**What are the elements of fraudulent misrepresentation and what are the legal remedies to the wronged party? 6 to 8 pages**

When a defendant intentionally or recklessly misrepresents a fact or opinion with the intent to persuade a party to act or refrain from acting on the basis of that misrepresentation, it is fraudulent misrepresentation, which is a tort claim that frequently arises in the area of contract law. Elements of fraudulent misrepresentation include.

**A. False assertion of fact**

Avon Insurance plc. v. Swire Fraser Ltd. (2000) per Rix J. • the "substantially correct" standard is used to determine whether a statement is false. The term "statement" can refer to nonverbal actions alone. Consider the 2002 case of Spice Girls v. Aprilia

• The following claims of fact are accurate:

- A mere "puff" or "sales patter" - see, for example, Dimmock v. Hallett (1866) - Statements of intention, unless the party truly had those intentions at the time the statement was made - see, for instance, Edgington v. Fitzmaurice (1885).

- position statements, unless the speaker did not truly hold the position or did not have a basis for the statement that was reasonable. See, for example, Bisset v. Wilkinson (1927), Smith v. Land & House Property Corp. (1884), and Humming Bird Motors Ltd. v. Hobbs (1986).

– Legal claims made in the abstract, unless they are made dishonestly or without a solid foundation. However, if representation actually involves applying the law to specific facts It may be actionable as misrepresentation if it is a statement regarding how the law would apply in a certain circumstance; see, for example, Pankhania v. London Borough of Hackney (2002).

**B. Parties to the contract**

- Although it may be done through a party's agent, misrepresentation must be made by a party to the contract. A non-party's false statement is not subject to redress under contract law; nevertheless, it may be subject to redress under tort law.

A representation made carelessly and in violation of the obligation owed by Party A to Party B to take reasonable care to ensure the representation is correct is referred to as a negligent misrepresentation. When a statement is made carelessly or without a good cause to believe it is true, it may be considered a misrepresentation under section 2(1) of the Misrepresentation Act 1967 even if there is no "special relationship" involved. An innocent misrepresentation is one that is neither dishonest nor careless.

Rescission and/or damages are the available remedies for misrepresentation. The claimant may seek rescission and damages for misrepresentation that was both fraudulent and negligent. The court may decide to grant damages instead of rescission in cases of innocent misrepresentation; however, the court cannot grant both (see section 2(2) of the Misrepresentation Act 1967).

**C. Inducement**

- A misrepresentation must affect a party’s decision to enter into a contract in order for it to give rise to legal action. Just one of the inducements is sufficient; the deception need not be the only one. For more information, see Edgington v. Fitzmaurice (1885) (above); if a misrepresentation is false, there is a rebuttable presumption that it caused a contract to be entered into; and Dadourian Group International Inc. V. Simms (Damages) (2009).

– Therefore, a represented is not liable for a misrepresentation if they: • Never knew it existed, as in Horsfall v. Thomas (1862); • Did not allow it to cloud their judgment, as in Smith v. Chadwick (1884); • Did not allow it to alter their behavior, as in Atwood v. Small (1838) duty of verification? Hurd v. Redgrave (1881.).

In order to appreciate the remedies of the wronged party is good to understand different types of misrepresentation which include:-

**Innocent misrepresentation** a false statement of a substantial fact made by the defendant that was untrue when the contract was signed constitutes innocent misrepresentation. Rescission or cancellation of the contract is typically the appropriate course of action in this case.

**Negligent misrepresentation** is when the defendant made a claim without making any effort to confirm that it was accurate prior to signing a contract. This goes against the idea of "reasonable care" that a party is required to exercise before making an agreement. Contract revocation and maybe damage are the remedies for negligent misrepresentation.

**Fraudulent misrepresentation** A statement that the defendant made recklessly or with knowledge that it was untrue in order to persuade the other party to enter into a contract is considered fraudulent misrepresentation. The harmed party may seek to have the agreement nullified and compensation from the defendant.

