**Chapter 9: Grounds Upon Which a Contract May be Impeached: Misrepresentation, Undue Influence**

**Material** – could reasonably be expected to influence the decision of a party to enter into a contract

**Rescind** – set the contract aside and put the party back in her pre-contract position

Someone who innocently makes a misstatement and later learns that it is false must inform the other party of the true situation as soon as possible. An innocent misrepresentation becomes fraudulent or negligent if the party responsible fails to correct it when in a position to do so.

When a party has relied upon an innocent misrepresentation and learns the true facts, the contract is voidable at the option of the victim.

**Indemnity or Compensation** – a money award given as a supplement to rescission for loss sustained in performing a contract

**Rescission** – setting aside or rescinding a contract in order to restore the parties as nearly as possible to their pre-contract positions

In contracts for sale of land, the right to rescission for innocent misrepresentation is generally lost once title to the property is transferred and the transaction is completed.

**Expert Opinion** – an opinion given by a person who purports to have specialized knowledge of a subject

**Utmost Good Faith** – a duty owed when a special measure of trust is placed in one party by the other

When one party has special knowledge, they have a duty to inform the other so that they may have an idea of the risks they would be taking under the proposed contract.

Contracts of Insurance require utmost good faith. A party seeking insurance must disclose to the insurance company all pertinent aspects of the risk she is asking it to assume. A person who applies for life insurance must disclose everything about their state of health that will be of value to the insurer in deciding whether to accept or reject her application.

**Prospectus** – a statement issued to inform the public about a new issue of shares or bonds

**Caveat Emptor** – let the buyer beware

A buyer of goods must take them with their defects unless some fact about their quality has been misrepresented. Caveat emptor applies only to the quality/condition of goods, not to ownership.

**Undue Influence** – the domination of one party over the mind of another to such a degree as to deprive the weaker party of the will to make an independent decision

A contract formed as a result of *undue influence* is voidable at the option of the victim. The victim may avoid the contract only if he acts promptly after he is freed from the domination.

Sometimes undue influence arises when one party is temporarily in dire straits and will agree to exorbitant and unfair terms because he is desperate for aid.

Burden of Proof  
Once the alleged victim shows that circumstances likely to lead to undue influence existed, the burden shifts to the dominant party to prove that undue influence was **not** exerted by him which is very hard to do. Sometimes the advantage taken by the stronger party is referred to as *fraud* or *constructive fraud*.

**Constructive Fraud** – the unconscientious use of power by a dominant party to take advantage of the weakness of the other party

**Prima Facie** – at first sight; on the face of it

The most important factors in determining whether there is undue influence are the degree of domination of the stronger party and the extent of the advantage he has received.

Undue influence is more difficult to prove between husband and wife that other relationships since the law presumes that at various times either party may well desire to confer a benefit on the other without obtaining a good “price” in return. Undue influence may arise if one spouse is experienced in business and has persuaded the other to pledge their separate assets as security/act as guarantor for their business transactions.

**Unconscionable Contracts** – contracts between parties of unequal bargaining power that result in an unfairly advantageous bargain for the powerful party

Courts insist first on a clear understanding of the problem under consideration; *only then* will they apply, with restraint, the general principle of unconscionability.

Unconscionable contracts often arise in loan contracts. The borrower may be in a financial crisis and desperate for money: he agrees to any exorbitant rate of interest. He later finds he can’t repay the debt since the interest is so high. The transaction is often unconscionable.

**Duress** – actual or threatened violence or imprisonment as a means of coercing a party to enter into a contract

**Coercion** – improperly forced payment under protest

The concept of undue influence is still wider and more flexible than duress and includes almost any circumstances that would not otherwise be called fraud.