

Chapter 11

Conduct Invalidating Assent

PURPOSE

This chapter explains situations in which an apparent acceptance of an offer and consent to a contract will be legally ineffective. In general, the law says in certain situations the manifested consent by one of the parties is not effective, because it was not knowingly and voluntarily given. In some situations what seems to be a contract will be considered to be a void agreement, or one that is totally lacking in legal effect and cannot be enforced by either party. In other situations, a contract will be merely voidable. If a contract is voidable, it can either be enforced or avoided by one party, or in some cases, either party. Some of these situations include duress, undue influence, fraud, nonfraudulent misrepresentation, and mistake.

CHAPTER CHECKPOINTS

After reading and studying this chapter, you should be able to:

1. Distinguish between duress by threats of physical force and duress by improper threats and discuss the legal effect of each type of duress.
2. Distinguish between a fraudulent misrepresentation and a nonfraudulent misrepresentation.
3. List the elements of fraud in the inducement and distinguish between fraud in the inducement and fraud in the execution.
4. Distinguish between unilateral mistake of fact and mutual mistake of fact and discuss the legal effect of each type of mistake.
5. Identify fact situations involving duress, undue influence, fraud, nonfraudulent misrepresentation, and mistake.

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