In order to obtain compensation or to have a contract annulled, one of the fraudulent misrepresentation remedies is to take the offender to court. When one party to a contract makes a misleading statement that persuades the other party to accept the contract, the claim of misrepresentation arises. Cases involving misrepresentation are handled by the Misrepresentation Act of 1967 and the common law. A plaintiff can cancel the contract in circumstances of misrepresentation or rather the legal remedies of fraudulent misrepresentation to the wronged party can be upheld through the following:-

1. **Rescission** is an equitable remedy in contract law that enables a contractual party to terminate the agreement. In the case of a vitiating circumstance, such as misrepresentation, error, duress, or undue influence, the parties may withdraw their agreement. Rescission is the cancellation of a deal. This is done in an effort to return the parties to their pre-contractual state as closely as possible (the status quo ante). a discretionary equitable remedy. It is a synonym for legal termination. If one party has confirmed the agreement through his actions a third party has acquired rights, or the agreement has been substantially implemented, the court may decide not to revoke it. As was done in Koompahtoo Local Aboriginal Land Council v. Sanpine Pty Ltd., parties may do well to highlight those conditions which may give rise to an entitlement to terminate in order to increase their prospects of being awarded rescission. The party requesting rescission often must promise to return all benefits acquired under the contract because rescission is intended to be imposed mutually by both parties.

Equitable rescission is referred to as "cancellation" in the US state of Virginia. In addition, a small number of common law countries, including South Africa, use the term "rescission" for actions that other countries would refer to as "reversing," "overturning," or "overruling" a court decision. On a request to the court that issued the judgment or to a higher court, the expression "to be set aside" or "make void" means to do so. Typically, requests to vacate a decision are filed on the grounds of error or good cause. By stating that one can retract a contract and cancel a deed (i.e., of real property), the majority of common law jurisdictions avoid all this confusion and treat rescission as a contractual remedy rather than a form of procedural remedy against a court judgment.

**Bars to rescission**- Revocation is prohibited when an innocent party affirms a contract after learning the truth, as in the case of Long v. Lloyd (1958). • When the parties cannot be put in a situation that is substantially the same as their pre-contractual one (restitution in integral form principle) • White v. Garden (1851), Car and Universal Finance Co. Ltd. v. Caldwell (1965), and other cases where a third party has acquired an interest in good faith and for the value of the contract's subject matter. • After a long period of time has passed. However, in circumstances of fraud or violation of fiduciary duty, the passage of time after the statement was made is proof of affirmation rather than a defense against retraction.

1. **Damages –** Damages accessible for deceitful conduct. In order to put the innocent party in the situation they would have been in had the warranty not been made, the innocent party may recover all loss (including consequential loss) directly resulting from the breach: Doyle v. Olby (Ironmongers) Ltd. (1969); upheld in Scimgeour Vickers (Asset Management) Ltd. v. Smith New Court Securities Ltd. (1997).Also entitled to full compensation for losses incurred after the contract's effective date is the innocent party. Represented has an obligation to reduce loss when they become aware of fraud 1997's Down v. Chappell**.**

If a breach of contract claim is validated, there are two broad types of damages that may be granted. As follows:

**Compensatory damage**. Compensation damages (sometimes known as "actual damages") are meant to make up for the loss the non-breaching party suffered as a result of the contract's violation. The amount granted is meant to compensate for or replace the harm the breach caused.

The following two types of compensatory damages are available to the non-breaching party:

1. **Damages in general**. The loss directly and inescapably brought on by the non-breaching of the contract is compensated by general damages. The most typical form of damages for breaches of contract is general damages. Example: Furniture of the incorrect type was delivered to Company B by Company A. Later in the day, when the error was discovered, Company B demanded that Company A pick up the incorrect furniture and provide the correct furniture. Company A refused to remove the furniture and claimed it was unable to provide the appropriate furniture because it was out of stock. Company B was successful in its lawsuit for contract breach. The following are possible general damages for this breach: a reimbursement of any fees paid by Company B to purchase the furniture, as well as payment for any additional costs incurred by Company B in order to purchase the appropriate furniture, or its closest equivalent, from another vendor.
2. Damages Particular. The term "**special damages**" (sometimes known as "consequential damages") refers to any harm brought on by a contract breach due to unique or unforeseeable events. These are actual losses brought on by the breach, though not immediately and directly. The nonbreaching party must demonstrate that the breaching party was aware of the unique circumstances or needs at the time the contract was executed in order to recover damages for this kind of loss.

The damages for breach of contract could include all of the damages given in the aforementioned example, for instance, if Company A knew that Company B needed the new furniture on a specific day because its old furniture was scheduled to be hauled away the night before.

