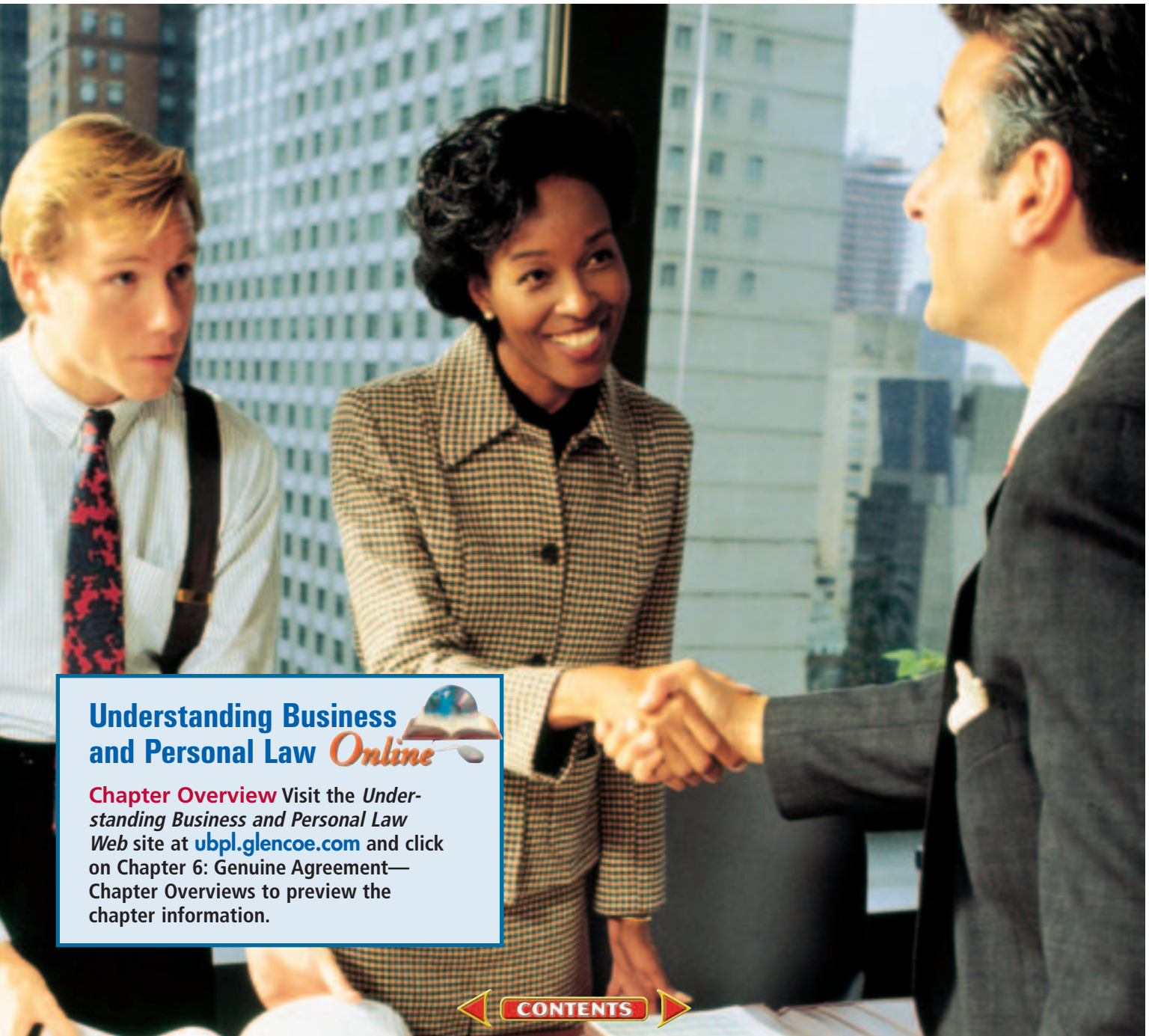


Genuine Agreement



Understanding Business and Personal Law *Online*



Chapter Overview Visit the *Understanding Business and Personal Law* Web site at ubpl.glencoe.com and click on Chapter 6: Genuine Agreement—Chapter Overviews to preview the chapter information.

The Opening Scene

Viktor and his friend Jake are pushing Jake's "new" car six blocks to the Benes' home. Mr. Benes, Alena, and Hana are sitting out in front of the house.

Transmission Troubles

ALENA: Look, Hana, a horse-drawn chariot—without the horse.

HANA: Having trouble, guys? Is there anything I can do to help?

VIKTOR: No.

ALENA: I guess, you're just pushing that thing around to impress people. Where on earth did you get that piece of junk?

VIKTOR: Shut up, Allie. We don't need to hear any of your smart comments right now. We're not in the mood.

