

# Rescission

<p><b>Definition</b></p>	<p><i>Rescission is an equitable form of relief whereby the contract is set aside, in this case, due to [mistake, misrepresentation, breach of fiduciary duty, duress, undue influence, unconscionable dealing], and the parties are generally restored to positions occupied before contract made (restitutio integrum). Considering whether precise restitution at common law is possible, as ____ (subject matter has been destroyed/ third parties have acquired rights in relation to the contract/ one of both parties have incurred expenses in reliance on the contract/ circumstances have changed so significantly since the formation of the contract that restitution would be impractical or unfair) the parties can't be restored to their exact pre-contractual positions. However, in equity, rescission is available if substantial restitution could unravel the contract and restore status quo by appropriate orders such as to:</i></p> <ul style="list-style-type: none"> <li>- <b>Order accounts for expenses or income:</b> <a href="#">Alati v Kruger</a></li> </ul> <p><b>Facts:</b> P bought business from D. P induced by fraudulent misrepresentation bc D warranted mean profits £100/week in contract. P claimed rescission <b>Held:</b> equity recognises disaffirmance of contract induced by fraud even though precise restitutio not possible, if can do what's practically just between parties, and thus restore them substantially to status quo. Though possessing premises might have precluded rescission at CL, in equity, payment could compensate for difference between rental value and rent paid. Title created by lease had been vested in R, but was subject to right to disaffirm transaction. Title reverts in equity when he elected to rescind. Took over £20 of stock, but while he couldn't restore to A <i>in specie</i>, he could pay. Business itself had deteriorated but not R's fault: even at CL, returning property in original condition qualified to allow for incidents buyer not responsible for</p> <ul style="list-style-type: none"> <li>- <b>Order accounts for improvements/deteriorations or award indemnity</b> <a href="#">Brown v Smitt</a></li> </ul> <p><b>Facts:</b> P purchased farm from D – entered possession, incurred expenses and made profit. Fraudulent misrep about soil quality; ordered rescission <b>Held:</b> Can't award damages for innocent misrepresentation but can award indemnity. P may be entitled to allowance for any improvements made to property. Conversely, D may be entitled to an allowance for deteriorations. P to give possession, D to repay purchase price plus interest and compensate for improvements made</p> <p><b>What won't be compensated?</b></p> <ol style="list-style-type: none"> <li>1. improvements that were a matter of taste or personal enjoyment (<a href="#">Smitt</a>)</li> <li>2. Improvements made after P knows of defect (<a href="#">Smitt</a>)</li> <li>3. Collateral losses (things outside contract's subject matter) – bring action in deceit (<a href="#">Smitt</a>)</li> <li>4. If P caused additional loss (eg discontinuing business, abandoning premises with no way for D to possess it) BUT no duty to keep business going indefinitely when incurring loss. P should appoint receiver (<a href="#">Alati</a>)</li> </ol>
<p><b>Step 4: partial rescission</b></p>	<p><i>Equity also allows for partial rescission, where P may rescind only a portion of the contract, leaving the rest in force, as this is consistent with good conscience and practical justice that part of the contract remains intact, considering "what is practically just for both parties" (Vadasz).</i></p> <p><a href="#">Vadasz v Pioneer Concrete</a></p>

	<p><b>Facts:</b> V sole shareholders. PC supplied V with concrete. V fell behind on payments and \$200k debt, took personal guarantee thinking it was for future debt but was in fact for all money owed</p> <p><b>Held:</b> partial rescission for past debts since: (1) V was willing to enter contract for guaranteeing future debt and; (2) full rescission would mean V would enjoy benefit without paying</p>
<p><b>Step 5: bars to rescission</b></p>	<p><i>Considering whether there are any bars to rescission, first, a valid election must occur between rescission or affirmation of the contract, and this election is irrevocable once made (Coastal Estates v Melevende). Rescission is barred once the contract has been affirmed by P (Coastal). Considering whether [act] constitutes an election to adhere to the contract after the discovery of a vitiating factor, first, P had knowledge of all material facts/ their right to rescind, and second, P gave [express statement/ implied by unequivocal conduct]. Then consider whether any of the following are relevant:</i></p> <ol style="list-style-type: none"> <li>1. <a href="#">Sale of Goods s 4(2A)</a>: rescinding for innocent misrep applies to sale of goods</li> <li>2. Debatable if certain contracts can be rescinded, in absence of fraud, if executed. Rescission precluded for innocent misrepresentation of executed contract (<a href="#">Vimig</a>) but this has been altered by Sale of Goods Act</li> <li>3. Lapse of time may infer affirmation. Won't bar relief in equity but relevant to court's exercise of discretion</li> <li>4. Right to rescind for misrepresentation survives if representation becomes a term of the contract (<a href="#">Sale of Goods s 4(2A)</a> for goods and <a href="#">Academy of Health</a> for non-sale of goods)</li> <li>5. Third-party rights may also bar rescission, although a monetary remedy may then be granted (<a href="#">McKenzie</a>)</li> <li>6. non-fraudulent representor <i>may</i> be protected by merger clause stating representee has not relied on any pre-contractual statements       <ol style="list-style-type: none"> <li>a. At law, innocent representor may have benefit of such a clause (<a href="#">Byers</a>)</li> <li>b. At equity, equitable promissory estoppel not restricted by entire agreement clause (<a href="#">Saleh</a>)</li> </ol> </li> <li>7. Rescission not effective until representee notifies representor of election to rescind. If not possible to notify, representee "may still satisfy a judge that he made final and irrevocable decision and ended contract" (<a href="#">Carr</a>)</li> <li>8. Rescission for misrepresentation is defence to action on contract (<a href="#">Academy of Health</a>)</li> </ol>