**Punitive damages** - Damages Retaliatory. Punitive damages, also known as "exemplary damages," are given to punish or set an example for someone who has wronged another by acting intentionally, willfully, or falsely. Punitive damages, as opposed to compensatory damages, which are meant to make up for actual loss, are meant to penalize the wrongdoer for outrageous behavior and discourage others from acting similarly in the future. In addition to compensatory damages, punitive damages are granted. Rarely are punitive damages granted for contract violations. They appear more frequently in tort lawsuits, which aim to punish willful or careless behavior that causes personal injury.

1. **For negligence misrepresentation** Damages allowed under section 2(1) of the Misrepresentation Act of 1967 (MA) for irresponsible misrepresentation include:

• "Where a person has entered into a contract after another party has made a misrepresentation to him, and as a result of that, he has suffered loss, then, if the person making the misrepresentation would have been liable to damages in respect thereof had the misrepresentation been made with fraud, that person shall be so liable notwithstanding the misrepresentation was not made with fraud, unless he proves that he had reasonable grounds to believe a different outcome. “The burden of proof—or, more precisely, the burden of disproof—is fairly heavy; for examples, see Howard Marine & Dredging Co. Ltd. v. A. Ogden & Sons Ltd.

1. **Specific performance** A court may require a party in breach of a contract to fulfill their half of the bargain as a type of specific performance remedy. As a remedy for contract violation, monetary damages are often preferred above specific performance. However, if monetary damages are insufficient to fully compensate you, particular performance may be an option. For instance, they might be used in a contract for something special that is difficult to replace**.** In the bus case, monetary damages would be adequate to make up for the tour company's loss. But suppose a well-known singer had previously ridden the brand-new bus. The bus was intended to be used by the tour firm for tours around the singer's hometown. Since no other bus would be equivalent to the one it had agreed to purchase, the tour operator could then argue for specific performance rather than monetary damages**.**
2. **Injunction** The goal of injunctions is the same as that of particular performance. With particular performance, the court instructs a party to take a certain action. The court frequently directs a party not to do anything with an injunction. Both permanent and temporary injunctions are possible. While a lawsuit is pending, temporary injunctions are frequently issued to avert potential harm. For instance, in a case involving the alleged violation of a noncompeting agreement, the court can compel the defendant to stop engaging in the allegedly competitive activity until the case is over. A perpetual injunction is exactly what its name implies—permanent. A judge's final decision in a case may include a permanent injunction.
3. **Liquidated damages** A precise sum established by the parties in the contract called liquidated damages serves as compensation for a breach. In cases when it may be challenging to determine the appropriate amount of compensatory damages, contracts frequently contain liquidated damages provisions. Liquidated damages are frequently used in construction contracts and real estate purchase agreements. They could be a particular amount, like the earnest money deposit required by a purchase agreement. Or they might rely on a formula, such paying a particular sum of money for every day that a deadline is missed. Liquidated damages clauses are also frequently included in partnership agreements. Although liquidated damages clauses are generally upheld by courts, they may be disregarded if the sum of liquidated damages is significantly less or more than the value of the plaintiff has actually been harmed.
4. **Consequential damages** damages that naturally follow from the breach are referred to as consequential damages. Profits that a business loses as a result of the breach are frequently included in consequential damages. Imagine that it takes an extra week to obtain the new bus in the instance of the bus example. The outcome was that the tour operator had to turn away 1,000 clients who would have paid $50 each for a bus tour. In that situation, the business would probably be able to seek consequential damages for the $50,000 in ticket sales they lost**.** Frequently, the party which violated the agreement would try to avoid paying consequential damages by arguing that they are unforeseeable or too speculative. In some cases, parties to a contract may also restrict or forbid one party from pursuing consequential damages. A knowledgeable attorney can assist you in rebutting these claims and maximizing your damages award.

In conclusion a misleading statement of a substantial fact made by one party that influences the other party's decision to enter into a contract is referred to as a misrepresentation. The agreement may be deemed void if the deception is uncovered. The person who has been negatively damaged may claim damages depending on the circumstances. In this kind of contract dispute, the plaintiff is the person asserting the claim, and the party accused of creating the misrepresentation is the defendant. Damages are awarded in accordance with the same criteria as fraudulent misrepresentation under Section 2(1) of the Misrepresentation Act. Therefore, the statement maker will be liable in damages for all resulting losses, regardless of how predictable they were.