deliberate false representation or active concealment of a material fact, which is meant to and which does induce another to make an unfavorable contract.
 6. Approval of a voidable contract by the injured party.
 7. The dominating party in a confidential relationship using his or her power to induce the dependent person into making an unfavorable contract.
 8. Use of an improper act or threat to obtain an expression of agreement.
 9. The process of restoring to the parties what they have put into the contract.
- a. Duress
 - b. Fraud
 - c. Fraudulent Misrepresentation
 - d. Genuine Assent
 - e. Innocent Misrepresentation
 - f. Material Fact
 - g. Mutual Mistake
 - h. Ratification
 - i. Rescission
 - j. Undue Influence
 - k. Unilateral Mistake
 - l. Void
 - m. voidable

ACTIVITY #21

- 1) Describe the concept of mutual mistake of fact.
- 2) Distinguish the effect of the passage of time on the potential for avoiding the contract versus the effect of time on the potential for the contract's ratification.
- 3) What does reliance mean?
- 4) Explain all the elements that must be proven to establish fraud.
- 5) How is innocent misrepresentation different from fraud?
- 6) In negotiations for the purchase of a ranch, Adler (the seller) discussed water rights with Folt, the buyer. Adler never mentioned an ongoing dispute she had over such rights with a neighboring rancher. After the purchase, Folt realized that he had "bought a lawsuit" when his neighbor sued him over the water rights. In turn, he therefore sued Adler for rescission of their contract. Who will prevail, and why?

ACTIVITY #21

- 7) Ralph received an inheritance of \$30,000 from his aunt's estate. He then bought a used sports car from Sid and paid \$25,000 cash. Shortly thereafter, Ralph realized that Sid had fraudulently misstated the car's mileage, horsepower, and engine condition. At the same time, Ralph realized he needed \$15,000 in cash to close a real estate deal. As a consequence, he took out a loan using the sports car as collateral.
- a) Could Ralph still avoid and rescind the contract for the purchase of the car?
 - b) Could he take any other legal action against Sid?
- 8) Ashly, a salesperson, told Geppy that a new computer and its accounting software should do the work of at least five employees. Relying on this statement, Geppy bought the products. When Geppy found that he could eliminate only three employees but needed a new specialist, he claimed fraud.
- Was fraud committed?
- 9) Molly had no automobile liability insurance, although it was required by state law. She negligently collided with Cher's car. Cher threatened to sue if Molly failed to pay \$1,000 for pain and suffering and \$2,000 for car repairs. Molly gave Cher a check for \$3,000. Then she stopped payment on it, claiming duress.
- Was it duress?