

LST2BSL: Introduction to Business Law & Ethics

6.3 The Parole Evidence Rule (P 118)

Limits the introduction of extra terms into the contract based on oral statements. Once a court determines that a contract is wholly in writing it will not admit any evidence to alter terms.

Exceptions to the Parol Evidence rule:

- Is admissible to show that a custom or trade usage is applicable to the contract even though not specifically referred to;
- May be given that the operation of the written contract was subject to a condition that has not yet been fulfilled; for example, approval by a third party;
- May be given to resolve an ambiguity in the words used
- May be given to identify

6.4 Collateral Contracts (P 120)

A collateral contract may be described as a subsidiary contract, the main purpose which is to vary or add terms to the principal contract.

The courts are reluctant to find a collateral contract where the purpose is to add a term to the contract that the parties could have but did not include themselves.

Often collateral contract is found in pre-contractual representations that have not found their way into the principal contract.

In order for a collateral contract to be proved, 3 things must be present.

- An intention by the maker of the statement that it is to be relied on.
- Reliance by the innocent party, which causes it to enter into the contract.
- An intention by the maker that it was a warranty (promise) as to the truth.
- Case: Van Dan Esschert v Chappell (P 121)
- Before formal exchange of contracts for the sale of a house the purchaser enquired about white ants in the house, the vendor said 'no, no, no, if there had been any I would have taken steps to eradicate them'. The purchaser discovered white ants and sued for breach of the term that the house was ant free. Was the statement promissory in nature and capable of being enforced as a collateral contract? The court held: Yes, this statement would be of great importance to anyone and was not inconsistent with the written contract.

6.5 Exclusion Clauses (P 135)

An exclusion or exemption clause is a term of the contract that tries to exclude or limit the contractual rights that the parties would otherwise have. How exclusion clauses may be interpreted, these include:

- The words are to be given their natural and ordinary meaning.
- Always, any ambiguity is resolved against the party who is trying to benefit from the exclusion of liability. This is known as the CONTRA PROFERENTEM RULE.
- Also there may be clear legislative restrictions that prevent attempts to limit or exclude liability.

6.6 Ticket Cases (P 114)

The issue of a ticket is an offer; the passenger is said to have an opportunity to consider the terms of the offer, and the making of the journey is the acceptance by the passenger.

7.0 Contracts: Issues Affecting Consent and Agreement (P 145)

7.1 Misrepresentation (Pg 146)

Misrepresentation is an untrue statement made by one party to induce the another to entre a contract.

3 types of misrepresentation:

- Innocent,
- Negligent and;
- Fraudulent.

7.1.1 Characteristics of misrepresentation (P 147):

1. The representation was false
2. The representation induced the representee to enter into a contract
3. Representor intended the representee to act accordingly
4. The inducement was actual, but does not need to be the sole or only inducement to entre into the contract

Statements of opinion or prediction about the future are not generally representations, however, a statement of opinion is often found to infer that the maker of the statement knows fact to justify that opinion.

7.2 Silence as misrepresentation (P 147-148)

Silence can be held as misrepresentation, if a statement is made (pre contract) and the circumstances change throughout negotiations the purchasing party needs to be made aware

7.3 Types of Misrepresentation (P 148)

Innocent misrepresentation (P 150)

When a person makes an untrue statement in good faith without realising they have made a false statement or false impression.

The representee may rescind the contract but not sue for damages at common law, but under the ACL may sue for damage as you do not need to show intention.

7.4 Remedies for misrepresentation (P 150)

At common law the representee will be bound by a contract induced by an innocent but false statement until they decide to rescind but there is no contractual damages available.

Equity will allow for the innocent party to rely on misrepresentation either to rescind the contract or resist an action for specific performance. There may be a right to recover money or property transferred to another party.

Only a person induced into contract by false representation may rely on misrepresentation to rescind the contract. If they wish to rescind the contract they need to advise the other party in writing. If the party does not accept the rescission they may sue to enforce the contract. These cases the court will be called on to determine wether there was a right to rescind for misrepresentation

Recession is possible for false representation and the recession applies from the time the contract was formed. This is referred to as Recession Ab Inito which means that in law there never was a contract between parties. For an effective recession all parties must be in the position they were before the contract was made and restitution must be available.

