

Avoiding the Bargain

Avoiding the Bargain RST §178

Issues:

- Duty to Disclose
- Unilateral Mistake
- Mutual Mistake
- Mistaken Assumption
- Impracticability
- Misrepresentation
- Fraud
- Incapacity
- Undue Influence
- Coercion
- Unconscionability
- Illegality
- Contrary to Public Policy
- Abuse of Fiduciary Relationship
- Doctrine of Bona Fide Purchaser for Value (innocent buyer, who pays

Remedies: value, w/out notice of defect,)

Restitution for benefits conferred
Rescission
Reformation

Duty to Disclose

Generally, no duty to disclose, Except

- Half-Truths
- Positive Concealments
- Failure to correct past misleading statements
- Fiduciary relationships

Impracticability RST §261

Supervening, cataclysmic event
after K formation

- Performance becomes impossible
- Purpose of K is frustrated (Doctrine of Frustration)
- Profitability of K reduced
- Force Majeur Clauses
- Supervening Illegality

Foreseeability is only a factor where D should have investigated facts prior to K

Unconscionability RST §208 UCC §2-302

Corbin's Test - are terms so extreme as to be unconscionable according to the mores and business practices at the time and place?

Procedural - party induced to enter K without any real choice

Substantive - terms are unduly unfair or one-sided and thus unconscionable

Remedies: - Rescission

No Punitive Damages - "Cut and Paste" of K
- Reformation

Mutual Misunderstanding

Parties attach different meanings to their words and conduct under the agreement

- Both correct as to the facts;
- Both intended different facts

Effect of Mutual Misunderstanding

Neither Party at Fault:

- No meeting of the minds where:
 - neither party knows the meaning attached by the other party OR
 - each party knows the meaning attached by the other party

One Party at Fault:

Finger-Pointing Game:

most innocent and ignorant will prevail

Remedy: Reformation

Innocent - remedy rescission

Fraudulent: remedy damages
(Constructive + Punitive)

Mutual Mistake RST §152

- Both incorrect as to common fact;
- Mutual Mistake:
both parties wrong about material fact prevents K formation; no fraud
Remedy: Rescission
Reformation

Unilateral Mistake RST §153

Unilateral Mistake: One party wrong; requires proof of unconscionable hardship
"Apathy bears the risk of mistake"
"Equity aids the vigilant"

Where one party is aware, K is enforceable according to the intent of the innocent party

One party bears the risk of mistake when:

- Risk is allocated by express agreement OR
- Party is aware at K that he has limited knowledge but treats that knowledge as sufficient OR
- Court allocates risk to the party

Remedy: Rescission

Reformation
Specific Performance
Damages

Duress & Undue Influence

Duress: any threat that prevents the free exercise of the parties will prevent a meeting of the minds RST §175

Undue Influence: Persuasion which tends to be coercive in nature RST §177
An unduly influenced mind cannot agree to a K
Elements:
vulnerability; proximity; pressure

Incapacity RST §15. §16

Mental Incapacity: A K is voidable by a party if he is incapable of understanding the K or is unable to reas. perform due to illness AND other party had reason to know.

Intoxification: K is voidable if intoxicated party was unable to understand the consequences, or act in a reasonable manner, AND other party had reason to know.

Infancy: Absolute right to disavow a K
Except: any K for food, shelter & transport
(18 is age of K majority everywhere)

Contrary to Public Policy

boundaries beyond which courts and legislatures will not allow certain types of K

Statutory Public Policy

- Monopolistic Trade Practices
- Practices in Restraint of Trade
- Federal Bankruptcy Law

Judicial Public Policy

- K to commit a tort or crime
- Bankruptcy Default Clauses
- Ass'gmt of Malpractice Claims
- Some Exculpatory Clauses

Misrepresentation

Innocent Material Misrep.

- Misrep. may be a tort
- may be basis for rescission (no meeting of the minds)
- Assertion of an opinion is not sufficient for misrep unless:
 - fiduciary relationship OR
 - opinion of an expert OR
 - party is especially susceptible

Fraudulent Misrep. (contracts)

- **Knowingly**
- **Without belief in its truth**
- **Reckless of careless**
whether it be true or false

Tort of Fraud: intentional misrep, reasonably relied upon
(contracts standard for fraud lower)

Remedy: Damages:

- Extent of reliance
 - Punitive
- Rescission