

# Misrepresentation act 1967



**ASSIGN  
BUSTER**

From looking at the facts laid out by Bruce in his letter to me regarding his purchase of a second hand Mercedes from Asbury Motors it seems that the most likely action is that of misrepresentation. A Misrepresentation is defined at common law as a “ statement of fact made by one party to the other party, which is false.

And while not necessarily forming a term of the contract, is yet one of the main reasons which induces the later to enter into the contract” 1 and is also governed by the Misrepresentation Act 1967. From the facts of the case, according to Bruce’s letter, it seems that he is unhappy with the fuel economy of the car he has purchased. In his letter Bruce says that he “.. . asked a series of questions relating to the car...

but the one which sticks in my mind is the one regarding fuel consumption. ” Bruce refers to the statement made by the salesman, Clarence regarding fuel consumption. Clarence told him that “ he reckoned” that the car would “ do” 30 mpg on the open road and 22 mpg around town. However for Bruce to have an action for misrepresentation he must first prove that Clarence’s statement was one of fact and was false. In deciding whether a statement can become a misrepresentation I must look to see, firstly whether the statement is a term of the contract or a mere representation.

In this case the facts suggest that Clarence’s statement would not form part of the contract, as the standard form contract signed by Bruce makes no mention of fuel consumption. From this evidence it would seem that the courts would not construe the statement made by Clarence regarding the car’s fuel consumption as a term of the contract as it was not included in the

standard form contract signed by Bruce. However this is not to say that the courts would not define the representation as a term because in cases such as Dick Bentley Productions v Harold Smith (Motors) Ltd<sup>2</sup> the courts have viewed the statement to be a term of the contract due to certain factors, which can be considered as evidence by the courts. Secondly it is necessary to discover whether the statement is a misrepresentation in the legal sense. Firstly the representation must be a statement of fact, rather than one of opinion, law or future conduct. In this case to the general person it would seem that Clarence's statement was a statement of opinion due to the language used.

In Bruce's letter it states that Clarence "reckoned" the car would do 30mpg on the open road and 22mpg around town. However the fact that Clarence is a salesman at a registered second hand Mercedes dealer would suggest that he had some skill or knowledge in the subject matter of his statement. The case of Smith v Land & House Property Corp<sup>3</sup> is an example of how the courts could view this case. In this case a statement that the tenant of the house concerned was a "very reliable person" was considered to be a statement of fact rather than a statement of opinion as "..

. he opinion was being made by somebody who had the knowledge to make such a statement", so in my opinion the courts would view Clarence's statement as a statement of fact in this context as he had the "knowledge" to make such a statement due to his position as a salesman of a registered Mercedes dealer. The second element of whether the statement is a representation in the legal sense, is the question: Did the statement induce the person into signing the contract? The courts would look to four conditions

laid down by a series of cases to decide whether the statement did induce the contract to be entered into by the representee. The first of these is defined by the cases of *Smith v Chadwick*<sup>4</sup> and *Museprime Properties Ltd v Adhill Properties Ltd*<sup>5</sup> where it was decided that the representation must be material to the subject matter of the contract, I would advise Bruce that the courts are likely to determine the fuel consumption of a car as material to the subject matter of the contract if they followed the *Smith* precedent.

The second condition is that the representation must be known to the representee. In Bruce's case the fact that the representation stems from a conversation between the two makes it obvious that the representation is known to him. Also, the representation must be intended to be acted on. The fact that Clarence is a salesman should make this obvious to the court, this is backed up by the case of *Peek v Gurney*<sup>6</sup> where it was decided that a salesman in his very nature, makes representations, which are intended to be acted on. The final condition, is that the representation must be acted upon, this stems from the case of *Attwood v Small*<sup>7</sup>. In Bruce's case I would advise him that the fact he purchased the car would be evidence that he acted on the representation.

In his letter Bruce states that fuel consumption “ is a major factor considering my limited budget”. I would advise Bruce that if the courts were to follow the precedent of *Smith v Chadwick*<sup>8</sup> then the statement would have been seen to have induced him into signing the contract. In the *Smith* case the courts decided that “ if the plaintiff can prove that he interpreted the statement in the sense that it was false” then this would be sufficient evidence to prove he had relied on the statement. The third question which

most be asked in such circumstances is whether the statement made becomes an actionable misrepresentation or whether it remains a mere representation, therefore not actionable.