JAKE: I've been cheated!

ALENA: Do you actually mean that someone got the best of Jake? Now there's a shocker!

MR. BENES: Take it easy please, Allie. What happened, guys?

JAKE: The stupid transmission gave out. I've only had the car for three days. I can't believe I'm having car problems already.

MR. BENES: Don't get too excited—we don't know what's wrong yet. Maybe it's not that serious. Let me take a look.

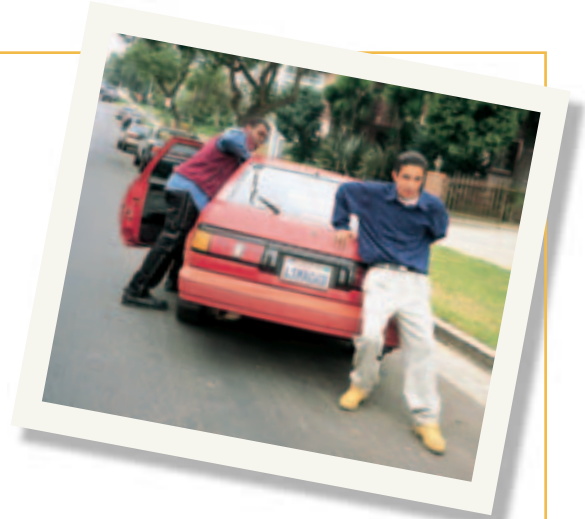
HANA: I like the color. It's so . . . red. Where'd you get it?

JAKE: Nowhere.

ALENA: Sure, Hana. See, Jake woke up this morning and, "boom," the car was on his front lawn, just like that.

JAKE: All right, all right. I bought it at that Buy-a-Heap used car place in Shelby. I got it for a pretty good price.

ALENA: Didn't you see this coming? Anyone who buys something at a place called Buy-a-Heap deserves what he gets.



VIKTOR: Shut up, Allie. The sales guys said that the car was just fine. He seemed like a nice guy.

MR. BENES: Here's your problem, Jake. Looks like somebody put sawdust in the transmission to make it run smoothly for a while. It's an old trick.

JAKE: What?

MR. BENES: I said, somebody put sawdust. . . .

JAKE: I heard you the first time, Mr. B. I've been cheated, haven't I? Great, what am I going to do now?

ALENA: Duh! You should have known better!

HANA: Maybe it was a mistake.

ALENA: I doubt that.

VIKTOR: Oh, yeah. The guy reached for the transmission fluid and got the sawdust by mistake. What are the odds?

HANA: It could happen, I guess.

MR. BENES: C'mon, Jake. I'll drive you and Vik back to . . . what was the name of the place?

ALENA: Buy-a-Heap.

MR. BENES: Right. Buy-a-Heap.

What Are the Legal Issues?

1. Do customers have the right to expect salespeople to tell the truth about important facts in a contract?
2. Can fraud be committed by words?
3. Can fraud be committed by actions?
4. Will a mistake void a contract?

Fraud and Misrepresentation

What You'll Learn

- How to identify the elements of fraud
- How to distinguish between fraud and concealment
- How to distinguish between fraud and innocent misrepresentation
- How to distinguish between the remedy available for fraud and the remedy available for misrepresentation

Why It's Important

Learning the elements of fraud may prevent you from being victimized or help you claim your rights if you are defrauded.

Legal Terms

- fraud
- rescind
- material fact
- concealment
- misrepresentation

Defective Agreements

If the offeror makes a valid offer, and the offeree has made a valid acceptance, then a genuine agreement has been reached. The courts describe this type of agreement as a “meeting of the minds.” Assuming the other three elements—consideration, capacity, and legality—are also present, a valid contract exists between the parties.

Sometimes, however, something goes wrong and what seems like a valid contract turns out to be nothing of the kind. In these cases, we say that the agreement is defective. Several circumstances might create a defective agreement: fraud, misrepresentation, mistake, duress, and undue influence.

Fraud

Fraud is a deliberate deception intended to secure an unfair or unlawful gain. If you have been induced to enter into a contract by fraud, you have a choice: You may **rescind**, or cancel, the contract, or you may sue for money damages. Because of the deliberate deception involved in fraud, you may also try to collect punitive damages. Damages are designed to punish the wrongdoer for his or her conduct and can greatly exceed the amount of money needed to pay back the victim.

Figure 6.1

The Elements of Fraud

1. A false representation of fact.
2. Knowledge of the falsity by the party making the false representation.
3. Intent to deceive by the party making the false representation.
4. Reasonable reliance by the innocent party.
5. Actual loss suffered by the innocent party.

