# Fraud invalidates a contract

Law, Contract Law

Week Four Assignment By: Kelly Sciberras November 25, 2012 DeVry University Business Law – BUSN420 ? Week Four Assignment As our textbook explains fraud invalidates a contract. “ The presence of fraud affects the authenticity of the innocent party’s consent to a contract. When an innocent party is fraudulently induced to enter into a contract, the contract usually can be avoided because she or he has not voluntarily consented to the terms. Normally, the innocent party can either cancel the contract and be restored to her or his original position or enforce the contract and seek damages for harms resulting from the fraud (Miller 281). Generally, fraudulent misrepresentation refers only to misrepresentation that is consciously false and is intended to mislead another. Typically, fraud involves three elements; a misrepresentation of a material fact must occur, secondly there must be intent to deceive, and lastly the innocent party must justifiably rely on the misrepresentation. To collect damages, a party must have been harmed as a result of the misrepresentation. Fraudulent misrepresentation can also occur in the onlineenvironment.

Undue Influence and Duress Undue influence arises from relationships in which one party can greatly influence another party, thus overcoming that party’s free will. A contract entered into under excessive or undue influence lacks voluntary consent and is therefore voidable. The essential feature of undue influence is that the party being taken advantage of does not, in reality, exercise free will in entering into a contract. It is not enough that a person is elderly or suffers from some mental or physical impairment.

There must be clear and convincing evidence that the person did not act out of her or his free will Miller explains. Forcing a party to enter into a contract because of the fear created by threats is referred to as duress. In addition, blackmail or extortion to induce consent to a contract constitutes duress. Generally, for duress to occur, the threatened act must be wrongful or illegal. Threatening to exercise a legal right, such as the right to sue someone, ordinarily is not illegal and usually does not constitute duress.

Duress is both a defense to the enforcement of a contract and a ground for rescission of a contract. Therefore, a party who signs a contract under duress can choose to carry out the contract or to avoid the entire transaction. (The wronged party usually has this choice in cases in which consent is not voluntary. ) Economic need generally is not sufficient to constitute duress, even when one party exacts a very high price for an item the other party needs. If the party exacting the price also creates the need, however, economic duress may be found (Miller 286-287).

Examples of undue influence and duress can been seen in various types of relationships in which one party may dominate another party, thus unfairly influencing him or her. Minors and elderly people, for example, are often under the influence of guardians. If a guardian induces a young or elderly ward to enter into a contract that benefits the guardian, the guardian may have exerted undue influence. Undue influence can arise from a number of confidential or fiduciary relationships, including attorney-client, physician-patient, guardian-ward, parent-child, husband-wife, and trustee-beneficiary (Miller 286).

Damages and Equitable Remedies There are basically four broad categories of damages; compensatory damages which are intended to cover direct losses and costs, consequential damages which cover indirect and foreseeable losses, punitive damages are supposed to punish and deter wrongdoing, and nominal damages which recognize wrongdoing when no monetary loss is shown (Miller 323). Our textbook discusses how there are times when damages are an inadequate remedy for a breach of contract.

In these situations, the non-breaching party may ask the court for an equitable remedy. Equitable remedies include rescission and restitution, specific performance, and reformation. Restitution is an equitable remedy under which a person is restored to his or her original position prior to loss or injury, or placed in the position he or she would have been in had the breach not occurred. Specific Performance is an equitable remedy requiring exactly the performance that was specified in a contract; usually granted only when monetary damages would be an inadequate emedy and the subject matter of the contract is unique (for example, real property). Reformation is an equitable remedy used when the parties have imperfectly expressed their agreement in writing. Reformation allows a court to rewrite the contract to reflect the parties' true intentions. Courts order reformation most often when fraud or mutual mistake is present. ? References Miller, Jentz. Business Law Today: Comprehensive, 9th Edition. South Western Educational Publishing, 01/2011. .