

Revision Summary Chapter 10

Vitiating factors

Misrepresentation

- Misrepresentation occurs where a party is induced into entering into a contract by another's false statement of fact or law.
- Statements of opinion and statements of intention will not usually constitute a misrepresentation, but there are exceptions.
- There are four types of misrepresentation: (i) fraudulent misrepresentation; (ii) common law negligent misrepresentation; (iii) statutory negligent misrepresentation; and (iv) innocent misrepresentation.
- Misrepresentation renders a contract voidable, but in certain circumstances, the representee will be barred from rescinding the contract. In cases of negligent and innocent misrepresentation, the court can award damages in lieu (instead) of rescission.

Mistake

- Mistakes may be common (both parties have made the same mistake), mutual (both parties have made a different mistake), or unilateral (only one party has made a mistake).
- At common law, mistake can render a contract void *ab initio*. There is no doctrine of common mistake in equity.

Duress

- Duress occurs where a party enters into a contract due to the presence of some form of illegitimate pressure or threat that causes him to have no realistic alternative other than to enter into the contract.

Undue influence

- Actual undue influence exists where one party causes another party to enter into a contract, or make a gift, via the use of some form of improper pressure or inappropriate use of influence.
- Presumed undue influence occurs where the relationship between the parties gives rise to a presumption that undue influence may be present. In order for the presumption to arise, the party seeking relief will need to establish that the transaction was one that calls for an explanation—but there is no need to establish that the transaction was 'manifestly disadvantageous'.
- Where a contract is tainted by undue influence, it will be voidable.

Revision Summary Chapter 10

Unconscionable bargains

- Equity may provide relief to a party who has entered into an unconscionable bargain. An unconscionable bargain will usually be one in which a stronger party has taken advantage of some weakness or deficiency of a weaker party.

Illegality and public policy

- Illegal contracts include:
 - contracts that amount to a legal wrong;
 - contracts that require the commission of an unlawful act;
 - contracts that are performed in breach of statute.
- Contracts that offend public policy include:
 - contracts that disrespect the institution of marriage or parental responsibility;
 - contracts that promote sexually immoral behaviour;
 - contracts that interfere with the application or administration of justice;
 - contracts that restrain trade.