ELEMENTS OF FRAUD

Genuine agreement can be disrupted by fraudulent representation made by one party to another. *Why does the law use the expression, “false representation” instead of just using “lie”?*

To succeed in a lawsuit for fraud, the following five elements must be demonstrated (see Figure 6.1):

- There must be a false representation of fact.
- The party making the representation must know it is false.
- The false representation must be made with the intent that it be relied upon.
- The innocent party must reasonably rely upon the false representation.
- The innocent party must actually suffer some monetary loss.

False Representation of Fact

Fraud requires a false representation of a material, existing fact. A **material fact** is a fact that is important; it matters to one of the parties. It cannot be a promise of something that will happen in the future, nor can it be someone’s opinion.

The law does allow salespeople to use a certain amount of “sales talk,” sometimes called “sales puffing” or “sales puffery.” A statement such as, “This car is really flashy,” is an example of sales puffery. Another example of sales puffery is, “You’ll get plenty of dates with this car,” which is not only the seller’s opinion, but also a promise of something to happen in the future.

Material false representations are not confined to oral or written statements. Actions intended to deceive are considered to be false representations. See Figure 6.2 for a listing of false representations.

Under some circumstances, individuals can make false representation by choosing not to reveal important information. This is known as **concealment**, also called passive fraud or nondisclosure, and it may be just as fraudulent as actively deceiving an innocent party. For example, if the seller of a house knows about some hidden problem that cannot be easily discovered by the potential buyer—a problem with the heating system or leaky pipes in the bathroom—that knowledge

Legal Briefs

Copyright is a form of protection provided by the laws of the United States (Title 17, U.S. Code) to the creators of “original works of authorship,” including literary, dramatic, musical, artistic, and other intellectual works. When material is copyrighted, the work of authorship immediately becomes the property of the author who created the work.

AGREEMENTS MADE DEFECTIVE BY FALSEHOOD

Genuine agreement can be disrupted by fraud, concealment, and misrepresentation. *Which of the three agreements made defective by falsehood is the least serious?*

Figure 6.2

Agreements Made Defective by Falsehood

Element	Description
Fraud	Fraud is a deliberate deception to secure an unfair or unlawful gain in a contractual situation.
Concealment	Concealment, also called nondisclosure and passive fraud, occurs when one party does not say something that he or she is obligated to reveal. Obligations arise in situations involving hidden problems and in special relationships.
Misrepresentation	Misrepresentation occurs when a false statement is made innocently with no intent to deceive.

creates a duty to reveal the hidden problem. Put another way, if one party has special knowledge about the subject, and the other party relies on that party's expertise, the knowledgeable party is obligated to reveal any facts.

Representation Known to Be False

To be held accountable for fraud, the party making the false representation must be aware that the representation is false. This may be shown by proving actual knowledge, or by showing that the statement was made recklessly, without regard for the truth.

Example 1. Jeff Banner purchased a used car from Al Reed's Quality Used Autos. The salesperson at the lot assured Jeff that his car had never been involved in an accident. While looking through his car's glove box a week after purchasing it, Jeff discovered repair receipts that indicated the car had been in a major accident. As a result, Jeff is able to pursue a claim of false representation.

LAWS in Your Life

Choosing a Lawyer

Having to sign a document you do not completely understand is just one reason that you might need a lawyer. Some lawyers are general practitioners. Others specialize in certain areas, such as personal injury, divorce, or criminal law. When in need of a lawyer, look for an attorney who specializes in handling the type of situation that confronts you.

The best way to find a lawyer is to talk with relatives and friends who have used lawyers. If their legal problems were similar to yours, ask if they would recommend their lawyer. Another good source is the *Martindale-Hubbell Law Directory*, found in every courthouse library. This book lists nearly every lawyer in the United States by specialty. Your county bar association can also refer you to a competent attorney. The attorney referral services listed in the Yellow Pages are usually businesses that some attorneys pay for referrals.

If possible, talk with two or more candidates before hiring your attorney. Many attorneys offer a first meeting for free.

Make a List Create an imaginary situation that would require you to hire a lawyer. Prepare a list of topics and questions that you would ask an attorney.

False Representation Intended to Be Relied Upon

To prove fraud, one must show that the false representation was made with the intent that it be relied upon. That is, the person making the misrepresentation must intend that the other party rely upon the information as part of the contract negotiations.

Example 2. Suppose that Eduardo met Mr. Johnson, a man whose car he admired. He asked Mr. Johnson, “Is this car a 1964 Mustang?” Mr. Johnson, with no intention of selling his car but with knowledge that it was really a 1965 model said, “Yes, it’s a 1964.” If Eduardo then went out and purchased a car like Mr. Johnson’s, believing it was really a 1964 Mustang, he could not win a lawsuit against Johnson for fraud. Johnson did not make the statement with the intent that Eduardo rely on it.

