

Voidable contract essay sample



Voidable contract is a contract that has legal effect and force when it is made, but is liable to be subsequently annulled or set aside by the courts through the process of rescission. Due to the section 10 of the Contracts Act provides, all agreements are contracts if they are made by the free consent of the parties competent to contract. As what i've been thought and my understanding, there are five causes which lead to the voidable contract.

They are :

1. Coercion (S. 15)
2. Undue influence (S. 16)
3. Fraud (S. 17)
4. Misrepresentation (S. 18)
5. Mistake (S. 22, 23, 24)

Coercion

Coercion is committing or threatening to commit any act forbidden by the Penal Code, or the unlawful detaining or threatening to detain, any property, to the prejudice of any person to enter into an agreement (S. 15). When a person being coerced, he did not enter a contract of his own will. It occurs where a party enters a contract under violence or threatened violence to himself or to his immediate family. Cases : Barton V. Armstrong (1975)

Undue Influence

It occurred where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other (S. 16(1)) It happened when a party enters a contract under improper pressure which

prevents him from exercising a free and independent judgment whereas the pressure is not sufficient to amount to duress. It has to be cleared that a person is deemed to be in a position to dominate the will of other (S. 16(2))

Cases : Inche Noriah V. Shaik Allie bin Omar

Fraud

Fraud is an Act committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into a contract (S. 17). Whenever a person causes another to act on a false representation which the maker himself does not believe to be true, he is said to have committed a fraud.

Misrepresentation

It can be defined as an unambiguous false statement of fact which induces another to enter into a contract and as a result the innocent party suffers loss. It includes (S. 18): (a) Positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true. (b) Any breach of duty which without an intent to deceive gives an advantage to the person committing it, or anyone claiming under him, by misleading another to his prejudice or to the prejudice of anyone claiming under him. (c) Causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement. For an action to be successful some criteria must be met in order to prove a misrepresentation. These include: 1. A false statement of fact has been made.

2. The statement was directed at the suing party and

Case : Spice Girls Ltd V Aprilia World Service BV, The Times, 5 April 2000

Mistake

Where both parties to an agreement are under mistake as to a matter of fact essential to the agreement, the agreement is void (S. 21). A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to the matter of fact (S. 23) Case : Raffles v Winchelhaus (1864)