Genuineness of Assent

A party who demonstrates that she did not genuinely assent to the terms of a contract may avoid an otherwise valid contract. Genuine assent may be lacking due to mistake, fraudulent misrepresentation, undue influence, or duress. As was true with contracts entered into by persons lacking contractual capacity, contracts lacking genuine assent are voidable, not void.

Mistake

Mistake: The parties entered into a contract with different understandings of one or more material facts relating to the subject matter of the contract.

Unilateral Mistake: A mistake made by one of the contracting parties. Generally, a unilateral mistake will not excuse performance of the contract unless:

1. The other party to the contract knew or should have known of the mistake; or
2. The mistake is one of mathematics only.

Mutual Mistake of Fact: A mistake on the part of both contracting parties as to some material fact. In this case, either party may rescind.

Mutual Mistake of Value: If, however, the mutual mistake concerns the future market value or some quality of the object of the contract, either party can normally enforce the contract.

Fraudulent Misrepresentation

When an innocent party consents to a contract with fraudulent terms, she may usually avoid the contract, because she did not genuinely assent to the fraudulent terms.

Elements of Fraudulent Misrepresentation:

1. A misrepresentation of material fact was made,
2. With the intent to deceive an innocent party,
3. On which the innocent party justifiably relied
4. Resulting in injury to the innocent party.

Most courts do not require proof of an injury to the innocent party if the only remedy sought by the innocent party is rescission of the contract – that is, returning the parties to their pre-contractual positions. However, in order to recover damages, it is universally held that the innocent party must prove injury as a result of the misrepresentation.
Types of Misrepresentations

Predictions and Expressions of Opinion: Generally, these will not give rise to an actionable misrepresentation, unless the person making the statement has a particular expertise and knows or has reason to know that the listener intends to rely on the statement.

Misrepresentation by Conduct: The conduct of a party – particularly a party’s concealment of some material fact from the other party – will support a claim of misrepresentation.

Misrepresentation of Law: Generally, this will not support a misrepresentation claim, unless the speaker is a member of a profession that is commonly known to require greater knowledge of the law than possessed by the average citizen.

Misrepresentation by Silence: Generally, neither party to a contract has a duty to come forward and volunteer facts unless the other party asks. However, common and statutory law create a duty to speak in certain situations (e.g., where one is aware of a serious defect or serious risk of injury).

Intent, Reliance, And Injury

Sciente: A defendant acts with the intent to deceive if he:

1. Knows a statement to be false,
2. Makes a statement he reasonably believes to false,
3. Makes a statement recklessly, without regard to its truthfulness or falsity, or
4. Implies that a statement is made on the basis of information that he does not possess or on some other basis on which it is not, in fact, based.

Reliance: The plaintiff must have acted based on (although not necessarily solely based on) the defendant’s misrepresentation. Moreover, in some jurisdictions, a plaintiff’s reliance on the misrepresentation must be reasonable.

Injury: Courts generally do not require a showing of actual injury in order to rescind a fraudulently induced contract. But actual injury is required before a plaintiff can recover damages.

Undue Influence And Duress

Undue Influence arises from relationships in which one party can influence another party to the point of overcoming the influenced party’s free will. The essential feature of undue influence is that the party being influenced does not, in reality, enter into the contract of her own free will.

Duress: Forcing a party to enter into a contract because of the fear created by threats. While a party forced to enter into a contract under duress may choose to perform the contract, duress is grounds for cancellation, or rescission.
The Statute of Frauds

Statute of Frauds: A statute that requires certain types of contracts to be evidenced by a writing in order to be enforceable. The following types of contracts generally must be in writing to be enforceable:

1. Contracts involving an interest in **real property** (e.g., a home mortgage);
2. Contracts that **cannot**, by their terms, be performed within **one year** after the date the contract was formed (e.g., a five year employment contract);
3. **Collateral promises**, such as promises to answer for or guarantee the debt or duty of another person and promises by an executor or administrator to answer personally for the debts of an estate;
   a. “**Main Purpose**” Rule: If the party who agrees to guarantee the debt of another does so to secure a personal benefit for themselves, the statute of frauds does not require a writing.
4. Promises made in **consideration of marriage** (i.e., prenuptial agreements); and
5. Contracts for the **sale of goods** for **$500 or more**.

The Statute of Frauds: Exceptions

A contract that might otherwise be unenforceable because it is not in writing may be enforced to some degree as follows:

**Partial Performance:** If a buyer has taken partial possession of property and paid that part of the contract price attributable to the property received, and if the parties cannot be returned to their pre-contractual positions, a court may order that the remainder of the contract be performed according to its terms.

Under the Uniform Commercial Code ("UCC"), an oral contract is enforceable **to the extent** that the seller has **accepted payment** or the buyer has **accepted delivery** of the goods covered by the oral contract.

**Judicial Admission:** If a party judicially admits the existence of a contract, the contract is enforceable at least to the extent of the admission.

**Promissory Estoppel:** If a promisor makes a promise on which the promisee **justifiably relies** to the promisee’s detriment, the promisor may be **estopped** from denying the existence and validity of the contract despite the lack of a writing satisfying the statute of frauds.
Form of the Writing

A written contract, signed by both parties, satisfies the requirements of the statute of frauds. What else will suffice?

A writing signed by the party against whom enforcement is sought; An agreement may be signed anywhere on the agreement; moreover, initials, letterhead, a rubber stamp, or even a fax banner may satisfy the signature requirement – as long as the person intended to authenticate the writing by affixing their initials, etc.

1. A confirmation, invoice, sales slip, check, or fax, or any combination thereof; or
2. Several documents which, in combination, provide the terms for an agreement.

Essential Terms

The writing need only contain the essential terms:

1. The names of the parties,
2. The subject matter of the contract,
3. The amount of property to be sold or leased or services to be rendered, and
4. The consideration given or promised to the party against whom enforcement is sought.

The Parol Evidence Rule

Parol Evidence Rule: A substantive rule of contract law under which a court will not admit evidence of the parties’ prior negotiations, prior oral or written agreements, or contemporaneous oral agreements if that evidence contradicts or varies the terms of a fully integrated, unambiguous written contract.

Integration: The extent to which a written contract represents the final and exclusive agreement of the parties.

A particular term included in a written contract is integrated if the writing represents the parties’ final agreement on that term.

A written contract is fully integrated if it constitutes the parties’ final agreement on all terms relating to the transaction.

Ambiguity: A written contract is unambiguous if its terms are not susceptible to more than one reasonable, legal interpretation.
Parol Evidence: Exceptions

There are certain statutory exceptions that apply to contracts under the UCC. In addition, courts have recognized numerous exceptions to the operation of the parol evidence rule. Among the better-established exceptions are the following:

1. Evidence of subsequent modification;

2. Evidence of mistake, fraud, or misrepresentation in the formation of the written contract;

3. Evidence which may resolve an ambiguity or fill in a missing term or condition in the written contract;

4. Evidence of prior dealing between the parties, usage of trade in the relevant locale or trade, and course of performance under the contract by the parties;

5. Evidence of an oral condition precedent to the written contract; and

6. Evidence of an obvious or gross clerical error.