False Representation Actually Relied Upon

If fraud is to be proven, the false representation must be reasonably relied upon by the other party when the agreement is made. Sometimes people make misrepresentations to others who pay no attention to those misrepresentations. In these cases, the party cannot bring suit for fraud.

Example 3. Suppose that Johnson wants to sell his car and tells Eduardo that it is a 1964 Mustang. However, Eduardo is accompanied by George Timmer, an antique car expert. Timmer takes Eduardo aside and tells him that the car is actually a 1965 and is worth far less money than a 1964. If Eduardo still insisted on buying Johnson’s car at an inflated price, he could not later win a lawsuit for fraud because he did not actually rely on Johnson’s false statement.



Language Arts

Many screenwriters for movies and television develop story lines that revolve around legal situations. For example, screenwriters might depict a person entering into an agreement under duress as part of a story line. In old western movies, ranches were often sold for a fraction of their value because of duress. Many movies about organized crime depict small business owners who are forced to turn over part of their earnings to the “family” to stay in business.

Research Activity

With a partner, write a mini-screenplay with a story line involving duress.

FALSE REPRESENTATION

Fraud involves false representations made to entice an innocent party into a contract. In The Opening Scene, assume that not everything the salesperson told Jake about the car was true. *If this is the case, how has Jake been a victim of fraud?*

Resulting Loss

You may choose to enter into a contract as the result of false statements made by the other party. Unless you suffer loss as a result, however, you cannot win a lawsuit for fraud. For instance, if you paid a friend \$75 for a CD player that was said to be “in perfect working order” and then discovered the track selection feature did not work, you have lost \$75 and may make a claim for fraud. If, however, you agreed to accept the CD player in exchange for a favor, such as helping your friend perform a community project, you suffered no monetary loss. In such a situation, you would not be legally entitled to make a claim for fraud.

Innocent Misrepresentation

Sometimes a person will make an innocent statement that turns out to be false. However, that person honestly believed the statement was true at the time it was made. Such an act is a **misrepresentation**, or an untrue statement of facts, and the law gives you the right to rescind the contract. You may not win damages if the false representation is innocently made.

Example 4. Fred bought a mountain bike from Matt, an acquaintance at school. Matt said he believed the bike did not need any repairs. After a weekend ride at a local reservoir, Fred discovered the back wheel was severely misaligned. Fred could cancel the deal and ask for his money back. He is not entitled to damages because Mike genuinely believed the bike was in good shape.

Section 6.1 Assessment

Reviewing What You Learned

1. What are the elements of fraud?
2. What is the difference between fraud and concealment?
3. What is the difference between fraud and innocent misrepresentation?
4. What is the difference between the remedy available for fraud and the remedy available for misrepresentation?

Critical Thinking Activity

Fraud Why do courts permit fraud to disrupt genuine agreement in a contractual setting?

Legal Skills in Action

Too Good to Be True? You recently received a phone call from a travel agency offering a vacation package to Europe for less than \$200. To take advantage of the offer, you were told to send \$200 in cash within 24 hours or to supply a credit card number on the spot. Working in a small group with your classmates, discuss whether this sounds like a case of potential fraud. Begin by listing the elements of fraud.

Mistake, Duress, and Undue Influence

Mistake

The purpose of contract law is to fulfill the reasonable expectations of the parties to a contract. People sometimes enter into contracts believing that certain information is true when it is actually not, or that information is not true when it really is. When the truth is learned, one or both of the parties may wish to avoid the contract. Canceling the contract may or may not be possible. See Figure 6.3 for the types of mistake that can disrupt an agreement.

Unilateral Mistake

A **unilateral mistake** is an error on the part of one of the parties to the contract. A person usually cannot avoid a contract because of such a mistake. Through words or actions, one party has created reasonable expectations on the part of the other party to the contract. Those expectations should not be blocked because one of the parties has made an error.

Example 5. The town of Sharonville received four bids for construction of a new city hall. Angelini Construction won the contract because its bid was the lowest. A few days later, Angelini's general manager discovered the bid should have been \$2 million, not \$1.5 million. The error was discovered too late. The company is bound by the bid it made to build the city hall for \$1.5 million.

Mistake as to the Nature of the Agreement A mistake as to the nature of the agreement is one type of unilateral mistake. It cannot be an excuse to avoid a contract. Let's say you sign a contract to mow your neighbor's lawn through the summer, and the written agreement says this means mowing every week. You would be obligated to fulfill that schedule—even if you believe that you agreed orally to mow the lawn only every other week.

People who sign an agreement are bound to it, even if they have not read it or are mistaken about what it says. Your signature shows that you agree that the contract sets forth the terms of the agreement. This rule even applies to those who cannot read English. People who don't understand English are expected to have the agreement read and explained to them by someone they trust.

