

LAW122 REPRESENTATIONS

TEXTBOOK: McInnes, Kerr, & Vanduzer. (2018). Representations and Terms in *Managing the Law* (5th ed., pp. 211-234). Canada: Pearson.

Contractual Term	Pre-Contractual Term
Provision/term in an agreement that creates a legally binding enforceable obligation.	Statement one party makes by words or conduct with the intention of inducing another party to enter into a contract.
When buying a car, the negotiated price is a contractual term.	When buying a car, the seller makes a “representation” about the condition of the car that induces you to buy the car.

Misrepresentation is false statement of an **existing** fact that causes a recipient to enter into a contract; Pre-contractual term is not a contractual term!

KEY ELEMENTS OF MISREPRESENTATION

- False statement**
 - o Cannot be true
 - o Silence does not equal misrepresentation, *unless* it falls under one of the exceptions below:
- Of an existing fact**
 - o Not an opinion (statement of belief or judgment); exception would be expert opinion
 - o Not a statement of future conduct (e.g. Weather will be YYY); exception would be a description of one’s intent
 - o Not a statement of the law; exception would be statement of legal consequences
- Causing recipient to enter into a contract**

WHEN CAN SILENCE RESULT IN MISREPRESENTATION?

- When silence would distort previous assertion**
 - o For example: You told a customer the car you are selling has never been in an accident; when an accident happens prior to the sale, you must disclose so.
- When silence is a half truth**
 - o For example: When a statement is half true and half false resulting in confusion.
- When the contract requires a duty of utmost good faith – duty to disclose all the relevant facts**
 - o For example: When buying insurance must disclose all relevant facts.
- When special relationship exists between parties – special relationship**
 - o For example: Your teacher or accountant with whom you have a close and trusted relationship.
- When statutory provision requires disclosure – material facts disclosure outlined in e.g. insurance legislation**
- When facts are actively concealed**
 - o For example: Constantly concealing the structural damage of the building.

Type of Misrepresentation	Elements of Proof	Available Remedies
Innocent Misrepresentation: A statement a person makes carefully and without knowledge of the fact that it is false.	<ol style="list-style-type: none"> 1. False Statement of fact or misleading silence 2. Inducing a contract 	<input type="checkbox"/> Rescission of contract
Negligent Misrepresentation: A false, inducing statement made in an unreasonable or careless manner (misrepresentation & negligence).	<ol style="list-style-type: none"> 1. False statement 2. Made in unreasonable or careless manner 3. Inducing a contract 4. Causing a loss that is not always sufficiently remedied by rescission 	<input type="checkbox"/> Rescission of contract <input type="checkbox"/> Damages in tort
Fraudulent Misrepresentation: When a person makes a statement, <u>they know is false or that they have no reason to believe is true or that they recklessly make without regard to the trust</u> (misrepresentation & deceit).	<ol style="list-style-type: none"> 1. False statement or misleading silence 2. Made without honest belief in the truth 3. Made with intent to induce a contract 4. Inducing contract 5. Causing a loss not always sufficiently remedied by rescission 	<input type="checkbox"/> Rescission of contract <input type="checkbox"/> Damages in tort