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<b>MISTAKE</b>	
<b>General Principles</b>	
Vitiating factors are legally recognised factors which make an apparent contract lose its validity when it comes to its enforcement [due to factors which nullify or negate the apparent consent of one or both parties]	
Vitiating factors recognised by law are mistake, misrepresentation, duress, undue influence and unconscionability	
<p>A <b>void contract</b> is a legal nullity, it does not confer any rights or impose any obligation on the parties and has retrospective effect.</p> <p>A <b>voidable contract</b> is valid unless and until it is avoided or set aside by the party entitled to do so</p>	
To be mistaken is to be wrong as to a matter of fact that influences the formation of a contract	
For mistake to have any effect on a contract, the mistake must be one which existed at the time the contract was concluded i.e. the assumption must be factually wrong at the time the contract was concluded	<u>Amalgamated Investment &amp; Property Ltd v John Walker</u> [ <i>building of architectural or historic interest; bldg. placed on list the day after execution</i> ]
At common law, mistake operates so as to negate or in some cases nullify consent hence rendering the contract void ab initio. Thus, a third party who acquires an interest under such a contract, even if it's for value and in good faith, would have a void title	
At common law, apparent contracts should as much as possible be upheld and enforced in the interest of commercial convenience	<u>Frederick Rose v William Pim Junior</u> [ <i>Moroccan horsebeans/feveroles</i> ]
<p>In equity, mistake may</p> <ul style="list-style-type: none"> <li>- be a defence in an action for specific performance;</li> <li>- entitle the parties to have a written contract rectified;</li> <li>- be a ground for setting aside a contract or making it voidable</li> </ul> <p>A common mistake, even on a most fundamental matter, does not make a contract void at law; but it makes it voidable in equity.</p> <p>A contract is liable in equity to be set aside if the parties were under a common misapprehension either as to facts or as to their relative and respective rights, provided that the misapprehension was fundamental and that the party seeking to set it aside was not himself at fault</p>	<p><u>Malins v Freeman</u> [<i>D didn't intend to bid for particular lot at an auction; he came late and didn't hear; held he didn't intend to enter into the contract so inequitable to make him perform it</i>]</p> <p><u>Joscelyne v Nissen</u> [<i>father and daughter agreed at the time of sale of business to daughter that she'll pay bills but not included in contract, refused to perform it, rectification ordered</i>]</p> <p><u>Riverlate Properties v Paul</u> [<i>lessor forgot to include a term in a leasehold without the knowledge of lessee who subsequently took the lease, rectification refused</i>]</p> <p><u>Sole v Butcher</u> [<i>mistake that flat not tied down to controlled rent, lessee sought a reduction, held that the mistake was fundamental but not void, thus rescission on terms stated by Denning</i>]</p> <p><u>Grist v Bailey</u> [<i>hse sold for less cuz assumption that there was a statutory tenant so no vacant possession. Tenant had died. Mistake fundamental, rescission ordered</i>]</p> <p><u>Magee v Pennine Insurance</u> [<i>M buys car for son but without reading what he was signing indicated that M had a provisional licence. Accident and insurance co agrees to pay a sum but discovers the misrepresentation and refuses to pay. Held; both parties under common mistake that the policy was good and binding thus liable to be set aside in equity</i>]</p>
<b>Mutual Mistake</b>	
It exists where to all outward appearances the parties are agreed but there is in fact no genuine consensus between them because one party makes an offer to the other which the other accepts in a different sense from that intended by the offeror	<u>Raffles v Wichelhaus</u> [ex Peerless] <u>Scriven Bros v Hindley</u> [tow and hemp]
Based on the principle that if an offer doesn't correspond with acceptance, then no contract ensues. However intention of the parties are objectively determined thus a contract will be deemed to exist if an agreement can be inferred from the objective facts even if the parties	<u>Tamplin v James</u> [auction for lot]

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actually intended different things	
Where the parties have exhibited all the outward signs of agreement to the proposed terms, they will be deemed to be bound by the contract to which they manifestly expressed their assent to even if their actual intentions were different	<p><u>Tamplin v James</u> [<i>reasonable man would understand the contract in a certain sense</i>]  <u>Frederick E Rose v Pim</u> [<i>feveroles/Moroccan horsebeans</i>]</p>
Where the terms of the contracts are so ambiguous that it's impossible to objectively determine what it relates to, and the offer is innocently accepted in a sense different from the intention of the offeror, the contract will be declared void	<p><u>Raffles v Wichelhaus</u> [<i>unclear which Peerless was being referred to</i>]</p>
A contract may also be rendered ambiguous by the surrounding circumstances and when a party innocently accepts the offer in a sense different from that which is intended, the contract will be held to be void.	<p><u>Scriven Bros v Hindley &amp; Co</u> [<i>hemp &amp; tow bore same shipping mark hence no difference in contents; defendant bid for tow believing it to be hemp; contract not enforceable cuz owing to ambiguity of the circumstances</i>]</p>
Also, where the offer does not contain the real intention of the party making it and the other party knows of this mistake and seeks to take advantage of it, the law will set the contract aside on ground of mistake	<p><u>Hartog v Colin &amp; Shields</u> [<i>hare skins quoted per pound instead of per piece</i>]</p>
<b>Unilateral Mistake</b>	
It exists where only one party to the contract is mistaken. Typically the other party is aware of the first party's mistake but makes no mistake himself	<p><u>Smith v Hughes</u> [oats]</p>
Most common example is iro of mistake as to the identity of a contracting party typically where one party has in mind a definite, identifiable person with whom he intends to contract but ends up contracting with someone else (usually through the fraud of that person)	<p><u>Cundy v Lindsay</u> [Blenkiron &amp; Blenkarn]  <u>Lewis v Averay</u> [the actor Greene]</p>
Where a party makes an offer to a particular person, it can only be accepted by the person to whom it is addressed	<p><u>Boulton v Jones</u> [<i>Brocklehurst; right of set-off; no contract btm Jones and Boulton so J not liable for price of goods</i>]</p>
Where it is established that there was a mistake as to the identity of the contracting party, the resulting contract is deemed to be void. Thus the rogue doesn't acquire any legal title to the goods in accordance with the nemo dat quod non habet rule. hence, where the goods are sold to a third party, he obtains no title to the goods and the original owner is entitled to recover the goods from the third party	<p><u>Cundy v Lindsay</u> [<i>signed as if Blenkiron Co. although really Blenkarn of him they knew not</i>]</p>
Where mistake as to identity cannot be established, the resulting contract will not be deemed to be void but merely voidable on grounds of fraudulent misrepresentation. The contract is valid unless and until it is set aside. Here, the rogue would be deemed to have obtained valid title to the goods but if the owner takes steps to avoid the contract, the rogue's title will be rendered void.	<p><u>King's Norton Metal Co v Edridge, Merritt &amp; Co</u> [Ihd's purporting to be a company called Hallam &amp; Co, intended to deal with whoever wrote the letter hence identity not crucial]</p>
If the rogue's title has not yet been avoided by the time he sells the goods to a third party, the rogue passes on a valid title to the third party and the owner cannot recover the goods from the third party	
<p>To establish mistake as to identity of contracting party</p> <ul style="list-style-type: none"> <li>- the plaintiff should have intended to deal with a person other than the one with who he has apparently made a contract and the latter was aware of this intention [<i>a definite, identifiable person</i>]</li> <li>- the identity of the other contracting party was a matter of crucial importance to the plaintiff at the time of entering into the contract</li> <li>- reasonable steps were taken to verify the identity of the party</li> </ul>	<p><u>Cundy v Lindsay</u> [Blenkiron &amp; Co]   <u>King's Norton Metal v Edridge, Merritt &amp; Co</u>   <u>Ingram v Little</u></p>
Where the parties deal with each other face to face (contract inter praesentes), there is a strong presumption that the offeror intended to contract with the person who was physically present and none else	<p><u>Phillips v Brooks</u> [<i>Sir George Bullough, pearls and rings, contract not void but voidable on grounds of fraudulent misrepresentation</i>]   <u>Ingram v Little</u> [PGM Hutchinson, car]</p>
Where the rogue dishonestly claims that he is acting as an agent for another person, the presumption which applies in contracts inter praesentes will be deemed to be rebutted	<p><u>Hardman v Booth</u> [<i>Gandell &amp; Sons, rogue not member of the firm and had no authority to act on its behalf; goods intercepted and sold; plaintiff can recover from third party as no title passed to</i>]</p>

