Undue Influence, Mistake, Misrepresentation & Fraud

Chapter 7
Genuine Assent
Aim: What is undue influence? Identify two key elements of undue influence.

Do Now:
• Take out your notebook and copy down the Aim.
• Take out your HW – Deion Sanders Prenup & Rubenstein v. Rubenstein answers
5 Situations When There is No Genuine Assent

1. Duress
2. Undue Influence
3. Mistake
4. Misrepresentation
5. Fraud
Assignment

1. Research what happened in the divorce case of Deion Sanders.
   • Was the prenup thrown out because of duress?
   • What was the outcome of the divorce?

2. Research the case of Horace Rubenstein v Natalie Rubenstein
   • Break down the case as follows:
     • What are the facts?
     • What is the rule of law involved?
     • What is the decision?
     • Do you agree or disagree with the decision? Explain your answer.
WHAT IS UNDUE INFLUENCE?

• **Undue influence** occurs when one party to the contract is in a position of trust (confidential relationship) and wrongfully dominates the other party.

• **Confidential relationship** – an inordinate amount of trust and confidence is placed by a dependent party in the dominant party.

  – Can you think of examples of confidential relationships?
2 Elements of Undue Influence

1. Relationship
   • Trust, confidence, or authority must exist
     • (Ex. lawyer/client, parent/child, minister/congregation member, . . .)

2. Unfair Persuasion
   • Evidenced by unfair terms in the contract
   • Evidence of lack of free will
     • parent selling home to a child for half the value
   • Nagging or persuasion is not necessarily undue influence – issue will be decided by jury
Undue Influence

• VOIDABLE by the victim
• If a contract is obtained by undue influence, the document is invalid
What’s Your Verdict?

• Albert had cancer and was being treated by Dr. Bennington. He had carefully followed the doctor’s advice, and the treatment had been successful.

• One day, during a periodic checkup, Dr. Bennington said to Albert, “To prevent cancer from recurring, you need to reduce the stress in your life.

• Long drives in the country are great for that. Come to think of it, I’m selling my convertible right now. You should buy it.”

• Without investigating, Albert followed the doctor’s directions and contracted to buy the car. Later he found the price he’d agreed to pay was nearly double the market.

• Could Albert avoid the contract due to undue influence?
• Yes, the contract would be voidable by Albert.
• Sometimes, a confidential relationship is absent and the courts will still allow the injured party to void the contract.
  – Housekeeper and elderly employee
  – Disable person and their neighbor
• Jack saved more than $25,000 to buy the new car of his dreams.
• At the dealership, the sales staff convinced him to purchase option after option until his $25,000 was totally exhausted.
• When he went to register the vehicle, he found that the state expected him to pay an 8% sales tax on the purchase price.
• Jack thought the $2,000 in sales tax had been included in the $25,000 paid at the dealership, just as it is with purchases at other retail stores.

Is the contract voidable by Jack because of his mistake?

• No – it’s valid

What’s Your Verdict?
WHAT IS A UNILATERAL MISTAKE?

A **unilateral mistake** occurs when one party holds an incorrect belief about the facts related to a contract. - valid

- **Recognized unilateral mistake** – if mistake is major, and other party is aware of mistake = recission may be granted
Examples of Unilateral Mistake

• Failure to read a contract before signing
• Misunderstanding from hurried or careless reading
• Signing a contract with technical terminology you don’t understand
What’s Your Verdict?

• Brian wanted the gutters of his new house to be free of rust.
• The specs called for “rust-resistant steel gutters galvanized with zinc.”
• Later learns galvanized steel gutters would eventually rust
• Aluminum or cooper are best & would not rust
• Brian sues contractor claiming a breach of contract b/c he did not get what he really wanted.

Will he win?

• No – unilateral mistake on Brian’s part
WHAT ARE MUTUAL MISTAKES?

When there is a **mutual mistake** both parties have an incorrect belief about an important fact (**material facts**). – void

**Material facts** – Important facts that influence the parties’ decisions about a contract.
**Mistake about the subject matter**
- i.e. Buyer & Seller think a certain piece of property is 41 acres in size and they contract based on this belief. Later they learn the property is really only 28 acres.
  - Void
- i.e. Buyer and Seller think the value of a certain piece of property is worth more than it is, the contract would still be valid.

**Mistake of law** - when mistake is about applicable laws, contract is still valid (People are presumed to know the law)
  - Valid
Assignment

• Create a “What’s Your Verdict?” scenario.
• The situation must involve either duress, undue influence or mistake.
• Have at least two questions at the end of your scenario for the audience to answer.
Aim: List the criteria for a statement to be treated as misrepresentation. Define fraud and the describe the remedies for it.

Do Now:
1. If you did not complete the scenario assignment from last class, please do so now.
2. If you finished this complete the following:
   • Read pages 134-139 & answer the following:
     1. What is misrepresentation?
     2. Explain the difference between innocent and fraudulent misrepresentation.
     3. What is the criteria for a statement to be treated as misrepresentation?
     4. Define fraud and describe the remedies for it.
Misrepresentation

• In many contract negotiations, parties make statements that turn out to be untrue.

• When an innocent party consents to a contract with fraudulent terms, he or she may usually avoid the contract, because he or she did not genuinely assent to the fraudulent terms.
Two types of Misrepresentation

• **Innocent Misrepresentation:**
  – Does not know statement to be untrue.
    • Ex. Selling a car unaware that the previous owner had replaced the odometer.

• **Fraudulent Misrepresentation:**
  – Know that the statement is untrue.

• In both of these situations the contract is **voidable** by the party to whom the misrepresentation was made.
Voidable vs. Void

- **Voidable** – *valid contract*: if the injured party desires, they can cancel their obligation and get back what they have already put in (rescind)

- **Void** - a formal agreement that is illegitimate and unenforceable from the moment it is created.
  – Ex. Illegal, lacks capacity
Requirements of Misrepresentation

1. Untrue statement is one of **fact** (not opinion) or **active concealment**
2. Statement is **material** to the transaction
3. Victim reasonably **relied** on statement
Fraud

• Based on misrepresentation

• Must be proven to show...
  – All elements of misrepresentation
  – Intent
  – Injury resulted
Remedies for Fraud

• Rescission (cancel the contract)

• Compensatory Damages
  – Recovery from loss

• Punitive Damages
  – Forms of punishment (above and beyond recovery from loss)
Genuine Assent Quiz
(Chapter 7)
Tuesday, November 22nd

• Five Situations Where There is NO Genuine Assent
  – Duress
  – Undue Influence
  – Mistake
  – Misrepresentation
  – Fraud

• For each situations, understand the requirements.

• Quiz
  – Multiple Choice
  – Fill in the blank
  – Short answer