LST2BSL: Introduction to Business Law & Ethics

7.4.1 Bars to recession (P 150)

If the following have occurred, recession is not possible;

- An innocent party affirms the contract after learning the falsity, or there is
- Undue delay between the learning of the falsity and the actual recession OR
- A third party has acquired the rights and any recession would interfere with those rights OR IF
- Property has been transferred under innocent misrepresentation

If parties have executed the contracts (executed their obligations) and the property has been transferred then it is not possible to undo the contract. (*Seddon v North Eastern Salt Company Ltd [1905] 1 Ch 326*)

7.5 Fraudulent Misrepresentation (P 150)

The statement is made by a person who knows the statement is untrue. The remedy is misrepresentation is damages and recession.

➤ Case: Alati v Kruger (P. 151)

7.6 Negligent Misrepresentation/Mistatement (P 782)

Negligent misrepresentation comes about when:

a party who owes a duty of care to another party, and assumes responsibility for the accuracy of giving advice or information to that other party, makes a statement on which that other party reasonably relies, the statement is inaccurate, and that other party suffers detriment because of reliance on that inaccurate statement.

For negligent misrepresentation the remedy is damages

- Shaddock and associates V Paramatta City Council (P 783)
- A developer asked a council member if his property purchase would be affected by road-widening, the council said it would not be affected. The developer bought the property in reliance on the statement and it was in fact affected. The court held that a special relationship had arisen and it was enough for the council to owe a duty of care and the council was liable.

7.7 Mistake (p 153)

The general rule is that no remedy will be awarded for mistakes in contract. The law requires people who get into contractual relationships to be very careful about the terms of the contract and the agreement they are making.

7.7.1 Operative mistake in a contract

a mistake made prior to or at the time of formation of the contract which would of resulted in one of the parties not entering the contract had they been aware. If one or both parties are mistaken the parties cannot be said to be in agreement.

Common law: no relief unless there has been an operative mistake in which case the contract would be voided under ab initio.

Equity: takes the view that mistakes can be rectified by altering the words of a contract to reflect the true intention of the parties concerned

LST2BSL: Introduction to Business Law & Ethics

7.7.2 Types of mistakes:

Common Mistakes - A common mistake is a mistake shared between both parties.

This mistake does not affect formation of a contract (as both parties are in agreement) but does affect performance.

If such a mistake is fundamental to the performance of the contract, the contract may be voidable.

The elements that are required to void a contract for common mistake are as follows:

- A common assumption has been made by both parties about the existence of a certain state of affairs;
- Neither party gave a warranty that that state of affairs exists;
- Neither party can be said to have caused or been responsible for the mistake;
- The non-existence of the state of affairs must render the performance of the contract impossible;.

Two dimensions of common mistakes:

- a. The existence of the subject matter of the contract; and
- b. The quality of the thing contracted for.

7.8 Existence of Subject Matter of the Contract (P 154)

Where the common mistake of the parties is as to the existence of the subject matter of the contract, the approach is to characterise the mistaken assumption as a condition precedent to liability. The non-fulfilment of which results in there being no obligation to perform.

7.9 Quality of the thing contracted for (P 156)

The courts do not hold the quality of the thing that is contract for as a fundamental and therefore, a mistake about this does not void a contract. However, there may still be grounds for misrepresentation.

(In equity, a contract may be held voidable on the basis that there is a mistake about quality)

What is fundamental to a contract are:

- Existence of the subject matter.
- Identity of the other party AND,
- The very nature of the transaction.

However, the Court says that what is NOT FUNDAMENTAL to the contract are the following:

- Quality of the subject matter,
- Attributes of the other party AND
- Terms of the contract.

A mistake about these aspects **does not void** the contract.

7.10 Mutual Mistake (P 157)

Mutual mistake occurs when both parties are in apparent agreement and the terms of the contract are clear but nevertheless the minds of the parties are at odds.

To be successful, the party trying to avoid a contract for mutual mistake must show that both parties were thinking of different things.

**If on the other hand, the terms of the contract can be identified or interpreted with certainty and such terms can be applied, then the contract will be valid.*

7.11 Unilateral Mistake (P 158)

Only one party to the contract is mistaken.

If one party is mistake and the other party is totally unaware of the mistake made by the other party then there are no legal consequences.