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<p>That's because there is no contract between the seller and the purported principal and the rogue can't accept on behalf of the principal if it's the principal who the offer's been made to.</p>	<p><i>rogue</i>]  <u>Lake v Simmons</u> [<i>plaintiff gives pearl necklets to rogue posing as wife of Van der Borgh, held that he was made to believe he was dealing with a different person</i>]  <u>Shogun Finance v Hudson</u> [<i>Mr. Patel, credit check, credit company only meant to deal with the person it deemed creditworthy after the check not the rogue</i>]</p>
<p>The courts are of the view that, as a matter of legal policy, it would be more appropriate for the loss to be borne by the owner, being the one who takes the risk to part with his goods without payment</p>	<p>Minority in <u>Shogun Finance v Hudson</u></p>
<p><b>Common Mistake</b></p>	
<p>It arises when the parties have both contracted in the mistaken belief that some fact which is the basis of the contract is true when in fact it is not i.e. there is a fundamental mistaken assumption which is shared by both parties; both parties make the same mistake about the circumstances surrounding the transaction</p>	<p><u>Leaf v International Galleries</u> [<i>painting by Constable</i>]</p>
<p>Common mistake will only be declared void by the courts if it radically affects the substance of the contract or it empties the contract of all its contents</p>	<p><u>Bell v Lever Bros</u> [<i>Niger Co./Cocoa trading</i>]  <u>Nicholson &amp; Venn v Smith-Marriot</u> [<i>Charles I crest on napkins</i>]</p>
<p>The difference between common mistake on one hand, and mutual and unilateral mistake on the other is that there is no question of lack of agreement between the parties. In this situation, the courts will apply the objective test to determine whether the mistake is sufficiently fundamental as to make the contract void on grounds of mistake</p>	<p><u>Leaf v International Galleries</u>  <u>Nicholson &amp; Venn v Smith-Marriot</u></p>
<p><b>Common mistake as to the existence of the subject matter</b></p>	
<p>Where unknown to the parties the subject matter of the contract at the time the contract is made does not exist, the contract may be void on grounds of common mistake i.e. where the parties are mistaken as to the very existence of the subject matter of the contract, such a mistake may be deemed to be sufficiently fundamental as to render the contract void</p>	<p><u>Couturier v Hastie</u> [corn sale]</p>
<p>“<i>Res extincta</i>” – where the subject matter of the contract has perished or is otherwise non-existent – empties the contract of all its contents and render the contract void if it was a common mistake of both parties</p>	<p>Per Lord Atkins in <u>Bell v Lever Bros</u>  <u>Couturier v Hastie</u> [<i>corn cargo sold for what could be obtained; object of contract no longer in existence</i>]  <u>McRae v Commonwealth Disposals Commission</u> [<i>non-existent tanker but due to fraud not mistake</i>]</p>
<p>Whether or not the contract will be void depends on the interpretation of the contract. if on the true construction of the contract it's found that one party guaranteed or impliedly promised that the subject matter of the contract was in existence, and this turns out to be false, the contract so made is not void and the party which made the promise can be sued for breach of contract</p>	<p><u>McRae v Commonwealth Disposals Commission</u> [<i>non-existent oil tanker on non-existent Jourmand Reef off Papua</i>]</p>
<p>There's an implied condition on the part of the seller that the goods are in fact in existence at the time when the contract is made.   <i>Where the goods are not in existence, the buyer can sue the seller for damages for breach of an implied condition.</i></p>	<p>Section 9, Sale of Goods Act, 1962 (Act 137)</p>
<p><b>Common mistake as to title</b></p>	
<p>Principle of <i>res extincta</i> has been extended to cases where unknown to both parties, what is proposed to be sold or transferred to a person is already owned by the person to whom it is to be transferred – “<i>res sua</i>”</p>	
<p>Where a person agrees to purchase property which unknown to himself and the seller it's already owned by the buyer, such a contract may be void by reason of the common mistake as to title</p>	<p>Per Lord Atkins in <u>Bell v Lever Bros</u>  <u>Cooper v Phibbs</u> [<i>salmon fishery devolved to plaintiff who unknowingly thought it belonged to his deceased uncle</i>]</p>
<p>Normally a seller is taken to guarantee that he has title to the property sold but it's only when unknown to both parties the buyer already owns the property will the contract be deemed void at common law</p>	
<p>There is an implied warranty on the part of the seller that he will have a</p>	<p>Section 10(1), Sale of Goods Act (Act 137)</p>

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right to sell the goods at the time the property is to pass i.e. seller must have title to the property he's purporting to sell	
<b><i>Common mistake as to the quality of the subject matter</i></b>	
Generally, if the parties are agreed on the same terms with respect to the same subject matter, the courts are most reluctant to declare a contract void simply because the parties are mistaken as to the quality of the subject matter.	<u>Frederick E. Rose v William Pim</u> [ <i>feveroles/ Moroccan horsebeans</i> ] <u>Bell v Lever Bros</u> [ <i>not to make any private profit by doing business on their own; employment terminated before 5 yr term; agreed compensation paid after which it was found that they had engaged in business for profit, mistake not sufficiently fundamental to make contract void</i> ]
The test which has to be fulfilled before a mistake as to quality of subject matter can make a contract void: 1. The mistake must be of both parties 2. It must be a mistake as to the existence of some quality which makes the thing without that quality essentially different from the thing as it was believed to be i.e the quality must be fundamental	<u>Bell v Lever Bros</u> , Per Lord Atkins and Lord Thankerton <u>Leaf v International Galleries Ltd</u> [ <i>painting by Constable; dismissed</i> ] <u>Nicholson &amp; Venn v Smith-Marriot</u> [ <i>napkins with crest of Charles I; held items essentially different from what it was believed to be</i> ]  <u>Associated Japanese Bank v Credit Du Nord</u> [upheld]
When goods are sold under a known trade description without misrepresentation and without breach of warranty, the fact that both parties are unaware that the goods of that known description lack any particular quality is completely irrelevant	<u>Harrison &amp; Jones v Buntin &amp; Lancaster</u> [ <i>Calcutta Kapok; dismissed</i> ]  <u>Frederick Rose v William Pim</u> [ <i>Moroccan horsebeans/feveroles; dismissed</i> ]
Whenever it can be inferred from the terms of a contract or its surrounding circumstances that an agreement has been reached based on a particular contractual assumption which is fundamental to the continued validity of the contract, and that assumption is not true, the contract may be declared void on that ground.  i.e. a common mistake may be sufficiently fundamental to make a contract void where both parties believe that the contract is capable of being performed when in fact it is not	<u>Scott v Coulson</u> [ <i>life insurance policy, assured was dead, contract void</i> ]  <u>Sheikh Bros v Ochsner</u> [ <i>estate incapable of producing quantity of sisal contracted for, contract void</i> ]  <u>Associated Japanese Bank v Credit Du Nord</u> [ <i>lease back agreement with P; D guaranteed performance of rogue who subsequently disappeared. Guarantee void since issued on an express or implied condition that the machines existed</i> ]
<b>Mistake in Equity</b>	
Common law rules are in some cases a source of hardship to parties who have genuinely contracted under a mistaken assumption. Equity seeks to mitigate the harsh effects of the restrictive approach adopted by common law	
Equity follows the law, thus if a contract is void at common law, equity will also treat it as a nullity. However, some contracts which are deemed to be valid at common law may be held to be unenforceable in equity. The equitable remedies are rescission, rectification, refusal of specific performance	
<b>Rescission</b> is the setting aside of a contract. in equity, a contract affected by common mistake is not void but voidable; however the court will ensure that the other party has justice as well	<u>Cooper v Phibbs</u> [ <i>defendants given a lien over the fishery for the money they had spent improving the property</i> ]
In equity, a contract is liable to be rescinded if the parties were under a common misapprehension either to facts or as to their relative and respective rights provided the misapprehension is fundamental and the party seeking to rescind was not himself at fault	<u>Sole v Butcher</u> [ <i>controlled rent</i> ]  <u>Grist v Bailey</u> [ <i>statutory tenant dead, property with vacant possession cost more, specific performance denied</i> ]  <u>Magee v Penine Insurance</u> [ <i>no provisional licence</i> ]
The courts will only grant the remedy of <b>specific performance</b> if it's fair and just to do so. It may thus refuse an application for an order of specific performance on the ground that the party against whom the contract is to be enforced made a mistake	
Specific performance will be refused if it's clear that the defendant entered into the contract under an honest mistake and if the enforcement of the contract will impose a heavy burden on the party who has contracted under the accidental mistake	<u>Webster v Cecil</u> [ <i>C refused to sell property to W at £2,000 but when he mistakenly offered to sell it for £1250 instead of £2250; specific performance refused</i> ]

