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One of the fundamental principles underpinning English contract law is that there should be a meeting of minds between the parties (consensus ad idem). Inevitably questions will be asked and statements made during the pre-contractual negotiations which will impact upon each party's decision to enter into a legally binding agreement.

However, it is possible that some of the statements made and relied upon may not be accurate and amount to a misrepresentation in English law, casting doubt on the validity of the contract and providing the aggrieved party with a suitable remedy. In English contract law, misrepresentation is a false statement of fact made by one party to another, which, whilst not being a term of the contract, induces the other party to enter the contract giving the innocent party the right to rescind the contract and/or claim damages. Over the years the English Legal System has developed a series of principles which provide guidance on the application of the law relating to misrepresentation.

To be actionable in English law, the misrepresentation must be a false statement of fact, not opinion or future intention or law. It must involve a positive statement by one party which induces the other to enter into the contract which means that silence will generally not amount to a misrepresentation *Smith v Hughes* 1871. However, there are exceptions to this rule for example contracts involving the sale of land and insurance. A false statement of opinion will generally not amount to misrepresentation however there are exceptions as highlighted in the case of *Smith v Land House Corp.* 1884 in which the claimant purchased a hotel.

The seller described one of the tenants as being 'most desirable'. In fact, as the seller knew, the tenant was in arrears and on the verge of bankruptcy. This was held to be a statement of fact rather than opinion as the seller was in a position to know the facts.

Different types of misrepresentation exist in English Law, accordingly misrepresentative statements may be made fraudulently, negligently or innocently. Fraudulent misrepresentation was defined by Lord Herschell in the case of *Derry v Peek* (1889) as a false statement that is "made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless as to whether it be true or false." Negligent misrepresentation involves one party making a false statement having no reasonable grounds for believing that the statement is in fact true. A case to illustrate this principle is *Hedley Byrne v Heller* in which the defendant was held liable as a duty of care existed. Further, under s. 2(1) Misrepresentation Act 1967, a negligent misrepresentation has been defined as a statement made without reasonable grounds for belief in its truth. Here, the burden of proof rests on the representor to demonstrate they had reasonable grounds for believing the statement to be true.

Innocent misrepresentation involves a party making a false statement which he reasonably believes to be true not only at the time of making the statement but also when the contract was actually entered into. Remedies available for misrepresentation are dependent on the type of misrepresentation. For all types the remedy of rescission is available. This is putting the parties back in their pre-contractual position.

Each party gives back the benefit which they have received under the contract. However, it is not always possible to rescind the contract and in some circumstances the right to rescind may be lost in which case damages may be considered a more appropriate for the injured party.