

Chapter 13 – Reality of Consent

Five ways to get out of a contract if you have not given your consent to the contract

1. **Misrepresentation** – an untrue statement
 - a. May be innocent or not so innocent
2. **Fraud** – if the representation is made knowingly and does so with the intention of deceiving the person
 - a. You know the statement is false when you say it or you don't know whether it's true or false but you say it anyway
 - b. You can also get damages – compensatory and sometimes punitive damages
3. **Mistake**
4. **Duress**
5. **Undo Influence**

What is the effect of one of the five things?

- The effect is that the contract is voidable
 - The injured party, if he or she wants to, can rescind or cancel the contract
 - The other party cannot get out of the contract
- To get out of a contract, you must act promptly and unequivocally
 - Must object promptly upon hearing the facts that give her the right to rescind and must clearly express intent to cancel the contract
- You must also avoid affirming or ratifying the contract
 - Once you ratify a contract, you cannot rescind
 - If you enter into a contract, and you continue to accept benefits under the contract even though you believe you have been defrauded, you have ratified the contract

Misrepresentation and Fraud

- You can rescind (make a rescission) the contract
- You can only receive damages when there is fraud
- Must prove four things:
 1. There is an untrue assertion of fact (opinions, promises, and predictions don't count)
 - Concealment and nondisclosure can constitute an assertion of fact
 2. Materiality
 - Materiality – only have to show if it is an innocent misrepresentation
 - If arguing fraud, you don't have to show materiality but you do have to know that the statement is made knowingly
 - You have to show the statement of fact was material – played a significant role in inducing a reasonable person into the contract
 3. Actual reliance
 - Have to show that you actually relied on the statement
 4. Reliance of the complaining party was reasonable (justifiable reliance)
- Jordan Case

Mistake

- Belief that is not in accord with the truth
- What if you enter into a contract but you were mistaken about the law
 - You can get out of a contract if you are mistaken about the law
- Negligence
 - What if the reason you were mistaken is that you were negligent?
 - You can get out of the contract (as the general rule)
- Mutual mistakes in drafting
 - Written agreement doesn't apply to what you actually agree to
 - Courts issue an order for reformation – the contract needs to be rewritten to reflect the agreement
- Mutual mistake and unilateral mistake
- Mutual mistake – both parties are mistaken; must prove three things if you want to get out of the contract
 1. The mistake involved an assumption about the identity, existence, quality, or quantity or the subject matter of the contract
 2. The effect of the mistake was so significant that it would be unfair to make you stick to the contract
 3. The party adversely affected by the mistake does not bear the risk of the mistake

- You would bear the risk where you expressly agree to do so
 - Example : buy property as is – you are taking it with all defects
 - Turns out the condo is infested with
 - You cannot get out of it because you took it as is and agreed to bear the risk
 - Nelson Case
 - Estate loses because they bore the risk of loss
- Unilateral mistake – only one party is mistaken
 - Very difficult to get out of the contract
 - Must prove the same three things that you have to prove for mutual mistake and you have to prove one of the following:
 1. That the party that wasn't mistaken either knew or should have known about the mistake
 2. That it would be unconscionable (grossly unfair) to make you go ahead with the contract

Duress

- Wrongful coercion that induces a person to either enter into or modify a contract
- Types of duress:
 - Physical compulsion
 - Someone actually grabs your hand and forces you to sign a contract
 - The contract is *void*
 - Threat of physical, emotional, or economic harm
 - The contract is *voidable* – you can get out of the contract if you want to
- You must show:
 1. The contract was induced by an improper act or threat
 2. You have no reasonable alternative but to comply with the duress and enter into the contract
- Not all threats constitute duress
 - The threat does not have to be illegal, it has to be improper
 - Example of improper: suppose negotiating with somebody and they refuse to sign on terms you want, you threaten to sue on an unrelated to what you're negotiating – would be improper
- Economic duress – one person induces the formation or modification of a contract by threatening another person's economic interest
 - Modern view: economic duress is a basis for getting out of a contract
 - Example: say you're in a contract with someone and you want to modify to change the terms and the other side won't, you threaten to breach the contract unless they agree to modify it

Undue Influence

- Unfair persuasion
- Sounds similar to duress ("cousin" of duress)
- Difference: involves persuasion, whereas duress involves coercion
- A lot of cases involve rich, dying, elderly people
 - One persuades rich, dying, elderly person to change their will
- Must prove two things (either 1a or 1b and 2):
 1.
 - a. A relationship of trust and confidence between the person dying and the person who influenced them to change will
 - Typically a family situation (spouses); can be a parent and child, professional relationship (attorney and client)
 - b. A relationship of domination
 - Usually psychological domination (an old rich guy who is bossed around by live-in nurse or housekeeper and makes him sign over the fortune to him or her)
 2. The persuasion is unfair
 - No specific rule but courts look at factors:
 - Whether old, rich person has been able to consult with other people (example locked away in attic, no one can get to him except housekeeper – unfair)
 - Was the will or other contract entered into or modified at an unusual time (like 4am just before he dies)
 - Is the new will or other document obviously lopsided or unfair (housekeeper joins just two weeks before he dies, will is modified during those two weeks for that housekeeper to receive everything)