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	<u>Malins v Freeman</u> [ <i>specific performance to pay for lot bid for at auction refused on grounds of mistake and also hardship if he's made to honour the contract</i> ]
The remedy of <b>rectification</b> may be available where terms of the contract have been reduced into writing and the parties made a mistake in recording an oral agreement previously made	<u>Joscelyne v Nissen</u> [ <i>father-daughter written agreement didn't include oral agreement iro payment of utilities</i> ]
<p>Before remedy of rectification will be granted, there must be a legal issue between the parties as to their rights under the contract</p> <p>There must also be some outward expression of accord or agreement on the terms up to the moment of the execution of the contract e.g. agreed points or common intention btn the parties before the execution of the written contract</p> <p>There must be a literal disparity btn the terms of the prior oral agreement and those of the written document</p> <p>It's granted iro of common mistake i.e. the mistake must be shared by both parties thus where mistake is unilateral, the remedy will not be available</p>	<p>Joscelyne v Nissen</p> <p><u>Frederick Rose v William Pim</u> [<i>oral same as written contract</i>]</p> <p><u>Riverlate Properties v Paul</u> [<i>intention to make tenant liable for part of cost of external repairs but not communicated to tenant, application dismissed</i>]</p>
<b>MISREPRESENTATION</b>	
A statement which is intended to influence the other party into entering a contract but which does not become part of the contract as a term is referred to as a representation. A misrepresentation is thus a representation which is untrue or false	
The general effect of a misrepresentation is that it renders the contract voidable at the option of the party misled	
An operative misrepresentation consists of a false statement of fact made by one party to another before or at the time of the making of a contract which is intended to and in fact induces the other party to enter into the contract	
<p><u>Elements</u></p> <ul style="list-style-type: none"> <li>- There must be a false representation either by words or by conduct</li> <li>- Representation must be one of existing fact i.e. it must relate to a past or present state of affairs</li> <li>- It should be made with the intention to induce the other party to enter the contract</li> <li>- The other party should have been induced by the false representation</li> </ul>	
A statement of opinion is not considered as a representation because it is not a positive assertion of fact	<u>Bisset v Wilkinson</u> [ <i>2,000 sheep; land never used for sheep farming</i> ]
A statement of opinion can amount to a misrepresentation of fact if it's proved that the person who expressed the opinion did not in fact hold that opinion or could not as a reasonable man with his knowledge of facts, honestly hold such an opinion	<u>Smith v Land &amp; House Property Corp</u> [ <i>"let to a most desirable tenant"</i> ]
A statement of intention which relates to the future may in some cases amount to a misrepresentation of fact if it turns out that at the time the statement was made, the maker had no intention to put that stated intention into effect. It constitutes a misrepresentation of the maker's present state of mind	<u>Edgington v Fitzmaurice</u> [ <i>money lent for improvement of company bldgs and expansion when it was actually to pay off existing debt</i> ]
Generally commendatory statements or mere sales talk usually expressed in vague terms are used in ads and promotional items are considered mere puffs and have no effect at law or in equity	<u>Dimmock v Hallet</u> [ <i>'land is fertile and improvable' while in fact land turned out to be useless and abandoned</i> ]
<b>Silence as Misrepresentation</b>	
At common law, mere silence is not regarded as misrepresentation even if disclosure of a known fact would have influenced the decision of the	<u>Smith v Hughes</u> [ <i>good oats vs old oats</i> ]

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other party as long as the silent party isn't guilty of any misleading conduct	<u>Ray v Sempers</u> [ <i>accused waited for waiter to leave room before dashing out of restaurant without paying. Held conduct didn't amount to misrepresentation by conduct</i> ]
A party's silence may constitute a misrepresentation of fact in <b>contracts uberrimae fidei</b> where one party alone is in possession of the material facts affecting the rights of the parties	<u>Carter v Boehm</u> [ <i>C concealed info about the weaknesses of a fort being insured that would have helped underwriter assess the risk better</i> ]
Silence will also constitute a misrepresentation when a true statement becomes untrue to the knowledge of the representor before the contract is concluded and the representor, knowing that the representee is relying on the original statement, fails to inform him of the change in circumstances	<u>With v O'Flanagan</u> [ <i>medical practice worth 2K but by conclusion of contract was worth much less and he didn't say</i> ]
A half-truth may amount to a misrepresentation if the representor decides to make a representation on a matter but doesn't disclose everything fully	<u>Curtis v Chemical Cleaning Co</u> [ <i>exclusion of liability for damage to beads and sequins only</i> ]
<b>Representation should be addressed to party misled</b>	
The party relying on the misrepresentation should be the one it was made or intended to be passed on to or a member of a class of persons at which the representation was directed	<u>Peek v Gurney</u> [ <i>IPO directed at people to whom shares were allotted to not those who bought it from allottees</i> ]
<b>Inducement</b>	
The representee must show that the misrepresentation operated on his mind to induce him to enter the contract	
There will be no remedy if the other party did not become aware of the misrepresentation before the conclusion of the contract because he could not have been induced by something he was unaware of	<u>Horsfall v Thomas</u> [ <i>defective gun</i> ]
If misrepresentation affected the representee's decision to enter the contract, it matters not that other factors also induced him to enter the contract	<u>Edgington v Fitzmaurice</u> [ <i>in addition to being made to think loan was for expansion, he was under erroneous belief that he'd have a charge over the company</i> ]
If the representee didn't allow the representation to affect his decision to enter the contract, even though it was designed to, he cannot make it a ground for rescission	<u>Smith v Chadwick</u> [ <i>prospectus said a VIP was on the BOD, P not influenced by this fact</i> ]
Where representee relied on the accuracy of his own investigations and not on the representation, he cannot be said to have been induced to enter the contract by the misrepresentation	<u>Atwood v Small</u> [ <i>SPA of mine, earning capa exaggerated and unreliable; independent agents appointed to verify reported that vendor's statements true</i> ]
Where representee has entered contract in reliance on the misrepresentation, the representor cannot be heard to say that if the representee had taken reasonable care, he would have discovered falsity of the representation	<u>Redgrave v Hurd</u> [ <i>worthless law practice</i> ]
If it can be proved that the representee had actual and complete knowledge of the true facts, although the representation made was false, it would not be an operative misrepresentation since he can't claim to be misled by it	<u>Redgrave v Hurd</u>
<b>Fraudulent Misrepresentation</b>	
A fraudulent misrepresentation occurs when a person makes a false representation knowingly, or without belief in its truth or recklessly, careless whether it is true or false	<u>Derry v Peek</u> [ <i>shares purchased in reliance on info in IPO that company had permission to use steam to power trams; held representation not fraudulent as made bona fide</i> ]
In addition to being a ground for rescission of a contract, proof of fraudulent misrepresentation entitles the party misled to damages for deceit	
A party that has been fraudulently misled is entitled to <ul style="list-style-type: none"> <li>- Rescind the contract + damages in respect of loss</li> <li>- Repudiate the contract</li> <li>- Set up the fraud as a defence in the event the representor sues for breach of contract or specific performance</li> </ul>	

