

Chapter 6 - Genuine Agreement

**DO NOW:**

2. Harry Castell buys a leaf blower after a sales person convinces him that using the leaf blower will save him time and money. Castell finds that he actually spends more time and money with the leaf blower than when he just raked the leaves himself. He tries to recover the price he paid for the leaf blower claiming fraud. Is Castell within his rights? Explain your answer.

4. A salesperson tells Ilsa Penhow, "This is the best DVD player on the market." Penhow buys it and later finds a better DVD player at another store. Does this amount to fraud? Explain your answer.

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Agreement exists if there is a valid offer and a valid acceptance.  
The following circumstances might create a defective agreement:

**Mistake**

People sometimes enter into contracts in the belief that certain facts exist when they really do not.

1. **Unilateral Mistake:** an error on the part of one of the parties to the contract.

Mistake -> Nature of the Agreement (not reading a contract or not knowing what it says). This cannot be an excuse to avoid a contract.

Mistake -> The Identity of a Party

• If the mistaken identity is made in person, it will not prevent a binding contract.



<http://abc7ny.com/home/more-than-a-dozen-homeowners-on-long-island-lose-homes-in-mortgage-scam/990107/>



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# Ch6 Genuine Agreement.notebook

2. **Bilateral Mistake:** both parties to a contract are mistaken about some important fact.
- The contract may be avoided by either party.
  - Mistake as to the Possibility of Performance:** both believe the contract can be performed when it cannot.  
(i.e. parts are out of stock, weather does not permit, etc.)
  - Mistake as to the Subject Matter**  
(i.e thought the item was a "6s", it was actually a "6")

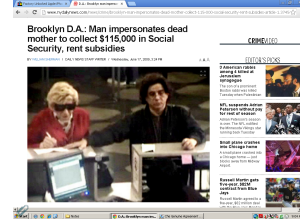


## Fraud

A deliberate deception to secure an unfair or unlawful gain.

Victims of fraud can rescind or cancel the contract, or sue for money damages (including punitive damages)...

... the victim can even be the government!



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For Fraud - Must prove the following five elements:

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1. There must be a false representation of fact.

**Material fact** is one that is important; matters to one of the parties.

**Concealment** or nondisclosure is not saying something that a person should say.

Note: **Sales Puffery** is not considered fraudulent.

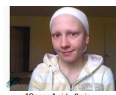
"this suit will land you the job of your dreams!!",  
"get ripped in 90 days!"



PC Concealment pt1  
PC Concealment pt2



2. The party making the representation must know that it is false.
3. The false representation must be made with the intent that it be relied on.
4. The innocent party must reasonably rely upon the false representation.
5. The innocent party must actually suffer some monetary loss.



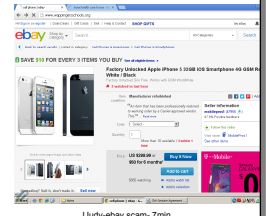
https://www.youtube.com/watch?v=ms8E3GAV8k4



PC Credit Card Fraud - 15min



Shame Shame Vid 5 min



JJudy-ebay scam- 7min

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**Misrepresentation**

I purchased attic stairs for my house at Home Depot.  
The associate told me that "one size fits all".  
I found this was not so when I took it home.

Can I return the opened item?  
Can I tell HD to pay me gas money and "lost time"?

**Misrepresentation** is an untrue statement of facts.

The injured party has the right to rescind the contract but no right to damages if the false representation is innocently made.

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**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.

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**Economic duress** consists of threats to a person's business or income to cause him or her to enter a contract without real consent.

Often a threat to breach an existing contract if another contract is not entered into.

**B&S Contractors v Victor Green Publications [1984] ICR 419**

A contractor who had undertaken to erect stands for an exhibition at Olympia told his client, less than a week before the exhibition was due to open, that the contract would be cancelled unless the client paid an additional sum to meet claims which were being made against the contractor by his workforce. The consequence of not having the stands erected in time would have been disastrous for the client in that it would have gravely damaged his reputation and might have exposed him to heavy claims for damages from exhibitors to whom space on the stands had been let. In these circumstances it was held that the payment had been made under duress and that the client was entitled to recover it back.

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**Undue Influence**

**Undue influence** is unfair and improper persuasive pressure exercised by one person in a relationship of trust with another person.

- Parent/child
- Guardian/ward
- Priest/member of parish
- Solicitor/client
- Doctor/patient

"You enjoy how I take care of you, right?  
Would you be willing to...?"



**Judge finds caregiver used undue influence**  
A judge has ruled that a caregiver used undue influence to pressure an elderly woman into signing over her home to the caregiver's family. The judge found that the caregiver had used a combination of threats, promises, and emotional manipulation to convince the woman to sign the documents. The woman's family had been told that the caregiver was the only person who could take care of her, and that if they did not sign the documents, the caregiver would stop caring for her. The judge also found that the woman was vulnerable and that the caregiver had a duty of care towards her. The judge ordered that the documents be set aside and that the woman's home be returned to her family.



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Nov 18-8:46 AM

## Attachments

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-  Ch6\_The People\_s Court- \_Selling a Bad Bike\_ Concealment\_part1.wmv
-  Ch6\_The People\_s Court- \_Selling a Bad Bike\_ Concealment\_part2.wmv