Misrepresentation in Contract Law Remedies and Case Applications

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The Seminar

Scenario 1

Misrepresentation is a term of a contract or a declaration that is made to induce entry into an agreement whilst the declaration is not part of the contract. This is a false statement created by one party to another, so as to persuade them to agree and get into a contract. When misrepresentation occurs, the contracts are deemed voidable. There are several remedies in cases of misrepresentation; these include rescission and damages.

The English law prescribes that there is no requirement of pre-contractual good faith. However, one can see signs of higher judicial readiness acknowledging the doctrines that are emerging over the years, as in the case of Philips Electronique Grand Publique SA v. British Sky Broadcasting Ltd. [1995] EMLR 472.

The scenario between B and S falls under misrepresentation in contract law. There are several elements of misrepresentation. These include a false declaration of fact and the statement made by S to B to “proceed with the deal,” which led B to believe S had accepted their offer. The test of falsity was stipulated in the case of Avon Insurance plc. V. Swire Fraser Ltd. (2000) per Rix J.

A mere statement of intention when making a contract supersedes the fact that S did not sign the contract itself. Unless the account of opinion was created when the maker could not embrace the view and there was no reasonable ground to rest their opinion. In our issue, we realise that when S made the statement to go ahead to B, he made it clear that he intended to purchase the fertilisers from B. Representation in contract law deals with the application to particular facts. The effect of statements made by S is actionable in the case of Pankhania v. London Borough of Hackney (2002).

Scenario 2

In contract law, a mistake falls under an incorrect understanding by one or more of the parties and may be used as an argument to invalidate an agreement. A contract based on a mistake by one of the

parties will render the contract void ab initio. This will act as if the contract never existed. The contract between B and the local government was signed with the term "… subject to any existing liabilities over it." That term represents the essential distinction between voidable contracts. When a contract is rendered voidable, it is valid and exists until the claimant decides to set it aside.

The contract herein is voidable. This is because party B signed the contract after reading the terms which stated that the land was being sold with all its liabilities. B cannot make a mistake based on the assurance made by the local authority council that the property was okay. The contract in scenario 2 is voidable. The contract did not disclose the sewer passing through the land but mentioned that all liabilities would transfer once the contract was finalised. The purchaser must search the property before purchasing it. The contract is deemed voidable, and the title passes.

Mistakes in a contract after signing a document may give rise to a plea that it is not my deed (non est factum). Moreover, it has minimal chances of succeeding in a courtroom. The plea can only be applied when it is proven that the party signing the document believes it to be true and can only succeed if the party can show there was no carelessness in signing the paper and that they read and understood it.

For a contract to be binding, it needs to be made in good faith and honesty by the parties. Few people are comfortable agreeing to a contract made out of misrepresentation of facts. Misrepresentation leads to suffering, which few people are comfortable binding themselves to. There are three types of misrepresentation shown in the matter between B and the Council. They include fraudulent, innocent and negligent misrepresentation.

Apart from the mistake, there is also innocent misrepresentation in B and the council issue. An innocent misrepresentation is induced by a party to a contract that has already occurred. The party making statements of misrepresentation can show that there are reasonable grounds for believing that what they are saying is correct at the time the representation is being made. A claimant can claim damages when he is a victim of innocent misrepresentation. But then again, the claimant cannot request rescission. It is essential to prove that the claimant suffered a loss due to the misrepresentation by the other party for the case to be successful. Most claims based on allegations of misrepresentation assist in the contracts getting honoured. The unscrupulous or negligent behaviour of the party should not go unpunished.

Scenario 3

The contract made between Laura and the 'pay and display' car park is an agreement. Both parties agree freely, and the meeting of their minds thereby qualifies as mutual consent. Mutual consent can be declared either void or voidable.

Undue influence operates where there has been an existing relationship between two or more parties, but one party decided to exploit the other so as to achieve an unfair advantage. Undue influence is

classified into two categories: presumed and actual undue influence. A contract is declared voidable when it is entered into by a party who is influenced by undue influence. The contract can be set aside by the party who was subjected to such a force to enter into an agreement with the party exerting the influence.

There are two categories of undue influence: actual and presumed undue influence. A party entering a contract because of undue influence makes the contract voidable. This allows the individual influenced to set aside the contract against the party who subjected the other to such a force or inflicted the influence. Reference to the case of Bank of Credit & Commerce International v. Aboody [1990] 1 QB 923. This occurs when a party to a transaction can influence the decisions of the other party to the transaction.

The dispute between Laura and the car park falls under the assumption of undue influence. The law does not require any party to prove entering into a contract due to undue influence. The only thing that needs to be established is that there existed a relationship between the two parties. Most fiduciary relationships are capable of giving rise to undue influence. Another circumstance that gives rise to undue influence is where the relationship between the parties cannot readily explain the transaction.

The relationship between Laura and the car park is apparently not to benefit Laura, but it confers a more significant advantage to the 'pay and display' management, who are in a fiduciary position. The only thing that the law recognises and raises is the assumption of some abuse in the relationship between the parties when entering into the contract. Terms manifested in establishing a disadvantage usually qualify in these cases.

In the case of Royal Bank of Scotland v. Etridge [2001] 3 WLR 1021, there was a difficulty in manifesting the relationship of disadvantage. In the above example, the court held that some terms should not be used or replaced with requirements that the transaction is among the ones that could not be explained by the party's own relationship. A rule on small gifts was hence created so as to exclude the little gifts, bringing back the substantial benefits when a party received vulnerable kinds of gifts as a benefit. This influences the court to consider the whole transaction.

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