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The defendant is bound to make reparation for all actual damages flowing from the fraudulent inducement and he cannot be heard to say that the damages were not reasonably foreseeable by him	<u>Doyle v Olby (Ironmongers) Ltd</u> [ <i>sale of business which was said to be profitable when it wasn't; half of the trade was wholesale and not over the counter</i> ]
<b>Negligent Misrepresentation</b>	
It's where a representation is made carelessly and in breach of a duty owed by the representor to the representee to take reasonable care that the representation is accurate	
Elements <ul style="list-style-type: none"> <li>- The representor must owe a duty to the representee</li> <li>- The statement is made carelessly</li> <li>- The statement is inaccurate</li> </ul>	
Initially, a duty of care was only said to exist where there was a contract between the representor and the representee  A false statement, made carelessly, but not fraudulently, though acted upon by the other person to his detriment, was not actionable in the absence of any contractual or fiduciary relationship b/n the parties	<u>Nocton v Ashburn</u> [ <i>solicitor advised client to release part of mortgage and suffered loss; held advice given without sufficient skill hence breach of duty arising from fiduciary relationship</i> ]  <u>Candler v Crane, Christmas &amp; Co</u> [ <i>clerk carelessly prepared accounts which investor relied on to invest in the business; held no fiduciary relationship b/n the accounting firm and the plaintiff; action dismissed</i> ]
In the absence of a contractual or fiduciary relationship a duty of care will be deemed to be owed to the party by reason of a special relationship which demanded that care should be taken that the statement being made is accurate	<u>Hedley Byrne v Heller &amp; Partner</u> [ <i>decision to place more adverts for Easipower based on information from their bankers about their financial standing</i> ]
Such a special relationship would be deemed to exist in cases involving professional or business relationships where even in the absence of contract, it can be established that the representor knew or out reasonably to have known that the representee was likely to act or rely on the representation to his detriment.  This relationship doesn't require a direct contract but exists in a business or professional transaction whose nature makes clear the gravity of the enquiry <ul style="list-style-type: none"> <li>- the representor voluntarily assumes responsibility and</li> <li>- there's foreseeable detrimental reliance by the representee</li> </ul>	<u>Hedley Byrne</u> [ <i>there was a disclaimer which is why the action failed</i> ]
No liability arises in purely social relationships, even if the advice is given by a professional person. However, where the parties are friends, a duty of care may be deemed to exist if the representor voluntarily assumes responsibility in a business connection and the advice is not given on a purely social occasion	<u>Chaudhry v Prabakhar</u> [ <i>P had no knowledge of cars, D agreed to help P find a good second hand car but she didn't want one which had been in an accident; he got her a lemon sold by a car sprayer and panel beater which had been involved in an accident; car not roadworthy, successfully sued friend</i> ]
A duty of care may arise between the parties to a contract during pre-contractual negotiations if one party gives advice in such circumstances that it is clear that the other party will rely on the superior skill and knowledge of the representor	<u>Esso Petroleum v Mardon</u> [ <i>reliance on profitability of fuel station</i> ]
<b>Innocent Misrepresentation</b>	
It's an untrue statement made in good faith with honest belief in its truth and intended to induce a party to enter into a contract. it's neither fraudulent nor negligent	
An innocent misrepresentation gives the party misled a right to rescind the contract but it does not entitle the party misled to claim damages.  The misled party may also repudiate the contract and set up the misrepresentation as a defence to an action brought against him for breach of contract or for specific performance of the contract.	<u>Redgrave v Hurd</u> [ <i>contract to buy house and useless solicitor's practice rescinded</i> ]  <u>Newbigging v Adam</u> [ <i>partner in manufacturing business, misrep of capacity of a machine, business failed, rescission and indemnity</i> ]
The party misled may bring an action for rescission and in some cases, claim an indemnity against all losses or liabilities imposed on him by the contract itself	<u>Whittington v Seale-Hayne</u> [ <i>poultry farmers take lease on misrep that premises in a sanitary condition. Under lease, P to execute all works and repairs. Water supply poisons, poultry died, manager became ill. Rescission ordered but indemnity against only those</i> ]

Contract II

Principle	Authority
<p>Damages are all those losses which naturally and reasonably flow from the breach of a contract.</p> <p>Indemnity is for losses incurred in the discharge of the obligations created by the contract made</p>	<p><i>losses stated in the contract</i></p>
<b>Rescission</b>	
<p>Rescission consists in the setting aside of the contract. its aim is to cancel the contract and to restore the parties as far as possible to the position they were in before the contract was made in an attempt to achieve restitutio in integrum</p>	
<p>The party misled may elect to either rescind or affirm the contract. If the contract is rescinded, he must bring his decision to the notice of the representor</p>	<p><u>Car &amp; Universal Finance v Caldwell</u> [<i>rogue's cheque for car sale dishonoured when presented next day. Automobile assoc notified as well as popo for assistance to find the car. Car sold after owner's notice to AA. Held the notification was sufficient notice of intention to rescind so no title passed to third party</i>]</p>
<p>A condition for the rescission of a contract is the possibility of restitution. Thus, if restitution is impossible, there can be no rescission of the contract. restitution need not be exact or precise but it must be substantial</p> <p>(account for any profits derived from its use and also make allowance for any deterioration caused by dealing with the subject matter)</p>	<p><u>Erlanger v New Sombrero Phosphate Co</u> [<i>phosphate mine bought not so worked that restitution was impossible</i>]</p>
<p>Rescission is impossible where the subject matter has been so altered as to change the character of it</p>	<p><u>Clarke v Dickson</u> [<i>shares taken in a partnership which was turned into an LLC. Held rescission impossible</i>]</p>
<p>Where the subject matter is only deteriorated in value but still retains its substantial identity the right to rescind is not lost</p>	<p><u>Head v Tattersall</u> [<i>return horse sold as thoroughbred which was seriously wounded in a trial to test it</i>]</p>
<p>Where the representee expressly declares his intention to proceed with the contract or does an act from which such an intention can be implied after discovering the misrepresentation, he will be deemed to have affirmed the contract</p>	<p><u>Long v Lloyd</u> [<i>D offered to pay half of the cost of repairs on a vehicle he sold to P which was a lemon – speedometer broken, accelerator kaput, etc but he still went ahead and bought it. Agreeing to the repairs was affirmation</i>]</p>
<p>In the case of fraudulent misrepresentation, lapse of time does not itself act as a bar to rescission but may be evidence of affirmation because of the view that time begins to run from the discovery of the truth.</p> <p>In the case of innocent misrepresentation, a right to rescind may be barred by lapse of time even without any evidence of affirmation</p>	<p><u>Leaf v International Galleries</u> [<i>rescission sought 5 years later. Held right to rescind not available by reason of lapse of time</i>]</p>
<p>When a contract is voidable, and a third party acquires an interest in the subject for value, in good faith and without notice, the party with the right to rescission loses his right to rescind</p>	<p><u>Phillips v Brooks</u> [<i>Sir George Bullough</i>] <u>Lewis v Averay</u> [<i>Richard Greene</i>]</p>
<b>DURESS</b>	
<p>A contract which is obtained by illegitimate forms of pressure or intimidation is voidable on the ground of duress.</p> <p>At common law, duress consists of actual or threatened violence to the person, threats of imprisonment or prosecution or threats of violence or dishonour to a person's wife, husband or children.</p> <p>It must be established that the plaintiff was induced by the threats to enter into the contract which he is seeking to rescind.</p>	<p><u>Kaufman v Gerson</u> [<i>plaintiff extorted a contract from the G by threats of a criminal prosecution against her husband, the threatened proceedings being of such a kind that, if taken, they would ruin the husband and also socially disgrace the wife and children. She performed part of the contract and K brought an action to claim the balance and G counterclaimed duress</i>]</p>
<p>If threat was not the only reason for a person executing a promise, that person was entitled to relief notwithstanding that he might not have entered into the transaction even if there had been no threats to induce him to do so.</p> <p>There is no burden on the claimant to show that but for the threats no promise would have been extracted. In fact the onus is on the one who threatened to show that his threats didn't influence the other to enter into</p>	<p><u>Barton v Armstrong</u> [<i>A threatened to kill B if he didn't pay him monies owed him for kicking him off the board of Landmark and for securing a loan</i>]</p>



