

## MISREPRESENTATION:

### Falsity

- Express or implied
- False at the time it is made
- Objective test

### Statement of Fact

- Past or present
- Express or inferred from conduct
- Exclude puffs, opinions or predictions.

### Party to the Contract to The Other Party

- Privity Principle
- Representations by non-contractual third party which induce are irrelevant

### Prior to Contracting

- Any statements made that become false after contracting are irrelevant

### Induces Entry

- Doesn't have to be sole reason for entry
- Onus shifts to the representor to show that *either* the representee knew that the representation was false *or* that by his/her conduct the representee showed that he/she did not rely on the representation.

## DEFINING MISREPRESENTATIONS:

- A false, material, statement of fact, made by one party to contract (representor) to the other party (representee) that induces entry into the contract.
- Misrepresentation as an excuse for non-performance focuses on false statements made during negotiations in order to induce entry into a contract (induced mistakes).
- **Representations** = Statements of fact
- **Misrepresentation** = False statements of fact.
- Parties are not obliged to disclose all information. However, the law does impose a duty to make true statements of fact and not make misrepresentations – this includes engaging in half-truths.
  - Half-truths recognises that sometimes what is left unsaid distorts the representations.
- Misrepresentation is not a breach of contract, it is a way to escape a contract.

## MISREP TO ESCAPE A CONTRACT:

## MISTAKE:

### FORMS OF MISTAKE:

- Mistake is made by one or both parties prior to formation
- Doctrine of operative mistake, is only concerned with a mistake that is made by one or both of the parties either before, or at the time the contract is signed.
- May be in relation to;
  - Existence of subject matter
  - Nature or quality of subject matter
    - Original piece of artwork v reproduction
  - Content of contract
    - What terms were included in the contract
  - Meaning of terms
    - What the terms of the contract means – these can generally be solved through interpretation principles.
  - Radical mistake as to nature of document signed
    - Non Est Factum

#### *Mccrae v Commonwealth Disposals Commission:*

- Comm contracted to sell what they believed to be a tanker lying off the coast of Papua New Guinea However it turned out it didn't exist
- McCray spent money for preparation of a boat, crew etc. – to find there was no boat. McCray sued for damages.
- Comm argued the contract was not breached as the parties shared a common mistake to the existence of a tanker. Unsuccessful (see case list).

### THREE MAIN KINDS OF MISTAKE

- The kind of mistake made will determine the remedy

#### Mutual

- One party thinks one thing, the other thinks something else.
- Neither aware of others view
- REMEDY: Objective approach of contract interpretation

#### Unilateral

- One party mistaken and the other party knows, or ought to have known of the mistake.
- Extends to wilful blindness
- REMEDY: Rescission

#### Common

- Both parties make the same mistake
- REMEDY: Common law unlikely to set aside, in equity can order rectification.

#### Mutual

- One party thinks one thing, the other party thinks something else