

Post-It Pad Summary: Genuine Agreement

Summarize each of the situations where genuine agreement may not exist in a contract. Provide an example of each. Use the information below to help you prepare your summary!



1: Duress

2: Undue Influence

3: Mistakes (Unilateral and Bilateral)

5: Misrepresentation

6: Fraud



DURESS

Duress occurs when one party uses an improper threat or act to obtain an expression of agreement. The resulting contract is voidable. Much of the law of duress focuses on the nature of the threat.

- **Threats of Illegal Conduct.** The threat to engage in illegal conduct, such as a crime or tort, to win agreement is always duress. Committing an act of violence (for example, stabbing), threatening a crime (threatening to stab), committing a tort (for example, unlawful detention), or threatening a tort to obtain a signature on a written contract is duress. The actual crime or tort, or the threat, may be to the physical life, liberty, or property of the victim, the victim's immediate family, or the victim's near relatives.
- **Threats to Report Crimes.** If you observe a crime, you have a duty to report it to the proper authorities. If you use a threat of reporting to coerce the criminal to contract with you, this is duress. It may also be the crime of extortion.
- **Threats to Sue.** The law encourages parties to settle conflicts without a suit. An important part of this process involves communicating a threat that you will sue if the other side doesn't settle. This happens frequently. But when the threat to sue is really made for a purpose unrelated to the suit this may be duress.
- **Economic Threats.** Often when parties are bound by a valid contract, they will seek to modify it. Parties then are tempted to use the economic power they have over one another to negotiate a favorable modification or settlement. In economic duress cases, the courts look at both the threat and the alternatives available to the threatened party. If the threatened party had no choice but to enter into or modify a contract, then duress exists.

UNDUE INFLUENCE

Undue influence occurs when one party to the contract is in a position of trust and wrongfully dominates the other party. The dominated person then does not exercise free will in accepting unfavorable terms. The two key elements in undue influence are the relationship and the wrongful or unfair persuasion. When a contract arises because of undue influence, the contract is voidable by the victim.

- **The Relationship.** A relationship of trust, confidence, or authority must exist between the parties to the contract. This relationship is presumed to exist between an attorney and client, wife and husband, parent and child, guardian and ward, physician and patient, or minister and congregation member.
- **Unfair Persuasion.** Often the best evidence of unfair persuasion is found in unfair terms of the contract. For example, an elderly person, who is dependent on one child for daily care, may sell her home to that child for half its value. This is strong evidence of lack of free will. A charge of undue influence can be overcome by proving that the contract is fair to both parties.

MISTAKES

- **Unilateral (1-sided) Mistake.** A unilateral mistake occurs when one party holds an incorrect belief about the facts related to a contract. Generally, this does not affect the validity of the contract. A mistake from failure to read a contract before signing is a unilateral mistake. So is a misunderstanding from a hurried or careless reading. Similarly, signing a contract written in language you don't understand will bind you even if you are mistaken about some of the contract's content.
- **Bilateral (2-sided) Mistake.** When there is a bilateral mistake (also called a mutual mistake) both parties have an incorrect belief about an important fact. Important facts that influence the parties' decisions about a contract are called material facts. If a mutual mistake occurs, the contract is void. If both a buyer and seller think that property is 41 acres and they contract for the sale based on this belief, then learn later that it is only 28 acres, this is a mutual mistake of fact. Their agreement is not binding.
- **Mistake about the Subject Matter.** Mutual mistakes may occur as to the existence of the subject matter, as shown in the following example. The law treats a unilateral mistake about the identity of the subject matter of a transaction as a mutual mistake. There was no genuine agreement between the parties.
- **Mistake of Law.** In most states, when the mutual mistake is about the applicable law, the contract is still valid. For example, if both parties to a sale of land mistakenly believe that local zoning laws permit construction of duplexes on the lot, the contract would be valid though there was a mutual mistake. This is because all persons are presumed to know the law.

MISREPRESENTATION

- In many contract negotiations, the parties make statements that turn out to be untrue. For example, in the sale of a car, the seller might say that it has 70,000 miles on it when in fact it has 150,000 miles on it. If the seller didn't know the true mileage because a prior owner replaced the odometer, this is an innocent misrepresentation. If the seller had known the statement were untrue, the seller would have engaged in fraudulent misrepresentation. Both of these defenses make the contract voidable.
- Statements are treated as misrepresentation only if:
 1. the untrue statement is one of fact or there is active concealment, and
 2. the statement is material to the transaction or is fraudulent, and
 3. the victim reasonably relied on the statement.
- **Untrue Statement.** 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.
- **Materiality.** There are three ways an untrue statement can be determined to be material. First, a statement is material if the statement would cause a reasonable person to contract. Second, a statement can be material if the defendant knew this plaintiff would rely on the statement. Third, if the defendant knew the statement was false, this makes the statement material. Therefore, if a seller lies about an otherwise nonmaterial fact, this is material.
- **Reasonable Reliance.** Even though the statement is material, there is no misrepresentation unless the victim reasonably relied on it.

FRAUD

- Fraud is based on misrepresentation. All the elements of misrepresentation must be proven or there is no fraud. In addition to misrepresentation, two additional elements must be proven to show fraud: intent and injury. If a victim can show fraud, courts will grant the victim assistance beyond rescission. In *What's Your Verdict?* Grafter was a criminal who intentionally lied about the car and actively concealed the damaged rear fender. The deception injured Camacho because the car was not worth \$16,000. Accordingly, Camacho could establish fraud.
- **Misrepresentation Must Be Intentional or Reckless.** Fraud clearly exists when a person deliberately lies or conceals a material fact. Fraud also exists if a person recklessly makes a false statement of fact, without knowing whether it is true or false. To constitute fraud, in addition to intending to deceive, the misrepresentation must also be intended to induce the victim to contract.
- **Misrepresentation or Concealment Must Injure.** To establish fraud, there must be proof of injury. If there is an intentional misrepresentation, but no injury, there is no liability for fraud. Suppose you are looking at an antique motorcycle. The seller says, it is a 1938 Indian. The seller knows it is a 1937 Indian but intentionally lies thinking the newer bike is more valuable. If you buy it for \$9,000 and it turns out to be worth \$14,000, you haven't suffered an injury. While you could rescind based on misrepresentation, you could not establish fraud.