Principle	Authority
the transaction.	
Where a party is induced to enter into a contract as a result of a threat by the other party to break an earlier contract, it may constitute <b>economic duress</b> and entitle the party threatened to avoid the contact	<p><u>D&amp;C Builders Ltd v Rees</u> [<i>D was facing bankruptcy and R refused to pay for work done for them if D didn't accept part payment in full satisfaction of the existing debt so D accepted out of desperation. Held that contract voidable on ground of duress</i>]</p> <p><u>B&amp;S Contract &amp; Design v Victor Green Publications</u> [<i>V made to pay B's employees' severance payment before contract to erect stands for their trade exhibition was completed. V netted the payments off the contract sum and B sued. Judgment for V since B had made a veiled threat to D's economic interests</i>]</p>
<p>If a party who had entered into a contract under economic duress later affirms the contract he is then bound by it.</p> <p>The fact that it was not their intention to affirm it did not entitle them to avoid the agreement if that intention had not been indicated to the other party.</p>	<p><u>North Ocean Shipping v Hyundai Construction</u> [<i>N entered into a contract with H to build a ship at a fixed price. Due to devaluation of USD, H asked for additional 10% on remaining instalments else ship would not be delivered. N agreed and paid the remaining instalments + 10% without protest and accepted delivery of the ship without protest. N sought to recover the additional 10% by claiming it was made involuntarily due to economic duress. Held: by failing to take any action by way of protest between the date of the 2<sup>nd</sup> agreement and the commencement of the arbitration, the owners had affirmed the agreement and could not avoid the contract</i>]</p>
Where A [unfairly] uses his dominant bargaining position to negotiate an agreement with B or threatens to repudiate an existing contract, the contract is not voidable on the ground of duress if there is no coercion.	<p><u>Pao On v Lau Yiu Long</u> [<i>P threatened to rescind a contract unless L indemnified them against any loss iro 60% of shares in L's public company if prices went below agreed \$2.5 a share as consideration for giving up their interest in a company L was seeking to acquire. No duress and L benefitted</i>]</p>
<b>UNDUE INFLUENCE</b>	
<p>Undue influence is an equitable doctrine in respect of coercion resulting from forms of pressure which are usually less direct than those under the doctrine of duress</p> <ul style="list-style-type: none"> <li>- express use of influence</li> <li>- presumption of influence</li> </ul>	
<p>Where one party exercises such domination over the mind and will of the other party that his consent to a contract cannot be said to have been independently given, there has been an express use of influence.</p> <p>In this case, there must be proof of actual coercion leading to the loss of independence of will or consent. No special relationship need exist between the parties</p>	<p><u>Morley v Loughman</u> [<i>man of straw converts testator to his religious sect who left his home and took up residence with L. he placed all his fortune at his disposal. Upon M's death, executors brought an action to recover 140k gift to L</i>]</p>
<p>Where the parties stand in a relationship of confidence to one another which puts one party in a position to exercise over the other an influence which is capable of being abused, there is a presumption of undue influence.</p> <p>Here, no need to prove actual coercion. Only proof needed is that a fiduciary relationship existed between the parties.</p>	<p><u>Allcard v Skinner</u> [<i>ex nun wanted to recover gifts of money and stock to sisterhood since she had no access to independent advice. Held unable to recover by reason of delay and conduct</i>]</p> <p><u>CFC Construction &amp; Read v Attitsogbe</u> [<i>A was trustee for widow and even signatory to her accounts. He claimed she signed over 5% of her shares in her company to him and she sought to avoid it on ground of undue influence</i>]</p>
<p>Before a transaction would be set aside for undue influence, whether in reliance on evidence or on the presumption of the exercise of undue influence, it had to be shown that the transaction had been wrongful in that it had constituted a manifest and unfair disadvantage to the person seeking to avoid it</p> <p>Evidence of the mere relationship of the parties was not sufficient to raise the presumption of undue influence without also evidence that the transaction itself had been wrongful in that it had constituted an advantage taken of the person subjected to the influence</p>	<p><u>National Westminster Bank v Morgan</u> [<i>M's wife sought to avoid a contract with a bank for the possession of her jointly owned matrimonial home when a refinancing loan was not paid. She claimed the bank rep exercised undue influence over her and didn't advise her to get independent counsel. Held that she was to benefit from the contract since the building society would have taken the house so it was not to her detriment</i>]</p>

Principle	Authority
The courts will set aside a voluntary gift where it's satisfied that the gift was the result of influence expressly used by the donee for such purpose unless it can be proved that it was the spontaneous act of the donor acting in circumstances which enabled him to exercise independent will	<u>Allcard v Skinner</u> <u>Morley v Loughman</u>
The courts will set aside a voluntary gift where it's satisfied that the relations between the donor and donee have at or shortly before the execution of the gift been such as to raise a presumption of that the donee had influence over the donor unless it can be proved that it was the spontaneous act of the donor acting in circumstances which enabled him to exercise independent will	<u>CFC Construction &amp; Read v Attitsogbe</u> [R who is very old transferred 5% of her 100% shares in C to A who was her trustee. Held that he didn't allow her independent counsel and used undue influence by virtue of her disability [old aged] for that gain.]
The courts will set aside on ground of public policy a gift from a ward who has just come of age to his guardian.  According to the court, it would give an opportunity either by flattery or force to take advantage of the ward/child	<u>Hylton v Hylton</u> [a year after coming of age, and just before his guardian/trustee was to deliver up accounts and hand over the estate to him, a ward granted among others a GBP60 annuity to the guardian. From the evidence, appears his uncle would not have parted with the estate but for the grant. Held: grant set aside]
Equity will not allow a person who exercises or enjoys a dominant religious influence over another to benefit, directly or indirectly, by the gifts which the donor makes under or in consequence of such influence unless it be shown that the donor, at the time of making the gift, was allowed full and free opportunity for counsel and advice outside, and the means of considering his or her worldly position, and of exercising an independent will about it.  Presumption of undue influence in the case of religious/spiritual advisor and follower	<u>Allcard v Skinner</u> [while a member of a sisterhood, A made gifts of money and stock to the Mother Superior on behalf of the sisterhood. She was not allowed to talk to anyone outside the sisterhood without consent of the Mother Superior. She left the sisterhood and 5 years later, sought to recover her stocks. Held title to gifts was voidable but delay of A after leaving disentitled her]  <u>Norton v Relly</u> [woman grants GBP50 annuity to so-called Methodist pastor. Kept in high-walled mansion with no access to her just before grant was made. Held the contract was void on ground of undue influence]
Undue influence may exist where a promise is extracted by a threat to prosecute certain third persons unless the promise was given and where the one threatening knew and intended the other to be so influenced; no direct threat is necessary and also no promise need to be given to abstain from prosecution  There should be no benefit to the one signing	<u>Mutual Finance v John Wetton &amp; Sons</u> [brother signs guarantee for which other brother forged signatures of Directors of family business because afraid it would affect health of father if forger is prosecuted. Action against him for avoiding. Judgment for D]  <u>Williams v Bayley</u> [
The presumption of undue influence will be rebutted if the party who benefited from the transaction can show that the other party acted independently of any influence from him	<u>Mercer v Bremping II</u> [solicitor of stool was paid by both the government as well as the stool for his services. When the stool became aware, they didn't repudiate or rescind the contract and subsequently affirmed the contract. M sued for the money. Held; no evidence of undue influence, doc was made in chiefs' language]
<b>UNCONSCIONABLE CONTRACTS</b>	
Where a contract is excessively harsh, especially where one party is poor, relatively ignorant, elderly and/or disadvantages, equity intervenes. Where the contract is such that no man in his right senses would make it on the one hand and no honest and fair man would accept it, it's said to be an inequitable and unconscionable bargain	
In Ghana, it's been held that a dealing whether by gift or contract is unconscionable where on account of the special disability of one of the parties, he or she is placed at a serious disadvantage in relation to the other	CFC Construction Co, Rita Read v Attitsogbe [plaintiff was an old woman; old age is a disability]  <u>Kwamin v Kufuor</u> [a lease btm a Gold Coast chief was alleged to have given up all his rights in the land to a British gold prospector. All Africans on the transaction were <b>illiterate</b> . P claimed that they only understood the clause to recognise the lease granted by the other chief and not surrender rights of the Enkawie Stool hence agent didn't understand memorandum of the agreement]  <u>Acquaye v Halm</u> [P borrowed 200 pounds from D, a moneylender. P illiterate; docs were actually deed of absolute conveyance and an agreement for repurchase but P made to believe it was a mortgage agreement. D put in claim for 45k to the govt as owner of land when the govt sought to acquire it]