What You'll Learn

- How to distinguish between unilateral and bilateral mistake
- How to recognize the types of mistake that will allow rescission of a contract
- How to recognize the requirements of economic duress
- How to recognize the requirements of undue influence

Why It's Important

Recognizing how mistake, duress, and undue influence can affect agreements will help you make better decisions in such situations.

Legal Terms

- unilateral mistake
- bilateral mistake
- duress
- economic duress
- undue influence

Figure 6.3**Agreements Made Defective by Mistake**

Unilateral Mistake	Bilateral Mistake
1. Mistake as to the nature of the agreement. Rescission will not be granted.	1. Mistake as to possibility of performance. Rescission will be granted.
2. Mistake as to the identity of a party. Rescission may be granted.	2. Mistake as to the subject matter. Rescission will be granted.

AGREEMENTS MADE DEFECTIVE BY MISTAKE

Genuine agreements can be disrupted by unilateral and bilateral mistake. *Which of the two types of mistakes will grant rescission most often?*

Mistake as to the Identity of a Party Another type of unilateral mistake involves the identity of a party to a contract. Unlike the previous cases, however, this mistake may be cause to void a contract.

Example 6. Genevieve Sands sent a letter offering baby-sitting services at a certain rate to Jill Gomez, a mother of toddlers in the neighborhood. The letter carrier mistakenly delivered the letter to another Jill Gomez, who happened to live across town and also had children. This other Jill Gomez liked Genevieve's offer and accepted it. However, the contract was voidable because this Jill Gomez was not the person Genevieve had in mind.

If Genevieve had made a baby-sitting offer face-to-face with a woman she thought was Jill Gomez, but who really was not, the mistaken identity would not prevent a binding contract. Genevieve would have made an offer facing the person who could accept it.

UNILATERAL MISTAKE

Unilateral mistake usually will not allow rescission of a contract. *What type of mistake was made by Angelini Construction when their representatives promised to build the Sharonville city hall for \$1.5 million?*

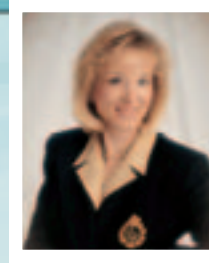




Careers in Law

District Court Judge

At age 12, Annette Scieszinski knew that she wanted to be part of the legal system. "I thought that lawyers should do the right thing and serve the public," she says from her office in Ottumwa, Iowa. "I still think that."



Today, Scieszinski is a district court judge who presides over a wide range of civil and criminal cases. She spends about half of her time handling trials and the proceedings leading up to them. One day she may be in her chambers, helping lawyers resolve issues in a contract dispute. The next day she may be in court, instructing a jury about a murder case.

The other half of Scieszinski's time is spent researching the law, updating judicial forms, and deciding what documents she needs to help settle a case. In nonjury trials, she also devotes at least one afternoon to "ruling time."

"'Ruling time' is kind of like study hall," she says. "When I preside over a nonjury trial, I'm the one who decides the verdict. So after I've taken evidence and heard testimony, I use ruling time to study the law and write my opinion."

Scieszinski says that judges can make a difference in peoples' lives. "This is a great job," she says. "It gives you an opportunity to creatively help people solve their problems and understand that even if they lose their case, justice is done."

Skills

Oral and written communication, logic, library and database research, interpersonal

Personality

Even-tempered, self-motivated, conscientious

Education

Many undergraduate majors, but English and economics are particularly useful; law degree; broad practice (not just trial work)

For more information on district court judges, visit ubpl.glencoe.com or your public library.

Bilateral Mistake

Sometimes both parties to a contract are mistaken about an important fact. This is usually known as a **bilateral mistake**, but is sometimes called a mutual mistake. When this mistake occurs, either party may avoid the contract.

Mistake as to the Possibility of Performance A bilateral mistake can be a mistake as to the possibility of performance. Suppose both parties entering into a contract believe that the duties described in

Leaking Information

Shanelle wants to upgrade her camping equipment because she has had the same tent and sleeping bag since she was in the sixth grade. She runs a classified ad in the school paper to sell both items for \$45 each. Andrew is interested in buying the tent, but he wants to know if it leaks. Shanelle had the tent repaired for leaks a few years ago. *Does Shanelle have an ethical responsibility to tell Andrew that she had the tent repaired, even if it hasn't leaked recently?*

the agreement can be performed when, in fact, they cannot. In this type of situation, either party may get out of the contract because of the bilateral mistake.

Example 7. Robert Houlihan agreed to sell his car to Cynthia Stamatopoulos for \$1,000. Unknown to both of them, however, was the fact that overnight the car had been sideswiped and severely damaged by a hit-and-run driver as it sat in front of Robert's house. Either party may now avoid the contract on the grounds of bilateral mistake as to the possibility of performance.