Firstly, Bruce must prove that the statement is false. In his letter to me he states that according to “ various motoring magazines” the car would have been unlikely to reach the performance stated by Clarence had the car been new, let alone in it’s current condition. I would advise Bruce that this would be sufficient evidence to prove that the statement was false. Also for a mere representation to become an actionable misrepresentation it must have caused some damage, or be likely to cause some damage.

My advice to Bruce would be that he must prove that the statement regarding fuel consumption has caused detrimental effects to his finances, i. g. making the car more expensive to run than previously stated by Clarence. Once Bruce has proved that the statement is an actionable misrepresentation it is necessary for me to advise him of the type of misrepresentation which has occurred, which depends on the mind of the representor at the time he made the statement.

The first type of misrepresentation is fraudulent misrepresentation at common law. I would advise Bruce that this bears a very high standard of proof and is very difficult to prove, as he would need to prove that Clarence was deliberately dishonest in making the statement. Another type of misrepresentation is that of negligent misstatement at common law. Here the appellant must prove that there was a special relationship between the parties and he must also prove all the elements of the tort of negligence.

However, once again this is difficult to prove as the burden of proof is on the 'wronged party' and I would advise Bruce that it would be difficult to prove that Clarence knew that he would act on his representation. I would advise Bruce it would be better to attempt to repudiate the contract under the doctrine of 'Negligent Misrepresentation under the Misrepresentation Act 1967(The Act). This is because s2(1) of the Act changes the burden of proof, shifting it to Clarence who must now prove that he had "... had reasonable grounds to believe.

.. and did believe the statement(s) to be true...

" 9 if Clarence cannot prove that he believed the statement to be true then he will be 'negligent' and thus Asbury Motors will be liable for damages and/or rescission of the contract (subject to certain bars to rescission). I would advise Bruce that the decision of the court in the case of Howard Marine and Dredging Co v A Ogden ; Sons (Excavations) Ltd<sup>10</sup>, if it were followed by the courts in his case could be an important factor. In Howard Marine the courts said that for them to reasonably believe that their statement was true they must take reasonable steps to verify this fact i. e. consult the manufacturer of the ship (in Bruce's case the car) and if it is established that Clarence did not consult the manufacturer of the car regarding the fuel consumption this could be a important factor in Bruce's case.

Also there is a type called innocent misrepresentation, however this is highly unlikely in this case as Clarence would have to prove that he had taken all reasonable steps to prove his statement to be true. If the courts find that the

statement by Clarence was a negligent misrepresentation (as above) then there are two appropriate remedies available. The first being the right to rescind the contract. There is a right to rescind the contract for all of the above types of misrepresentation. The effect of rescission is that the contract is deemed voidable.

The contract remains in existence up until the that the ‘ wronged’ party exercises their right to rescind. There are four limitations to the right to rescind. The first being Affirmation of contract, if the ‘ wronged’ party does not ‘ kill’ the contract he loses the right to rescind (Clough v London ; North Western Railway Co<sup>11</sup>). The second being a lapse of time.

If the ‘ wronged’ party waits to long after the contract being signed to take the case to court then they lose their right to rescind (Leaf v International Galleries<sup>12</sup>) The third bar to rescission is applicable if there is a right of a third party and the final one being Restitutio in Integrum Impossible meaning if it is impossible to restore the parties to their original position. In Bruce’s case, according to the facts in his letter there does not seem to be any applicable bars to rescission as there is no mention of a lapse of time, no mention of any affirmation of the contract and no third party rights. I would advise Bruce that the decision in the case of Spence v Crawford<sup>13</sup>, which stated that Restitutio in Integrum is only impossible if the identity of the subject matter had been “ substantially changed”. In my opinion I cant see any reason why the courts would decide that the car had changed “ substantially” from the time of the deal. However if the courts did decide that Restitutio in Integrum was impossible then damages may be awarded.

Overall, my advice to Bruce would be that there is a possibility that the courts would decide that the statement regarding the fuel consumption by Clarence was a Negligent Misrepresentation under the Misrepresentation Act 1967 and would allow Bruce the right of rescission and he would be able to get his money back as well as any damages awarded by the courts.