Principle	Authority
	<u>Dikyi v Ameen Sangari Industries Ltd</u> [A bought land from D's stool on terms which were unconscionable. Negotiator was heir apparent to the stool and director of the defendant company]
<b>ILLEGALITY &amp; UNENFORCEMENT OF CONTRACTUAL OBLIGATIONS</b>	
<b><i>Illegal Contracts on Ground of Public Policy</i></b>	
A valid contract will be held to be unenforceable if its purpose is illegal or contrary to public policy	
No court will assist a plaintiff to enforce a contract which in its view is injurious to society or prejudicial to the social or economic interest of the community	
A contract which has as its object the deliberate commission of a criminal offence or tort is illegal and unenforceable as being contrary to public policy	<u>Berg v Moore</u> [blacklisted tobacco association member seeking to buy through the backdoor]  <u>Brown Jenkinson v Percy Dalton</u> [shipping of orange juice in leaking barrels, waybill said it was clean, indemnity against losses particularly for compensating bill holder, shipper refused to pay]
Any contract which directly or indirectly promotes sexual immorality or which is contra bonos mores is illegal on grounds of public policy	<u>Pearce v Brooks</u> [ashawo hired carriage to further her business, failed to pay, action to recover money failed]
Where a contract is meant to result in the performance of illegal acts in a foreign and friendly country, it will be unenforceable as being contrary to public policy	<u>Foster v Driscoll</u> [shipping and smuggling whisky to US]  <u>Ragazzonia v Sethi</u> [exporting jute from India to SA prohibited by Indian law]
Where a contract tends to stifle or compromise a public prosecution or interfere with the course of justice, it's unenforceable as being contrary to public policy	<u>Keir v Leeman</u> [agreement to pay money if judgment debtor doesn't proceed with prosecution of defendants who assaulted the sheriff while levying an execution]
Where a contract's purpose is to sell a public office or honour, it will be unenforceable as being contrary to public policy  Similarly, contract to procure a public office for another for monetary consideration is illegal and unenforceable	<u>Parkinson v College of Ambulance</u> [donation for knighthood]  <u>Kwarteng v Donkor</u> [destoolment of sitting chief + entoolment of nephew for waiver of debt]  <u>Okantey v Kwadev</u> [position of local court magistrate for end to land litigation]
A contract which is directly or indirectly intended to deceive public authorities is against public policy and thus unenforceable	<u>Alexander v Rayson</u> [splitting rent in order to obtain a reduction of the rateable value of the premises, D ignorant of this purpose, P sued to recover under both docs]
Any contract which seeks to destroy the right of one or both parties to submit questions of law to the courts is contrary to public policy and therefore unenforceable  Arbitration clauses which provide that parties must resort to arbitration before submitting disputes to court have always been recognised as valid	<u>Lee v The Showmen's Guild of Great Britain</u> [trade union committee found against L in a dispute about unfair competition and dismissed him. the union's rules had an ouster clause in respect of the courts. Held the fine and expulsion were ultra vires]  Scott v Avery  <u>In Re GPRTU; Tetteh v Essilfie</u> [courts have power to inquire into the validity of exclusionary clauses to determine if they relate to the ordinary conditions of the contract only or can be classified as against public policy]
Contracts which involve using one's official position or public office to secure a private reward are unenforceable on grounds of public policy	<u>Kessie v Charmant</u> [Ghana ambassador to Liberia]  <u>Ampofo v Fiorini</u> [forestry dept. officer, agreement contrary to rule that civil servant not to take improper advantage of his position]
<b><i>Contracts in Restraint of Trade</i></b>	
It's a contract in which a party restricts his freedom to carry on his trade, business or profession in the future	
It's in the public interest that people should be free to practice their professions and pursue their trades, thus generally, all contracts in restraint of trade are prima facie contrary to public policy and therefore	

Contract II

Principle	Authority
void unless it can be shown to be reasonable as between the parties and also in the public interest	
An agreement which stipulates that a vendor will not set up business in competition with the purchaser would be generally enforceable as long as it is reasonable in the circumstances	<u>Nordenfelt v Maxim Nordenfelt Guns &amp; Ammunition</u> [not to engage directly or indirectly in the trade or manufacture of guns for 25 years found to be reasonable]
For a restraint clause in contracts for sale of business to be enforceable, it must be reasonable in terms of the area covered, the duration of the restraint and the activities covered. The restraint must be no wider than is necessary to protect the proprietary interest acquired by the purchaser	<u>Vancouver Malt v Vancouver Breweries</u> [restraint from brewing beer unreasonable as it was never part of business, restraint should be ltd to the business activity in respect of which the goodwill has been built]
Restraint clauses in employment contracts will only be upheld where it is reasonably necessary to protect the proprietary right of the employer in the nature of trade connections or trade secrets i.e. the employee has acquired trade secrets or the trust/influence of customers	<u>Herbert Morris v Saxelby</u> [draughtsman to engineer; covenant tht he won't carry on business in the sale or manufacture of hoisting machinery in UK or Ireland for 7 years; unreasonable]
To be reasonable, the restraint must afford no more than adequate protection of the party in whose favour it's imposed	<u>Kores Manuf Ltd v Kolok Manuf Ltd</u> [agreement that either company won't employ anyone employed by within the previous 5 yrs; not all employees have access to trade secret; agreement too wide in scope thus unenforceable]
The invalidity of a provision or part of the contract doesn't nullify the whole contract if the valid parts are severable. Severance will thus be allowed where it's possible to readily separate the invalid portion from the remainder of the contract	<u>Goldsol v Goldman</u> [seller of imitation jewellery undertook not to deal in real or imitation jewellery in the UK and certain named places abroad for 2 yrs; seller didn't sell real jewellery and had never traded abroad; contract too wide; reference to real jewellery and places abroad could be severed]
<b>Effects &amp; Consequences of Illegality</b>	
<p>Illegal from inception</p> <p>A contract is illegal when it's tainted with illegality at the time it was made i.e. its formation is prohibited by statute or is contrary to public policy. In this case, neither party can enforce it, even if the party seeking to enforce it is unaware and has been deceived by the other party</p>	<p><u>In Re Mahmoud v Ispahani</u> [it was against the law to sell linseed oil without licence. Seller had licence but buyer didn't although he lied to the seller that he did. Buyer refused to take delivery of the goods and was sued. Action failed]</p> <p><u>Olatiboye v Captain</u> [the law provided that no one could sell, buy or export diamonds without a licence; plaintiff didn't have a licence, sold diamonds to defendant and sued to recover price. Action failed]</p>
<p>Illegality in performance</p> <p>In some cases the contract may be lawful at its inception but a party, with or without the knowledge of the other exploits it or performs it in an illegal manner</p>	
<p>Where a legal and valid contract is performed in an illegal manner, the party responsible for the illegal performance may not be allowed to enforce the contract or rely on any contractual rights or remedies under the contract</p>	<u>Anderson v Daniel</u> [sale of fertilizer, by law invoice had to state the composition of the fertilizer when making delivery to the buyer. Seller delivered 10 tons without requisite invoice and failed in an action to recover the price due to illegality in performance]
<p>Where a contract is performed in an illegal manner, the innocent party will be entitled to enforce the contract and rely on the available remedies if it's shown that he did not condone or participate in the illegal performance in any way</p>	<p><u>Archibold v Spangletti</u> [agreement to carry a load of whisky; statute provided that a carrier of goods for reward needed an A licence; D knew vehicle didn't have required licence, P didn't; load was lost during journey and P sued successfully for damages]</p> <p><u>Schandorf v Zeini</u> [Z disregarded covenant not to sublet without headlessor's consent and sold the unexpired term of his leasehold to S; Z refused to convey the house to him after payment made. Sued for specific performance, Z claimed contract contrary to public policy. Held courts will not assist plaintiff who relies on his own illegality to recover under a contract]</p>
<p>If it's established that the other party condoned the illegal performance, neither party will be allowed to enforce any rights under the contract</p>	<u>Ashmore v Dawson Ltd</u> [P watched while articulator lorries which could not lawfully carry load was loaded to exceed maximum statutory max weight; lorry toppled over. Action unsuccessful because performance illegal]

