

Business Law

Text & Exercises *6th Ed.*

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Chapter 13: Mistakes and Other Contract Defects

Learning Outcomes

LO1

- **State the difference between mistakes of fact and mistakes as to judgment of market conditions.**

LO2

- **List the elements of fraudulent misrepresentation.**

Learning Outcomes

- LO3** • Contrast misrepresentation of fact and misrepresentation of law.
- LO4** • Recognize the difference between undue influence and duress.

Voluntary Consent

- **Knowledge of, and genuine assent to, the terms of a contract. If a contract is formed as a result of a mistake, misrepresentation, undue influence, or duress, voluntary consent is lacking, and the contract will be voidable.**

Mistakes

- **The concept of mistake in contract law has to do with mistaken assumptions relating to contract formation.**
 - Mistakes of fact.
 - Mistakes as to judgment of market conditions.

Mistakes of Fact

- **Unilateral Mistakes**
 - Involves some material fact.
- **Bilateral Mistakes**
 - When both parties are mistaken about the same material fact.

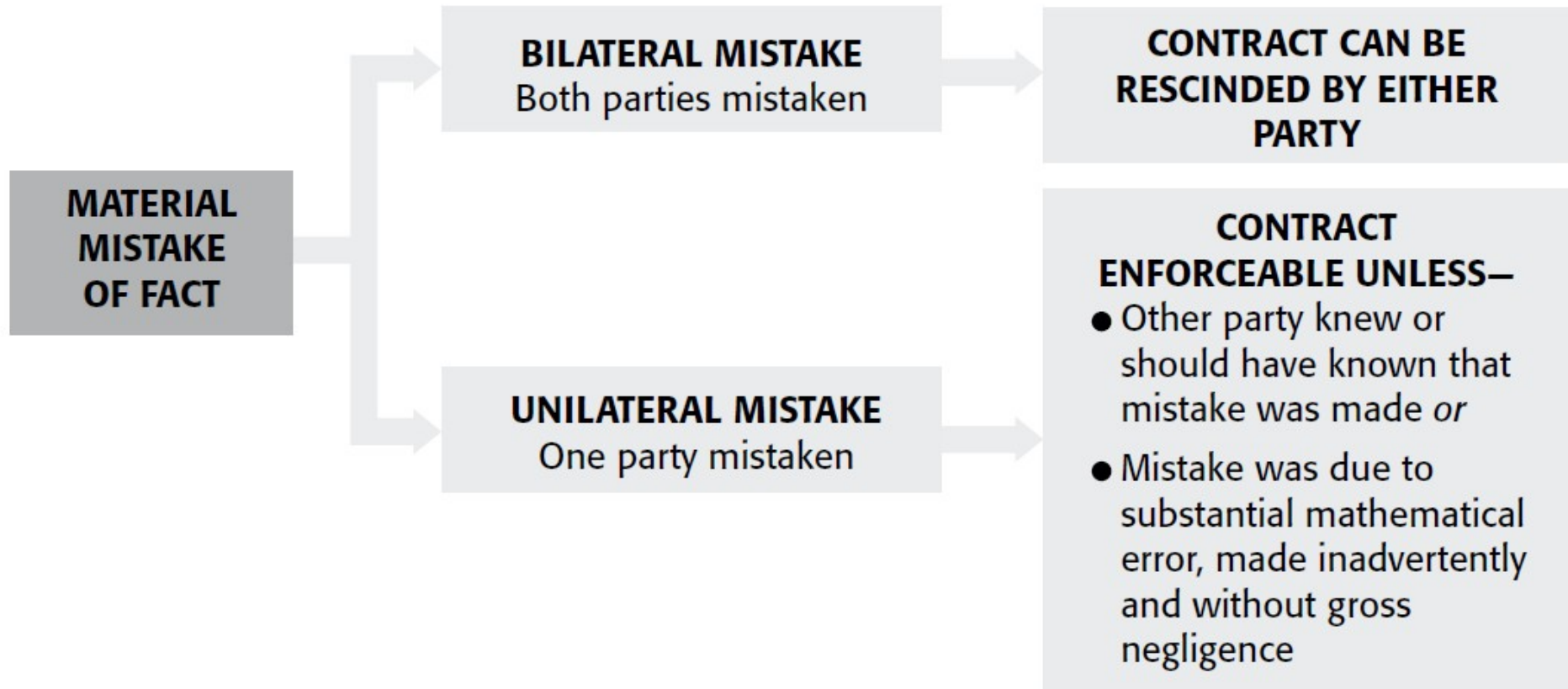
Unilateral Mistakes

- **In general, a unilateral mistake does not afford the mistaken party any right to relief from the contract, with two exceptions:**
 1. The other party to the contract knows or should have known that a mistake was made.
 2. The error was due to some substantial mathematical mistake.

Bilateral (Mutual) Mistakes

- **When both parties are mistaken about the same material fact, the contract can be rescinded by either party.**
- **The mistake must be about a material fact.**

Unilateral *vs.* Bilateral



Fraudulent Misrepresentation

- **Three elements of fraud:**
 1. A misrepresentation of a material fact must occur. →
 2. There must be an intent to deceive. →
 3. The innocent party must justifiably rely on the misrepresentation. →
- **To recover damages, the innocent party must also suffer an injury.**

Misrepresentation

- 1. Misrepresentation of a material fact must have occurred.**
 - Facts, not opinions.
- **Misrepresentation by Conduct.**
- **Misrepresentation of Law.**
 - Does not ordinarily a party to be relieved of a contract.
- **Misrepresentation by Silence.**

Intent to Deceive

- **Scienter: Knowledge by the misrepresenting party that material facts have been falsely represented or omitted with an intent to deceive.**

Justifiable Reliance

- **The deceived party must have a justifiable reason for relying on the misrepresentation, and the misrepresentation must be an important factor (but not necessarily the sole factor) in inducing the party to enter into the contract.**

Injury to the Innocent Party

- **For a person to recover damages caused by fraud, proof of an injury is required.**
- **Most courts do not require a showing of injury when the action is to rescind the contract.**

Undue Influence

- **Undue influence: Persuasion that is less than actual force but more than advice and that induces a person to act according to the will or purposes of the dominating party.**

Duress

- **Duress: Unlawful pressure brought to bear on a person, overcoming that person's free will and causing him or her to do (or refrain from doing) what he or she otherwise would not (or would) have done.**