Mistake as to the Subject Matter Both parties can be mistaken as to the identity of the subject matter when they enter into a contract. In this type of bilateral mistake, the contract may be avoided by either one of the parties.

Example 8. Ellery Weimer agreed to sell Alvin McCormick five vacant lots on Indiana Avenue in Parkersburg. McCormick refused to go through with the agreement when he discovered that the land he thought he was buying was on another Indiana Avenue, also in Parkersburg. Weimer sued McCormick for breach of contract. However, because there was a bilateral mistake as to the location of the land in the contract, Weimer lost the case.

DURESS

An individual's free will may be disrupted by violence, threats of violence, or by economic threats. *Which type of duress is the most serious?*



Figure 6.4**Agreements Made Defective by Duress**

Element	Description
Physical Duress	Actual physical violence is used to force a person to enter a contract.
Emotional Duress	Threat of physical force is used to force a person to enter a contract.
Economic Duress	Threats to a person's business or professional reputation are used to force a party to enter a contract.

AGREEMENTS MADE DEFECTIVE BY DURESS

Genuine agreement can be disrupted by duress. *Which of the types of duress is used most often to gain commercial advantage?*

Duress

Parties to an agreement must enter into it voluntarily, not under duress. **Duress** is overcoming a person's will by use of force or by threat of force or bodily harm. Agreements made under duress are either void or voidable. Figure 6.4 explains the specific types of duress recognized by the law. Criminal figures who threaten to hurt merchants if they do not pay fees for "protection" are using duress to secure an agreement.

When actual physical force is used to cause another to enter a contract, the contract is void. When a threat of physical force is used, the contract is voidable. Such a threat may be made against the party to a contract or against a member of that person's family. The innocent party may avoid the contract if he or she chooses to do so.

Another type of duress is **economic duress**. It consists of threats to a person's business or income that cause him or her to enter a contract without real consent.

Example 9. Baby-sitter Genevieve Sands sat with the children of one mother several times for an agreed price. One day the mother said that she wished to now pay 50 cents less per hour. The woman threatened to spread rumors around the neighborhood that Genevieve was a careless baby-sitter if Genevieve refused to agree to the pay cut. This was an attempt to reach an agreement by threatening economic harm to the baby-sitter's future business.

Note, however, that a threat to exercise one's legal rights is not duress. For example, to enforce an agreement, a party with grounds to sue may threaten to do so or demand satisfaction.

**Voidable Contracts**

The contracts of mentally impaired persons are voidable, and guardians are often appointed to help protect these individuals. The elderly are particularly vulnerable because they may suffer from dementia-related illnesses such as Alzheimer's disease, which slowly destroys the brain. *How do these victims manage their day-to-day affairs and avoid becoming victims?*

Get Involved

Inquire about volunteering at the geriatric department of a local hospital. Become a volunteer reader at a local nursing home or hospice. Offer to help elderly family members.

UNDUE INFLUENCE

Genuine agreements can be disrupted by undue influence. *What type of relationships might lead to the temptation to use undue influence?*

Figure 6.5

Elements of Undue Influence

Element	Description
A Dependency Relationship	One party in a relationship is dependent on the other party because of ill health, old age, or mental immaturity.
Unfair or Improper Pressure	The independent person uses excessive pressure to force the dependent person to enter a contract.
A Beneficial Contract	The contract that results benefits the independent party at the expense of the dependent party.

Undue Influence

The exercise of undue influence is another factor that can cause a contract to be voidable. **Undue influence** occurs when a person uses unfair and improper persuasive pressure to force another person to enter into an agreement. (See Figure 6.5 for the elements of undue influence.) Circumstances such as ill health, old age, or mental immaturity may put a person in a weaker position. The stronger person substitutes his or her will for the will of the weaker person.

Virtual Law

E-Book Publishing Rights

Until recently, few book contracts specified who owned the rights to publish electronic versions of printed books. This issue has become increasingly important because income from the sale of electronic books has grown as this format has become more popular. Publishers argue that they own the right to sell digital editions of printed books, even when their contract with an author might not address the issue. Publishers compare their industry to the film industry, where studios have the right to sell videotapes of movies. Publishers have started to change their contract language over the past several years to refer specifically to electronic books. Most authors argue that there is no genuine agreement on this issue until such language is included. (Source: *New York Times*, February 28, 2001, p. C5)

Connect Go to the Web site for Text and Academic Authors (TAA) and see what this group has to say about electronic rights.

Example 10. Paulding, an elderly woman, lived with her son, Emory, her only child and sole caretaker. Emory persuaded his mother to sell him some land that was worth \$150,000 for only \$50,000. Shortly before the transfer of title, Paulding discovered her son planned to resell the property for \$175,000 to Visconti, a developer who planned to build an apartment complex. Paulding had thought her son planned to use the property as a lot for building a vacation home. She did not expect her son to deceive her. The mother refused to go through with the sale. In the breach of contract suit that followed, the court ruled that Emory had taken advantage of his mother's trust in him to persuade her to sell the land. Paulding could avoid the contract.

