

MISREPRESENTATION IN THE LAW OF CONTRACT

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Misrepresentation is a statement made orally or in writing from one party to the other in order to induce the other party into entering into a contract. Like mistake, the presence of misrepresentation in the formation of a contract makes the contract void and unenforceable.

Types of Misrepresentation

Misrepresentation is basically of three types:

1. Fraudulent Misrepresentation
2. Negligent Misrepresentation
3. Innocent Misrepresentation.

Fraudulent Misrepresentation

As the name implies, fraudulent misrepresentation is a misrepresentation that is made fraudulently. In the case of *Derry vs. Peek*[\[1\]](#), it was aptly defined as:

A false statement made knowingly without belief in its truth, or made recklessly, carelessly without concern as to its truth.

In the case of *Reese Silver Mining Co vs. Smith*[\[2\]](#), the directors of a company issued out a prospectus stating the advantages of working a particular mine. They did this without ascertaining the truth of their assertions. When it was later discovered that their statements were untrue, they were held liable for fraudulent misrepresentation.

In the case of *Sule vs. Aromire*[\[3\]](#), the defendant advertised certain premises for sale. In order to prove the validity of his title, the defendant gave reference to a lawsuit which purportedly declared him the owner. In reality, the lawsuit was in respect to an adjoining property. When the plaintiff bought the property, he discovered that it validly belonged to third parties. The court held that this was a case of fraudulent misrepresentation, thus the defendant was held liable.

Negligent Misrepresentation

A negligent misrepresentation occurs when a person with a duty of care makes a false statement to his client intentionally or without caring to ascertain its truth. Thus, a misrepresentation cannot be termed as negligent unless there is a duty of care owed to the representee.

In the case of *Nocton vs. Ashburton*[\[4\]](#), the plaintiff sued his solicitor because the solicitor had given him improper advice regarding the security for a mortgage. The solicitor did this because he stood to benefit from his client's loss. The court held in this case that the misrepresentation was a negligent one, and thus the solicitor was held liable for the plaintiff's loss.

Originally, negligent misrepresentation could only apply in cases where there was a direct contractual relationship between the representor and the representee. However, this has been extended to include person who are affected by the representation, although there is no contractual relationship with the representee. The groundwork for this was laid by Lord Denning's dissenting judgement in the case of *Candler vs. Crane, Christmas & Co*[\[5\]](#). Lord Denning stated that the people upon which liability would rest include:

accountants, surveyors, valuers and analysts, whose profession and occupation is to examine books of account and other things and to make reports on which other people, other than their clients, rely in the ordinary course of business.

Lord Denning further classified the class of persons, apart from their direct clients, to which a duty was held as:

- Any third person to whom they themselves (the maker of the statement) show the statement.
- Any person to whom they know their employer is going to show the accounts in order to induce them to invest some money or take some other action.

This principle was solidified by the courts in the latter case of *Hedley Byrne & Co Ltd vs. Heller & Partners Ltd*[\[6\]](#), in

this case, the plaintiff was an advertising agent to Easipower Ltd and wanted to find out if Easipower Ltd was credit worthy. In order to find out, they asked their bank “ National Provincial ” to help them investigate. In the course of investigation National Provincial contacted Heller and Partners, the bankers for Easipower Ltd, for confirmation. Heller & Partners stated “œin confidence and without liability on our part” that Easipower was credit worthy. As a result, the plaintiff went into an advertising contract with Easipower Ltd and ended up losing money. Thus, they sued Heller & Partners.

The court held that Heller & Partners was liable for fraudulent misrepresentation. They were however let off the hook due to the exclusion clause “œwithout liability on our part” in their reply.

Innocent Misrepresentation

Innocent misrepresentation can simply be understood as a false statement which the user made not knowing that it was false and he was also not negligent in ascertaining its truth. A good example of an innocent misrepresentation is in the case of *Derry vs. Peek*^[7].

In this case, a company was statutorily incorporated by the British Parliament to construct tramways by means of animal power (horses). However, if the consent of the Board of Trade was obtained, they could make use of steam power. The directors of the company believed that the Board of Trade would approve their request since in the earlier processes to be followed, they didn’t meet any objections. They represented this to the plaintiff, which induced him to purchase shares in the company.

Subsequently, the Board of Trade didn’t give its assent and thus the company had to be closed down. The plaintiff thus sued for fraudulent misrepresentation. The court held that it would not be applicable in this case because the representor honestly believed in what they represented. It could also not be negligent because by following the due process and meeting no objection, they had tried their best to ascertain the veracity of their assertions. The defendants were thus held not liable for misrepresentation.

References

^[1] (1889) 14 App Cas. 337.

^[2] (1869} LR 4 HL 64

^[3] 1951 20 NLR 20

^[4] 1914 AC 932

^[5] 1951 2 KB 164

^[6] 1964 AC 465

^[7] 1889 14 App Cas 337