

- **Effect:** Contract is voidable (at the option of the innocent party) if:
  - written contract
  - serious mistake about a fundamental term
  - knowledge: the other party is aware that circumstances exist which indicate that the first party is entering the contract under some serious mistake or misapprehension about either the content or subject matter of that term, and
  - unconscionable conduct: the other party deliberately sets out to ensure that the first party does not become aware of the existence of the mistake or misapprehension
- *Taylor v Johnson (1983) 151 CLR 422*
  - Contract stipulated a price of “\$15,000”.
  - Vendor (seller) believed that the price for land was \$15,000 per acre or a total price of \$150,000 (for all 10 acres).
  - Purchaser deliberately ensured that vendor did not become aware of the mistake and attempted to purchase the land for \$15,000.
  - Vendor sought rectification of the contract and, alternatively, an order setting aside the contract.
  - Purchaser sought an order for specific performance.
  - **Held:** because the remedies sought were those of equity (not common law), the remedy ordered for the consequences of unilateral mistake was rescission due to the nature of the vendor’s mistake and the purchaser’s unconscionable conduct.
- Contract *void* for mistake **ONLY** where identity is of vital importance to the mistaken party evincing an intention only to contract with that person.

## 25. Unilateral Mistake as to identify one of the parties

- *Lewis v Averay [1972] 1 QB 198* 27.
  - Lewis agreed to sell his car for £450 to a person purporting to be Richard Greene, star of “Adventures of Robin Hood” but who, in fact, was a rogue
  - The rogue drew a cheque and signed it “R A Greene”
  - As the rogue wished to take the car immediately, Lewis asked him for proof of identity upon which the rogue produced what appeared to be an official studio admission pass
  - Lewis handed over the car to the rogue who proceeded to sell it to an innocent third party, Averay
  - Lewis sued Averay in tort for conversion of the car**Held:**

- A contract existed between Lewis and the rogue and then between the rogue and Averay
- The contract between Lewis and the rogue was voidable
- However, that contract was not avoided by Lewis before the contract between the rogue and Averay
- Therefore, Averay obtained good title to the car

## 26. Unilateral mistake about nature of the document

- *Non est factum:* a unilateral mistake as to the nature of a document signed by the plaintiff where the document was fundamentally and radically different in character from that which the plaintiff believed was being signed
- **Effect:** Contract is void *ab initio*
- *Petelin v Cullen (1975) 132 CLR 355*
  - Petelin, who could not read English, accepted a payment of £50 and in exchange gave Cullen an option for six months to buy Petelin’s property at a stated price
  - This option lapsed six months later
  - Subsequently, Cullen gave Petelin a check for £50 and asked him to sign a document that Cullen said was a receipt for the second payment
  - However, the document was really an extension of the option (which had lapsed)
  - When Cullen exercised this option, Petelin refused to transfer the property and Cullen sued for specific performance
  - **Held:** The court refused to order specific performance on the basis that the document that Petelin signed was fundamentally and radically different from the one that he thought he was signing

## 27. Misrepresentation

- = a false statement of fact, past or present, made by one person (representor) to another person (representee) during pre-contractual negotiations which induces the representee to enter into the contract
  - › **Elements:**
    - Statement of fact
    - Statement is false
    - Statement induces innocent party to enter contract
- Different types of misrepresentation:
- Type determines remedy
  - **Fraudulent** (tort)
  - **Negligent** (tort for negligent misstatement)

- **Innocent**
- (no remedy in tort law)
- **Statutory**  
(misleading and deceptive conduct)

## 27. Undue Influence

- Dominant/stronger party abuses the influence s/he has over the will of the subservient/weaker party in order to obtain some undue benefit
- Special relationships  
Undue influence is presumed to exist unless proven otherwise – rebuttable presumption
- ‘other relationships’ where a high degree of trust and confidence has developed
- Once established, the onus of proof is on dominant party to prove that the contract was voluntary
- Contract voidable but opportunity may be lost if there is delay

## 28. Unconscionable conduct

- Relief from *unconscionable conduct* in certain circumstances:
  - one party is under a *special disability*
  - the other party *knew or ought to have known* of that special disability
  - the conduct was in the circumstances *not consistent with good conscience* (i.e. *unconscionable*)
  - Contract **voidable** entitling the innocent party to rescind the contract
  - *Blomley v Ryan* (1956) 99 CLR 362: **Classes of disability**
  - *Commercial Bank of Australia Ltd v Amadio* (1983) 151 CLR 447
  - *Louth v Diprose* (1992) 151 CLR 621

## 29. Duress

- **Duress** is illegitimate pressure to contract against their will
- **Effect:** contract is voidable
- Different types of duress:
  - **Duress of the person:** *Barton v Armstrong* (1973) 47 ALJR 781: threat to injure person
  - **Economic duress:** Illegitimate commerce?
  - *North Ocean Shipping Co Ltd v Hyundai Construction Co Ltd* [1979] 1 CQB 705: threat to break contract
  - *Universe Tankships Inc of Monrovia v International Transport Workers Federation* [1983] 1 AC 366: held for ransom by the union.
  - *Contra Smith v William Charlick Ltd* (1924) CLC 38 BUT threat not to deal with a customer (commercial pressure not sufficient to constitute duress) could offend statute or be unconscionable.

## 30. Introduction to statutory improvements

- *Contracts Review Act 1980* (NSW)
- Key concept ‘harsh, oppressive, unconscionable or unjust’ in the circumstances
- *Competition and Consumer Act 2010* (Cth) that contains the *Australian Consumer Law* in Schedule 2 (e.g. misleading and deceptive conduct under s 18 (Sch 2) would cover most misrepresentations).

## Week 6 – Law of Contract – contents and interpretation of the contract

### Overview

- › The form of the contract
- › Terms of the contract
  - Express terms
  - Parol evidence rule + exceptions
  - Good faith
  - Implied terms
- › Classification of terms
- › Exclusion clauses

### 1. The form of the contract

- Is the contract oral/written/partly oral/partly written?
- Not all terms will be in the document
- Not all statements will be terms of the contract
- **Terms** = the obligations of each party under the contract
- Express terms + Implied terms

### 2. Terms of the contract

#### Express Terms

Term or representation?

- **Express terms:** what was expressly stated or written down  
(need to look at the written document or if oral contract, need evidence of what the parties said)
- BUT what about oral statements made during negotiations of the contract?  
Distinguish between:
  - statements made to induce entry into the contract (**representations**) and
  - statements meant to be obligations under the contract (**terms**)
- Why is this important?
  - Damages cannot be awarded for statement that is innocent misrepresentation inducing the contract
    - › Why?  
Representations outside the contract are not obligations under the contract - so cannot sue for breach of contract

BUT these representations/pre-contractual statements may be actionable outside the law of contract:

- **tort:** negligent or fraudulent