Principle	Authority
<p><b><i>Recovery of Money of Property Transferred Under an Illegal Contract</i></b></p> <p>Where a contract is found to be illegal, monies paid or property transferred under it are generally not recoverable, especially if the plaintiff has to rely on or disclose the illegality in order to establish his claim</p>	<p><u>Parkinson v College of Ambulance</u> [<i>promotion of inefficiency and corruption</i>]</p> <p><u>Taylor v Chester</u> [<i>return of half a £50 note pledged to secure a debt owed by P iro provision of wines and suppers supplied by D to P and several prostitutes in a debauch to incite the prostitutes to disorderly conduct. Held action unsuccessful cuz reliance on immoral contract</i>]</p>
<p>Exception to the above rule is where claim not founded on the illegal act, where plaintiff is not in pari delicto and where it's in respect of a class protecting statute</p>	
<p>A party can recover money or property transferred to the other party if he can establish his claim without reliance on the illegal contract</p>	<p><u>Schandorf v Zeini</u> [<i>plaintiff succeeded because didn't rely on payments made in forex</i>]</p> <p><u>Bowmakers Ltd v Barnet Instruments</u> [<i>D hired machines from P under a hire purchase agreement which didn't comply with statutory requirements. P sought to recover the machines but D argued that the illegality barred recovery. P however relied on his ownership and not the illegality to successfully recover</i>]</p>
<p>A party can recover money and properties transferred upon proof that he was induced to enter into the contract by fraud or duress or oppression at the hands of the defendant i.e. they were not in pari delicto or equally guilty</p>	<p><u>Hughes v Liverpool Victoria Friendly Society</u> [<i>D's agent told P that policies she had taken on the lives of people she had no insurable interest were valid. It was contrary to statute. She was able to recover premiums due to D's agent's fraud</i>]</p> <p><u>Kwarteng v Donkor</u> [<i>both parties equally guilty of using money to secure public stool; P couldn't recover</i>]</p> <p><u>Addy v Irani</u> [<i>P condoned with D to sell flour above control prices and split the profits; P gave money to D to smuggle out of country and lodge in a bank, some of the money was converted into USD; P sued D for denying receiving the moneys. Action failed</i>]</p>
<p>Where a contract is made in violation of a class protecting statute, the party who is a member of the protected class is not considered to be in pare delicto with the other party</p>	<p><u>Kiriri Cotton v Dewani</u> [<i>flat let out to tenant for 7 yrs and landlord claimed a premium, contrary to statute, neither party however knew that it was illegal and the ordinance made no provision for the recovery of illegal premiums. Tenant was allowed to recover money paid</i>]</p> <p><u>City &amp; Country Waste v A.M.A.</u> [<i>service contract to render waste disposal services terminated in the fourth year. D pleaded illegality due to breach of provisions in relationship to granting of contracts by DAs and AMA. Held; balancing the need to deny enforceability against the need to prevent unjust enrichment, and considering that in relation to AMA's non-compliance CCWL was not in pare delicto, plaintiff must be paid a reasonable compensation for the services it rendered to the defendant</i>]</p>
<p>A party to a contract, despite its illegality, is allowed a locus poenitentiae (an opportunity to repent or change his mind) and may be allowed to recover money or property transferred under the contract, provided he begins proceedings before the illegal purpose has been performed either in whole or in part</p>	<p><u>Kearley v Thomson</u> [<i>solicitors of petitioning creditor agreed not to appear at the public examination of the bankrupt nor oppose his discharge in consideration for money paid to them by P. D didn't appear at the examination and before an application had been made for discharge, they were sued by P for the return of the money. Held; where there's been a partial carrying into effect of the illegal purpose, impossible to recover any money paid</i>]</p>
<p>It must be shown that the plaintiff repented and not merely that the defendant deliberately failed or was unable to perform his side of the contract</p>	<p><u>Bigos v Boustead</u> [<i>share certificate deposited in exchange for £150 of Lire notes to enable P's wife and daughter travel to Italy. Breach of exchange control laws. Money was never delivered. Action to recover share certificate failed on ground that no evidence of true withdrawal or change of mind</i>]</p>

Principle	Authority
	<u>Kwarteng v Donkor</u> [no time for P to repent and the reason why he sought to recover the money was because it was not carried to a conclusion beneficial to him]
<b>REMEDIES FOR BREACH OF CONTRACT</b>	
<p>Every breach of contract entitles the injured party to recover <b>damages</b> for the loss suffered.</p> <p>Other remedies for breach of contract are <b>specific performance</b> and <b>injunction</b></p>	
<p>Losses consequent to a breach of contract include;</p> <ul style="list-style-type: none"> <li>- loss of the value of the benefit that the plaintiff has conferred on the defendant e.g. due to refusal to pay for services offered</li> <li>- expenditure incurred in preparing for the defendant's performance e.g. a buyer rents a warehouse for storage of goods to be supplied by the supplier</li> <li>- loss of potential benefit or net profit the plaintiff would have made if the contract had been performed</li> <li>- personal injury or damage to property occasioned by the breach aka consequential loss</li> <li>- expenses incurred after the breach in an attempt to reduce the loss e.g. purchasing goods from another source at a higher price in the event supplier defaults</li> </ul>	
<p>The objective of the award of damages is to place the injured/innocent party, as far as money can do, in the position he would have been in if the breach had not occurred – restitutio in integrum</p>	<u>Royal Dutch Airlines (KLM) v Farnex</u> [KLM failed to ship F's consignment of mangoes on schedule and when it eventually reached London, declared unwholesome. Judgment for F, sufficient compensation to cover their loss]
<p>A victim of a breach of contract is entitled to compensation for any loss which results from the breach as long as the loss is <b>not too remote</b> or one which the plaintiff could have avoided by taking reasonable steps in <b>mitigation</b></p> <p><i>Test for the award of damages is <b>reasonable foreseeability</b></i></p>	
<b>Remoteness of Damage</b>	
<p>The damages which a party ought to receive in respect of a breach of contract should be fairly and reasonably be considered as either <b>arising naturally</b> i.e. in the usual course of things from such breach, or such as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract as the probable result of a breach of it</p>	<u>Hadley v Baxendale</u> [delay in carriage of crankshaft from Gloucester to Greenwich to be used as model for a new one resulted in loss of profit for 5 days, failure to recover for loss because not flowing naturally from the breach, the special circumstances of the mill not working until return of crankshaft also unknown to defendants]
<p>Elements</p> <ul style="list-style-type: none"> <li>- losses which arise naturally, in the usual course of things, from the breach and are reasonably foreseeable as the likely result of the breach; described as <b>general damages</b></li> <li>- losses which arise from special or exceptional circumstances outside the ordinary course of things; described as <b>special damages</b> and defendant only liable if he knew of the special circumstances that gave rise to them</li> </ul>	<u>Victoria Laundry Ltd v Newman Industries</u> [contract to supply a large boiler of relevant capacity to enable V expand its business. Boiler delivered 5 months later. V sued for damages for the loss of profit and exceptional profits they'd have earned on lucrative dyeing contracts they had obtained]
<p>Everyone, as a reasonable person is taken to know the "ordinary course of things" and is therefore taken or presumed to know what loss is liable to result from a breach of a contract in the ordinary course; this knowledge is imputed to the defendant</p>	<p><u>Victoria Laundry Ltd v Newman Industries</u> [loss of profit is naturally flowing from the breach so defendant liable]</p> <p><u>Frafra v Boakye</u> [tractor hired to haul timber logs to haul at least 30 logs a day could only do max 7 due to defectiveness. In an action for breach of contract, held; on the info available to the defendant, a reasonable man should have foreseen that the plaintiff would suffer loss if the tractor was defective. General damages awarded!!]</p>

Principle	Authority
<p>In addition to imputed knowledge, in certain cases, is knowledge which the defendant actually possesses, of special circumstances outside the ordinary course of things, which are likely to cause additional or special losses</p>	<p><u>Victoria Laundry Ltd v Newman Industries</u> [D had no knowledge of the dyeing contracts so special damages can't be awarded]</p> <p><u>Juxon-Smith v KLM Dutch Airlines</u> [KLM failed to fly J to London to enable him bid for an international contract. J alleged that the breach was deliberate to cause him to lose the bid and sued claiming damages for the breach. Held; in contracts for carriage of persons, the normal measure of damages is cost, less the contract price and consequential losses such as hotel expenses, etc and non-pecuniary losses such as physical inconvenience and discomfort. Loss of the bid imputed actual knowledge which KLM didn't have]</p>
<p>Where an employer terminates an employee's appointment in breach of a contract of employment, the employer is liable to pay damages to the employee. The measure of damages is the quantum of what the employee would have earned from his employment during a reasonable period, after which he should have found alternative employment – the duty of mitigation devolves on the employee</p>	<p><u>Ashun v ABL</u> [snr staff declared redundant, he accepted the severance package and sued for damages. Held; he is liable for damages but by accepting the package, he made the termination one of mutual agreement thus no cause of action – he could have rejected it]</p>
<p>To determine likelihood of loss, it suffices if the defendant, as a reasonable man, should have foreseen that the loss was likely to result i.e. if the loss was a serious possibility or a real danger</p>	<p><u>The Heron II</u> [contract to carry cargo of sugar to a port where there was a sugar market; carrier was 9 days late by which time the price of sugar had fallen substantially; P sued for difference in damages and D claimed he didn't know of P's intention to sell. Held; D knew there was a sugar market and if he had adverted his mind to it, he would have realised that it was unlikely the sugar would not be sold on arrival, he must also have known that market prices fluctuate thus loss was not unlikely and P entitled to damages claimed]</p>
<p>Generally, as long as the damage or loss caused by a breach of contract was within the reasonable contemplation of the parties at the time the contract was made, it's immaterial that the chain of events which resulted was unlikely or far more serious than what was reasonably contemplated. Thus, it's enough that the defendant should have foreseen the particular head or type of damage not its quantum or extent</p>	<p><u>Smith v Leech Brain &amp; Co</u> [deceased was employee of D who worked as a galvanizer and lowered articles into a tank of molten metal, a piece of molten metal splattered out and burned his lips. It promoted cancer in tissues which were already pre-malignant and he subsequently died. Wife sued claiming damages for loss of expectation of life. Held; for the purpose of assessing damage, a tortfeasor took his victim as he found him and since the injury was reasonably foreseeable, defendants were liable for damages claimed although they had not foreseen the ultimate consequences of the initial injury]</p> <p><u>Wroth v Tyler</u> [failure to complete contract to sell a house and the value rose to almost 100%, held defendant liable to pay the difference as damages]</p> <p><u>Parsons v Utleigh Ingham</u> [D sued for failure to unseal ventilator of a hopper at a piggery during installation resulted in pig nuts getting mouldy, pigs suffering rare intestinal infection and over 250 dying. Held; D should have foreseen the type or kind of damage and not necessarily its extent]</p>
<p>Where a seller refuses to deliver goods to a buyer in accordance with the terms of a contract and there is an available market for the goods in question, the measure of damage is prima facie to be ascertained by the difference between the market or current price and the contract price</p> <ul style="list-style-type: none"> <li>- at the time fixed for delivery or when the goods ought to have been delivered in case the buyer doesn't accept the repudiation</li> <li>- in any other case at the time of the refusal to deliver the goods</li> </ul>	<p>Section 54(2), Sale of Goods Act, 1962 (Act 137)</p>
<p>Where there is no available market for the goods in question, the courts will attempt to place the innocent party in the position he would have been in if the contract had been performed i.e. award sufficient money to enable him to buy an equivalent quantity of the goods</p>	
<p>Where a buyer refuses to pay for goods in accordance with the terms of a contract, and there is an available market for the goods in question, the measure of damages will be the difference between the contract price and the current price</p>	<p>Section 48(2), Act 137</p>

