**Business Law**

**Ch. 8 - Genuine Agreement**

**(Meeting of the Minds)**

I. Purpose of Contract Law

A. To fulfill the reasonable expectations of the parties of a

contract.

B. Many people enter into contracts:

1. with the belief that certain facts exist when they

really do not,

2. believing that certain facts do not exist when they

really do.

C. When they discover the truth, one or both of the parties

may wish to avoid the contact (which may or may not be

possible).

II. Mistake

A. **Unilateral Mistake**

1. Def. - an error on the part of one of the parties to the

contract.

2. A person usually cannot get out of a contract because

of a unilateral mistake.

*3. Mistake as to the Nature of the Agreement*

a. Can't be an excuse to avoid a contract.

b. People are bound by a written agreement that

they sign even if they have not read it or are

mistaken as to what the writing says.

1) By signing it, they agree that the writing sets

forth the terms of the agreement.

2) If you cannot read the language a contract

is written in and you sign it you are bound to

it.

*5. Mistake as to the identity of a Party*

a. This mistake may be cause to avoid a contract.

b. If you are dealing face-to-face with a person you

think is "Joe Smith", but who really is not, your

mistake as to "his" identity will not prevent a

binding contract.

1) You are making an offer to the person facing

you.

2) They are the person who can accept it.

3) Mistaken identity of this kind will not be

ground for voiding the contract.

B. **Bilateral Mistake**

1. Def. - Both parties to a contract are mistaken about

some important fact (mutual mistake).

2. The contract may be avoided by either party.

3. Mistake as to the Possibility of Performance

a. If both parties entering into a contract believe

that it can be performed when in fact it cannot.

b. Either party may get out of the contact because

of the bilateral mistake.

4. Mistake as to the Subject Matter

a. The contract may be avoided by either party.

III. Fraud

A. **Fraud** - A deliberate deception to secure an unfair or

unlawful gain.

1. Persons who are induced to enter into contracts by

fraud have a choice.

a. They may rescind (cancel) the contract.

b. They may sue for money to replace what they

lost.

c. They may sue for **punitive damages**.

1) Def. - damages designed to punish the

wrongdoer for his or her conduct.

2) Punitive damages go beyond the amount of money needed to pay back the victim.

B. 5 Elements Necessary to Succeed in a Lawsuit for Fraud

(These 5 Elements Must Be Proven.)

1. **False Representation of Fact**

a. There must be a false representation of a

material, existing fact.

b. **material fact**

1) It must be a fact that is important.

2) The fact must matter to one of the parties.

3) It cannot be a promise of something to

happen in the future.

4) It cannot be someone's opinion.

d. Allowing for "Sales Talk" without being

fraudulent.

1) Also known as puffing or puffery

2) It is the seller's opinion (Example: "This is

a really flashy car.")

3) It may also be a promise of something to

happen in the future (Example: "You'll get

plenty of dates with it.")

e. They need not be confined to oral or written

statements.

1) An Action of a false representation:

"Painting over the rust on a car you are

planning to sell."

f. **Concealment** or Nondisclosure

1) Def. - Not saying something they should

say.

2) May be as fraudulent as actively deceiving

an innocent party.

3) Duty to Reveal - It obligates the knowledgeable party to reveal any material fact that the other party is relying on him or her to provide. (not obvious)

2. **Representation Known to be False**

a. The party making the representation must know

that it is false.

b. This element may be satisfied by proving actual

knowledge.

c. It may also be proved by showing that the

statement was made recklessly, without regard

for its truth or falsity.

3. **False Representation Intended to Be Relied Upon**

a. The person making the misrepresentation must

intend that the other party rely upon it as part of

the contact negotiations.

4. **False Representation Actually Relied Upon**

a. The innocent party must reasonably rely upon

the false representation.

b. If one pays no attention to a false representation,

one cannot bring a suit for fraud.

c. The false representation must be reasonably

relied upon by the other party at the time that it

is made.

5. **Resulting Loss**

a. The innocent party must actually suffer some

monetary loss.

b. Unless you suffer loss as a result, you cannot win

a lawsuit for fraud.

IV. Innocent Misrepresentation

A. Misrepresentation/Untrue Statement of Facts

B. Making an innocent statement of supposed fact that

turns out to be false.

C. The person honestly believes it to be true, but it really

is not.

D. Others may expect a person to have certain knowledge.

V. Duress

A. **Duress** - Overcoming a person's will by use of force or by

threat of force or bodily harm.

1. Parties to an agreement must enter into it voluntarily,

not under duress.

2. Agreements made under duress are either void or

voidable.

a. Void = When actual physical force is used to

cause another to enter into a contract.

b. Voidable = When a threat of physical force is

used to cause another to enter into a contract.

3. Such a threat may be made against the party to a

contract or a member of his or her immediate family.

4. The innocent party may avoid the contact if he or she

chooses to do so.

B. **Economic Duress** - Threats to a person's business or

income to cause him or her to enter into a contract

without real consent.

C. A threat to exercise one's legal right is not duress (A party

with grounds to sue may threaten to do so or demand

satisfaction).

VI. Undue Influence

A. Undue Influence - unfair and improper persuasive

pressure exercised by one person in a relationship of

trust with another person.

1. It can cause a contract to be voidable.

2. It is usually exerted by a stronger person upon one

who is weaker.

3. Circumstances such as ill health, old age or mental

immaturity may put a person in a weaker position.

4. The stronger person substitutes his or her will for the

will of the weaker person. (Elder abuse)