

UNENFORCEABLE CONTRACTS

Some contracts cannot be enforced by law. For example, if you enter into a contract while under the influence of drugs or alcohol, you may not have the capacity to consent. This is because you may not be able to understand the terms of the contract. Therefore, the contract may be voidable.

There are many other situations where a contract that is entered into could be voided...

MISREPRESENTATION

Knowingly making misrepresentations or false statements to persuade someone to enter into a contract can make that contract voidable.

A misrepresentation can only make a contract voidable if it is about a major part of the contract. Minor details generally will not qualify. As well, the contract must be cancelled within a reasonable amount of time.

For example, imagine that you are thinking of buying a duplex from Diana, and renting it out. Diana tells you that the rent is enough to cover the mortgage payments. In fact, Diana says, the rental income last year totalled \$24,000. (Diana's representation to you of the rental income.)

You buy the duplex and then find out that the suites were vacant most of last year. Further, you discover that last year's rents were only \$10,000. (Diana's representation to you was a misrepresentation.)

Because the misrepresentation was a major part of the contract and because it convinced you to enter into the contract, you have the option to either continue the contract or cancel it.

MISTAKE

There are three types of mistakes that can void a contract.

COMMON MISTAKE – If both parties make the same mistake regarding the subject matter.

For example, imagine that you agree to buy a car from a dealer. As you sit in the dealer's office, the car catches on fire. You sign the contract, pay for the car, and walk out to the lot to find the car a smouldering heap. This contract would be void, because each person was mistaken about the condition of the car.

MUTUAL MISTAKE – If both parties have a different subject matter in mind, the contract will be void.

For example, imagine that you are negotiating a car purchase, and you think it's the red Ford but the seller thinks you are dealing on the blue Kia. This contract would be void, because both parties made a mistake as to the subject matter.

UNILATERAL MISTAKE – An error is made by one party. The other party knows that this is a mistake, but makes no attempt to fix this error.

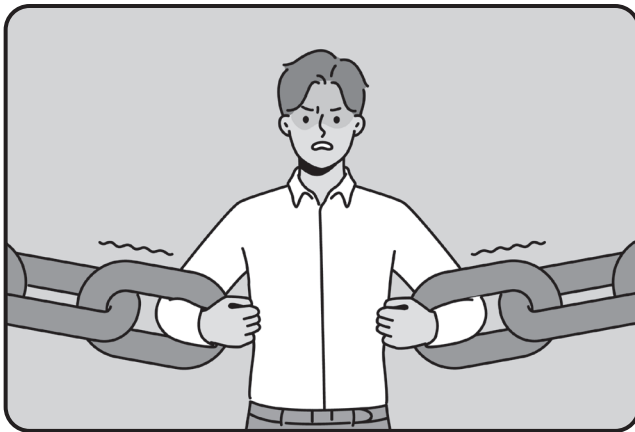
For example, imagine that Tyler sells you a vase that you believe is an ancient Roman artifact. In fact, Tyler bought the vase at Zellers. If Tyler knows that you think it's an ancient artifact, it is a unilateral mistake. This contract would be void.



DURESS

Genuine consent does not exist if a person agrees to a contract under the threat or use of physical violence.

For example, imagine that you tell a friend that if they do not buy your skates, you'll kidnap their dog. This contract would be void because your friend would be entering the contract under duress.



UNDUE INFLUENCE

Genuine consent does not exist if an improper use of power has been used by a person to form a contract. Generally, a court would need to decide if a situation involved the improper use of power. The burden of proof would rest upon the person alleging undue influence.

For example, imagine that you entered into a contract with the mayor of your town to buy his lawn mower. You later wanted to void the contract because you said the mayor exerted undue influence on you to buy the lawn mower. For the contract to be void, you would have to prove to the court how the mayor exerted undue influence.

However, in some relationships, undue influence is presumed to exist when alleged. Undue influence is presumed to exist in the following relationships:

- Parent contracting with child
- Teacher contracting with student
- Doctor contracting with patient
- Lawyer contracting with client
- Accountant contracting with client
- Clergyperson contracting with parishioner

Because of the power imbalance and emotional influence in the above relationships, any contract made between these people would be voidable at the option of the individual alleging undue influence.

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KILLER DEAL!

A contract killing is when one person is hired to murder someone. Since 1917, it is estimated that the Chicago Mob has ordered over 1100 contract killings. Among these murders, mob boss Sam Giancana was murdered while frying sausage in his home, FBI informant Richard Cain was shot in a sandwich shop, and Al Capone's chief hit man Jack McGurn was gunned down in a bowling alley.

One commonality of all these crimes is that the elements of a contract exist. There was the offer to pay someone to commit a murder, the acceptance, and the consideration of payment for the killing.

However, the contract is not enforceable at law. This is because any contract for an illegal activity is not a legally binding contract.

LIFE INSURANCE - EVERYBODY IS ACCEPTED

A frequent claim in life insurance advertisements is that no applicant will be turned down. However, this claim does not necessarily mean that the full benefits will be paid if that person should die.

For example, Hans knows that he is on his deathbed, says nothing, and enters into a life insurance contract. Chances are the full benefits will not be paid out if he dies shortly thereafter. This is because remaining silent about a terminal health condition is considered a misrepresentation. Had Hans revealed this information, he only may have been eligible for a small insurance payout.

