

Misrepresentation case

[Law](#), [Justice](#)



A misrepresentation is distinct from a statement of opinion which may render a valid contract void or voidable. There is a difference between innocent, negligent and fraudulent misrepresentations. An innocent misrepresentation would affect a contract. A negligent misrepresentation may result in liability for negligence; whereas, a fraudulent misrepresentation definitely attracts liability for fraud and deceit[1].

Under the common law, a misrepresentation can be any false or misleading expression of facts with the wilful intention to deceive or defraud the other party. Such misrepresentations mainly transpire in the areas of insurance or real estate businesses. Moreover, advertisements with false representation of facts may also come under misrepresentation. Therefore, any contract that contains or constitutes misrepresentations becomes void or voidable. The party who had sustained injuries by acting upon such misrepresentations can claim damages in a court of law[2].

A party, on occasion, may be induced to enter into a contract due to false statements being made with regard to the facts and information about the other party to the contract. Such unambiguous false statements can be termed as misrepresentations. It is possible to have various kinds of misrepresentations. For instance, in the case of *Spice Girls Ltd v Aprilia World Service BV*, the category of misrepresentation by conduct was established[3].

In that case the plaintiffs, the Spice Girls Ltd, had entered into a contract regarding advertisements with the defendants the Aprilia World Service or AWS. This contract period was to be effective up to March 1999. Accordingly,

the Spice Girls Ltd participated in the advertisement of the AWS. The plaintiff had also supplied logos and images of the Spice Girls. In that manner they had induced the defendant company to sign the agreement contract.

Subsequently, after sometime, the Spice Girls Ltd announced that one of the members of Spice Girls troupe was leaving the group. The defendant company, the AWS, argued that the plaintiff company the Spice Girls Ltd had known about that one of its members was about to leave, at the time of entering the agreement with them. Thus the AWS claimed that the Spice Girls had deliberately made a misrepresentation[4].

The Court held that the plaintiff company the Spice Girls Ltd had made a representation by their conduct and induced the defendant company to sign on the agreement. The conduct had been evident in their participating in the advertisement. Their conduct had also been established in their supplying the defendant company with the logos and images of the entire group of five members. The court held that no member could rescind the contract before March 1999, the expiry date of the advertisement contract[5].

Jeannie, a representative for Pine made some negotiations with Harry who wanted to purchase a store franchise from Pine. During that process she made some statements to Harry and it is to be seen whether these statements were factual or fraudulent.

Her first statement regarding the profit of the store being sold was a negligent misrepresentation, because she had not verified whether the store was making a profit or a loss. As such the store had been making losses for

the past two years. She had relied on the information given to her by the accountant and she had not taken the trouble to verify the accounts.

Negligent misrepresentations are dealt with by common law, and in *Hedley Byrne v Heller*, it was held that compensation for damages in tort were possible for negligent misstatements. However, the party who is making the statement must have knowledge that the party to whom such statement was addressed was likely to act upon the statement without any independent inquiry about that statement. The party making such statements has knowledge regarding the purpose for which the statement is to be used.

The other party must have acted on such statement without conducting any enquiry. As such, these statements result in a detriment to the receiving party after it has acted upon it[6]. In this case the House of Lords decided that in acts of tort it is possible to recover damages from the responsible party for negligent incorrect statements announced by him. However, their Lordships stated that such recovery of damages was subject to certain specific conditions[7].

In addition, she had made a false statement regarding the number of refrigeration units that could be accommodated in the store. This constitutes a fraudulent misrepresentation, due to the fact that Harry would rely on her statement to proceed with the contract of sale.

Finally, she failed to inform Harry that just prior to his purchasing the store; another competitor had opened a store that had proved to be very popular with the customers. This act of Jeannie constitutes pre - contractual

misrepresentation, as had been established in *With v. O'Flanagan*, and the underlying phenomenon in this case related to the interesting phenomenon of supervening falsification.

In some instances, statements become false due to change in the prevailing circumstances. In *With v O'Flanagan*, the vendor of a medical practice had stated that the company's income was £2, 000 per annum. This statement had been correct at the time of its issuance. Subsequently, the vendor became sick and income from the practice declined. Consequently, the value of the practice was much lower at the time of the sale than the amount of price paid by the buyer of the practice. The court held that the medical practitioner had failed to correct his earlier statement made to the purchaser and found that a misrepresentation had occurred in the sale contract[8].

Under the provisions of the law, an untrue statement of fact made at the time of negotiating a contract that induces other party to enter into the contract, is a misrepresentation. There are several remedies available for the injured party, and they depend on whether the misrepresentation was fraudulent, negligent, or innocent[9]. Silence cannot be construed as misrepresentation. Similarly, statements of opinion cannot be treated as facts.

In *Derry v Peek*, the company prospectus had contained misleading and incorrect information. The prospectus had stated that the company had been approved by the Parliament for running trams in the city. However, this was not true; and in order to claim and obtain compensation for damages, the injured party had to prove fraudulent, tortuous or deceitful conduct of the

other party. The court held that the plaintiff had failed to prove the fraudulent behaviour of the defendants and dismissed the case[10].

Innocent misrepresentation transpires if the party can prove that the misrepresentations were made out of innocence, without any fraudulent intention and if they were not negligent at common law; in accordance with section 2(1) of the Misrepresentation Act 1967, otherwise they will not be deemed to be innocent misrepresentations.

The only remedy available in common law for a misrepresentation that was made in good faith and after taking all reasonable care, is rescission.

Remedies available for misrepresentations include damages for fraudulent or negligent misrepresentations; rescission for fraudulent or negligent misrepresentations that were made innocently; and damages in lieu of rescission.

The 1967 Misrepresentation Act provides several legal consequences for misrepresentations. In the case of innocent misrepresentation, the remedy available is that the innocent party can rescind the contract wholly. English law sets out that there should not be any tortious and equitable duties that are aimed at deceit or misrepresenting the facts. Moreover, English law does not recognise the general duty of good faith. In contract negotiations, silence cannot be treated as representation, and can only be considered as half truth of a misrepresentation[11].

The Misrepresentation Act requires the courts to consider the possibility of awarding damages instead of rescission of the contract, in cases where

rescission is sought by the parties. The Act provides a right to the innocent party to recover damages from the other party who had made a misrepresentation. However, under those circumstances the injured party is required to prove that he had believed the representation, on grounds that were reasonable[12].

The party has also to prove that he had believed the facts to be true till the time that he had entered into the contract. In case of fraudulent misrepresentation, the injured party can rescind the contract and claim damages in tort for deceit. There is a vast difference between tort in misrepresentation and in a breach of contract. Similarly, the damage recoverable will also differ. The assessment of damages also varies in these two instances. In a misrepresentation, the damages are assessed in accordance with the legitimate expectation of the innocent party[13].

In some cases, the party may incur loss by relying on a statement of another party even though there is no contract between them. In those cases, misrepresentation can be applied. In professional relationships; if misrepresentation is made negligently then it is possible to recover the damages caused by breach of duty of care, by the injured party. For instance, a surveyor may advise the party duly misrepresenting the cost or value of certain property.

In such cases the injured party can claim damages from the party who had made the negligent misrepresentation. The principle of duty of care applies in these cases and the courts examine whether the statement was made with a fraudulent motive and accordingly award damages to the injured

party. In such cases, the provisions of other laws do not attempt to limit the damages. It is also unnecessary for a contract to exist between the parties[14].

Since, Harry had suffered losses due to the misrepresentations made by Jeannie; he can rescind the contract and can claim damages for rescission, in accordance with the foregoing discussion.

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