UNDUE INFLUENCE

An individual's free will may be disrupted by the undue influence of someone upon whom they depend. *Why is undue influence difficult to prove?*



Section 6.2 Assessment

Reviewing What You Learned

1. What is the difference between unilateral and bilateral mistakes?
2. What types of mistake will allow rescission of a contract?
3. What are the requirements of economic duress?
4. What are the requirements of undue influence?

Critical Thinking Activity

Types of Mistakes Why is it important to be able to distinguish between a unilateral and bilateral mistake?

Legal Skills in Action

Undue Influence Suppose that a close friend has sent you an e-mail message saying that she believes her grandfather was tricked into signing over all of his property to his live-in caretaker. Your friend asks for your advice on how to proceed with the problem. Write an e-mail reply to your friend in which you explain the elements she would have to prove to demonstrate that her grandfather signed over his property because of undue influence.

Chapter Summary

Section 6.1 Fraud and Misrepresentation

- Fraud is deliberate deception to secure an unfair or unlawful gain. To succeed in a lawsuit for fraud, the party bringing suit must prove five elements: (1) false representation of fact, (2) representation known to be false, (3) false representation intended to be relied upon, (4) false representation reasonably relied upon, and (5) resulting loss. Fraud requires a false representation of a material, existing fact. It cannot be a promise of something that will happen in the future, nor can it be someone's opinion. Material false representations are not confined to oral or written statements. Actions intended to deceive are considered to be false representations.
- Concealment, also called nondisclosure and passive fraud, is a type of fraud. This type of fraud is employed when a party keeps silent about a material fact of which the other party has no knowledge. The other person relies on the first person's special knowledge and gets hurt. Concealment can occur when a seller keeps quiet about a hidden defect that cannot be easily discovered by the buyer. Concealment can be just as fraudulent as actively deceiving an innocent party.
- An innocent statement of supposed fact that turns out to be false is a misrepresentation. The law gives an injured party the right to rescind a contract because of misrepresentation. You may not win damages if a false representation is innocently made.
- If you have been induced to enter a contract by fraud, you have several remedies available. You may cancel, or rescind, the contract. You may

also sue for damages. Damages are designed to punish the wrongdoer for his or her conduct and can greatly exceed the amount of money needed to repay the victim. If a person has merely made a misrepresentation, remember that, although you can rescind the contract, you cannot win damages.

Section 6.2 Mistake, Duress, and Undue Influence

- Unilateral mistake is an error on the part of one of the parties to the contract. A person usually cannot avoid a contract because of such a mistake. A unilateral mistake may be a mistake as to the nature of the agreement or a mistake as to the identity of a party. When both parties to a contract are mistaken about some important fact, a bilateral mistake has been made. A bilateral mistake may be a mistake as to the possibility of performance or a mistake as to the subject matter.
- When you make a unilateral mistake, you are bound to the contract, except when you make a mistake as to the identity of the party. When there has been a bilateral mistake, either party may rescind the contract.
- Duress is defined as overcoming a person's will by using force or by threat of force or bodily harm. Economic duress occurs when a person threatens another person's business or income to cause someone to enter a contract without true consent.
- Unfair and improper persuasive pressure used by a person to force a close friend, family member, or otherwise vulnerable person into entering into a contract is called undue influence.

Using Legal Language

Consider the key terms in the list below. Then use these terms to complete the following exercises.

fraud

rescind

material fact

concealment

misrepresentation

unilateral mistake

bilateral mistake

duress

economic duress

undue influence

1. Imagine one of your friends is facing a defective agreement with a recent contract. Write a story about the situation using as many of the key terms in the story as possible.
2. Exchange stories with a classmate and review the terms that you each used in your stories.
3. Present your story to the class.
4. As a class, vote to choose the best story.
5. Post the winning story somewhere in the classroom.

The Law Review

Answer the following questions. Refer to the chapter for additional reinforcement.

6. Name five circumstances that might create a defective agreement.
7. What are the two options for seeking recovery if you are induced to enter a fraudulent contract?
8. Describe a situation in which one party might be tempted to conceal information that would discourage the other party from entering into a contract.
9. What are two kinds of bilateral mistakes? Who may avoid a contract that contains a bilateral mistake?
10. What is the essential difference between duress and undue influence?
11. What is a material fact?
12. How does emotional duress differ from physical duress?

