

TOPIC 8: CONTRACT 3

COMMON LAW CONTRACT PRINCIPLES

Policy underpinnings to contract law:

1. Caveat Emptor – let the buyer beware
2. Freedom of contract – free and voluntary consent

VITIATING FACTORS

- Factors that affect **genuine contractual consent**
- These factors '**vitate**' a contract
- Allow innocent party to **set contract aside** and/or **sue for damages** or the courts may declare the contract void due to lack of **genuine consent**
- **Lack of free/voluntary consent** may arise from:
 - Misrepresentation
 - Mistake
 - Duress
 - Undue influence
 - Unconscionability

VOID AND VOIDABLE CONTRACTS

- A transaction is said to be void when it is of no contractual effect
- A **transaction** is described as **voidable** when it is capable of being either set aside or confirmed at the option of one party to it (the innocent party)
- Until set aside or avoided, the transaction is a valid contract and is legally binding on the parties

MISREPRESENTATION

- False statement of fact made by one party to another
- If the other party was induced to enter into the contract by a misrepresentation, the contract is then voidable

Elements of Misrepresentation

1. A false statement/representation of fact is made by the representor to the represent
2. With regard to an existing fact or past event – not statements of future intention
3. Before or at the time the contract is concluded
4. Intended to induce and in fact does induce, the other party to enter into the contract
5. There are 3 types of misrepresentation – Fraudulent, Innocent and Negligent

WHAT DOES NOT CONSTITUTE MISREPRESENTATION?

- The legal definition of a misrepresentation does not include:
 - Honest statements of opinion
 - Puffs or exaggerated statements
 - Promises/statements of future intention
 - Mere silence
- Unless one or more of the following applies:
 - A statement, previously true, then becomes untrue
 - The representor does not correct a previous statement after discovering it is untrue
 - A failure to disclose distorts of a statement previously made so that it becomes a half-truth
 - There is legal obligation of full disclosure by parties during negotiations

FRAUDULENT MISREPRESENTATION

- The representor knows or believes that the statement is untrue and presents it to be true or accurate with the aim of making the other party enter into the contract
- Elements of fraudulent misrepresentation:
 - A false statement of fact is made by one party to the other
 - The statement is made knowingly, with lack of belief in its truth or recklessly
 - The statement induces the other party to enter into the contract
 - The statement results in damage to the innocent party
- See: **Derry v Peek** [1889]
- Can rescind the contract and sue for damages

INNOCENT MISREPRESENTATION

- Elements of innocent misrepresentation:
 - When the representor does not intend to deceive anyone
 - The misrepresentation is made unintentionally
- See: **Oscar Chess Ltd v Williams** [1957]
- Can rescind contract, but cannot sue for damages

NEGLIGENT MISREPRESENTATION

- The representor makes an honest but incorrect statement negligently and carelessly
- Elements of negligent misrepresentation:
 - A relationship/special position exists between parties such that the person providing the information/advice must exercise a duty of care
 - Subject matter is of serious or business nature
 - Person providing advice realises that the recipient intends to act upon that advice/information
 - It was reasonable for recipient to rely on the advice/information
 - Damage was suffered by the recipient, usually monetary

Recap: Remedies for Misrep.

- **Rescission:** allows innocent party to terminate the contract, an equitable remedy
- **Damages:** available for fraudulent/negligent misrep.
- Damages are not available at common law for innocent misrepresentation

AUSTRALIAN CONSUMER LAW

- If the other party was tricked/deceived into entering into a contract they can commence legal action using statutory provisions in the ACL that prohibit misleading/deceptive conduct, false representations and other unfair practices

Misrepresentation at Common Law