Understanding Business and Personal Law

Online 

Self-Check Quiz Visit the *Understanding Business and Personal Law* Web site at ubpl.glencoe.com and click on Chapter 6: Genuine Agreement—Self-Check Quizzes to prepare for the chapter exam.

Linking School to Work

Interpreting and Communicating Ideas

Using the newspaper, news magazines, or the Internet, locate an article about a contract case in which punitive damages were awarded.

13. Review the facts of the case from the plaintiff's and the defendant's viewpoints.
14. Write a one-page paper explaining whether you would have awarded similar damages.
15. Present your case and decision to the class.

Let's Debate

Fraud

Serina called Erik to inquire about a washer and dryer that he is selling. Erik told Serina that the washer and dryer are in top-notch condition and haven't been used much. He told her that he is selling the appliances because he dislikes their color. You know for a fact, however, that Erik is not being totally honest with Serina. The washer doesn't rinse well, and the dryer cannot run for more than 20 minutes.

Debate

16. Is Erik misrepresenting his offer?
17. Is this a fraudulent situation?
18. Is nondisclosure involved?
19. What should Erik do?

Grasping Case Issues

For the following cases, give your decision and state a legal principle that applies.

20. The Oxford Art Gallery, operated by Allen Oxford, owned two 1907 photographs that

depicted immigrants arriving in America. One of the photographs, taken by the famous photographer Alfred Stieglitz, was worth a substantial sum of money. The other photo, taken by a relatively unknown photographer named Alexander Sergent, was worth about \$50. Ginny Thomas arranged to buy one of the photos, thinking the agreement was for the photo by Sergent. Oxford understood that the sale was for the Stieglitz. Was there a true meeting of the minds in this case? Would the circumstances support an action for rescission of this agreement? Why or why not?

21. Akeo Shimazu signed a form without reading it. He assumed the form was a request for a sample copy of an expensive book. When his order arrived, he found that he had actually signed an order form for the book itself. Shimazu refused the book, claiming he was not bound by the agreement because of his mistake. Is Shimazu legally bound by the agreement? Explain your answer.
22. The basement of Rodney Wiseman's house flooded every time it rained. Nevertheless, when Phelps, a potential buyer, asked about water in the basement, Wiseman said that the basement was dry. Phelps had an expert check the basement for dryness before he purchased the home. After a heavy rain, Phelps's new home's basement flooded. Can Phelps recover damages from Wiseman for fraud? Explain your answer.
23. Estelle Petkins put her summer cottage up for sale. Edith Ong, who was interested in buying the cottage, asked if it had termites. Petkins was not aware of a termite problem, so her answer was no. Ong bought the cottage and later found termites. Does Ong have any recourse against Petkins for fraud? Explain your answer.

Analyzing Real Cases

In each case that follows, you be the judge.

24. Intentional Misrepresentation

Walker and Cousineau were in the gravel business. Walker wanted to sell a tract of land. He claimed that he had an engineer's report showing the land held 80,000 cubic yards of gravel. However, Walker knew the land held substantially less gravel. Cousineau bought the land and quickly discovered that the land held only about 6,000 cubic yards of gravel. He sued Walker, asking the court to rescind the contract. *Will Cousineau win the case? Why or why not?*
Cousineau v. Walker, 613 P.2d 608 (AL).

25. Forced Promises

During a riot at the Iowa State Penitentiary, prisoners held staff members hostage. The hostages were released after the warden agreed in writing that the prisoners would experience no reprisals. Afterward, however, some of the prisoners were punished. One prisoner, Wagner, was placed in solitary confinement for 30 days and received 180 days of administrative segregation. He also lost 1,283 days of good time earned. *On what legal grounds can the warden refuse to keep his promise to the inmates, and why?*
Wagner v. State, 364 N.W.2d 246 (IA).

Legal Link

Last-Minute Changes

Seig hired "Deiter's Delights" to cater his daughter's wedding reception. Deiter, the owner of the service, told Seig that his company would provide all of the serving dishes, plates, and cups. On the day of the wedding, Deiter told Seig that there would be an extra charge for the dishes. Although Seig paid the bill in full, he has decided to hire a lawyer to determine whether this is a case of misrepresentation or fraud.

Connect

Using a variety of search engines:

26. Help Seig find a lawyer online.
27. Create a short checklist of criteria that you would use when locating a lawyer.



28. **Predict** How will understanding the elements of fraud help you avoid being a victim of fraud in the future?
29. **Connect** Create sample statements of "sales puffery" that border on being fraudulent.
30. **Question** In Example 5, given that Angelini Construction made an honest mistake when bidding the project to rebuild city hall, is it fair to bind them to the unreasonably low price they submitted? Explain. (Locate the text that corresponds with this item near the example under unilateral mistake.)
31. **Respond** In negotiating a contract, is the use of duress and undue influence unethical as well as illegal? Explain your answer.