Principle	Authority
<ul style="list-style-type: none"> <li>- at the time fixed for acceptance or when the goods ought to have been accepted in the case where the sellers refuses to repudiate the contract</li> <li>- in any other case, at the time of the refusal to accept the goods</li> </ul>	
<p>If a victim of a breach of contract can establish properly incurred expenditure in reliance on the defendant's promised performance and can show that as a result of the defendant's breach such expenditure has been wasted, he can recover compensation for such wasted expenditure</p>	<p><u>Anglia Television v Reed</u> [<i>R repudiated a contract to play the leading role in a TV play and was sued by A for damages for their wasted expenditure. Held: A entitled to damages because R must have known that much expenditure had already been incurred on director's fees and the like</i>]</p>
<p><b>Mitigation of Damages</b></p>	
<p>Where the party not in default is in a position to take any action which would reduce or avoid the losses resulting from the breach of the contract, he is required to do so and is prevented from claiming any part of the damage or loss which could have been avoided by mitigation. Thus, losses which could have been prevented by the plaintiff taking reasonable steps are generally not recoverable</p>	<p><u>Payzu v Saunders</u> [<i>D entered into a contract to deliver goods as required over 9 mths, payment to be made within a month of each delivery. P failed to pay for the first instalment on time and so D, in breach of contract, repudiated the contract, refused to deliver anymore instalments and offered to continue at the contract price if P would pay cash at the time of the order. The offer was rejected and P sued for damages since the price of the goods had risen claiming the difference between the contract price and the market price. Held: P was in a position to pay cash but instead of accepting defendant's offer, they permitted themselves to sustain a large measure of loss which as prudent and reasonable people they ought to have avoided. Damages awarded were therefore calculated based on the loss which the buyers would have suffered if they had mitigated their losses by accepting seller's offer</i>]</p> <p>SS 48, 49, 53 &amp; 54, Act 137</p> <p><u>Nutakor v Adzrah</u> [<i>P sued D to recover the cost of his building after D's family was given judgment iro a piece of land sold to P by D and which P built on after he had been warned that it was family land. Held, due to duty to mitigate loss, no improvement which purchaser undertook after he had learnt of his want of title will be legally chargeable to the vendor in breach</i>]</p> <p><u>Societe Generale de Compensation v Ackerman</u> [<i>SG terminated employment contract of A for a fixed period of 3 years inclusive a probationary period where SG could terminate the contract for professional or disciplinary reasons during the probation but did so for a different reason, contrary to the contract. in an action for wrongful dismissal, held, damage to be awarded should be amount of wages due and payable for the agreed period of service inclusive of any other benefit to which A is entitled to under the contract</i>]</p> <p><u>Attitsogbe v Post Telecom Corp</u> [<i>D locked letter-box rented to P for non-payment of rent when indeed P had paid. His bill didn't reflect the payment he had made and he didn't tell postmaster about the mistake. He rather sued and claimed damages. Held, P under a duty to take all reasonable steps to mitigate his loss consequent on breach of contractual right and was thus barred from claiming any damage due to his negligence to take such steps</i>]</p>
<p>1. the plaintiff is only expected to do what is in the normal course of business to mitigate his losses. He is not required to take risks with his money or to take steps which might damage his commercial reputation or take any complicated legal action against a third party</p>	<p><u>Pilkington v Wood</u> [<i>D, P's solicitors, negligently advised P to buy a house with a defective title. When he sued to recover the difference between the market value of the property at the time of breach with a good title and its value at the time with a defective title, D argued that he should have mitigated his losses by suing the vendor. Held; duty to mitigate doesn't go so far as to oblige an injured party to embark on complicated and difficult litigation against a third party</i>]</p>
<p>2. if a plaintiff in fact mitigates the loss by taking certain steps after the breach, he cannot recover damages for such avoided loss</p>	<p><u>Levison v Farin</u> [<i>sale of fashion company due to illness of principal which was disclosed to D. in the agreement, P provided a warranty that there would be no material adverse change in the net value of the net assets of the company. D made a bulk payment and the rest to be paid in annual instalments. When they took over the business,</i></p>



Principle	Authority
	<i>they found there was such a change and refused to pay the difference. P sued, D counterclaimed for the difference between the balance to be paid and the adverse change. Judgment for plaintiff]</i>
<p>3. the plaintiff may recover damages for any loss or expenses incurred in reasonably attempting to mitigate the loss following the defendant's breach</p>	<p><u>Banco de Portugal v Waterlow</u> [W printed and delivered bank notes to a 3<sup>rd</sup> party in a mistaken belief that he had the bank's authority. The notes were put in circulation by the third party and when the bank discovered this, they called in all the notes and redeemed both authorised and unauthorised notes. The bank claimed the cost of printing and redeeming the notes. W contended that the bank didn't need to have paid for the unauthorised notes. Held; the bank could recover is it acted reasonably to maintain confidence in the currency]</p>
<p>Where a party accepts the repudiation of a contract and sues immediately for breach of contract, he comes under a duty to mitigate his losses and will be entitled to recover only such damages as he would have incurred if he had taken such reasonable steps in mitigation</p>	<p>S48, Act 137 iro non-acceptance</p>
<p>Where a party rejects the repudiation upon anticipatory breach and affirm the contract, there is no duty to mitigate until the date fixed for performance arrives and the defendant still refuses to perform</p>	<p>S54, Act 137 iro non-delivery</p> <p><u>Tradegar Iron &amp; Coal v Hawthorn Bros &amp; Co</u> [D contracted to buy coal at 16s a ton from P. D repudiated the contract but obtained an offer from a third party to buy the coal at 16s.3d. P refused the offer and insisted on performance of the contract. D failed to take delivery and P ultimately sold the coal for 15s a ton. Held; P entitled to damages amounting to 1s a ton.]</p>
<b>Liquidated Damages</b>	
<p>They are fixed amounts which represent a genuine pre-estimate of the loss of one party in the event of breach by the other party</p>	<p><u>Dunlop Pneumatic Tyre Co v New Garage Motor Co</u> [dealer agreed with manufacturer not to sell any of the tyres below the list price. The dealer did and manufacturer brought an action for the specified sum of £5 per breach. Held; the losses were indirect and difficult to calculate thus no reason to hold that it wasn't a genuine attempt to estimate appellants' likely losses]</p>
<p>A penalty is any fixed amount which is greater than any loss likely to be suffered by the innocent party and is intended to operate as a threat to keep the potential defaulter to his bargain and not a genuine pre-estimate of the innocent party's possible loss</p>	<p><u>Law v Redditch Local Board</u> [statement of the law on liquidated damages]</p>
<p>The determination of whether a stipulated sum is liquidated damages or a penalty depends on</p> <ul style="list-style-type: none"> <li>- the nature of the contract</li> <li>- the terms of the clause</li> <li>- the surrounding circumstances</li> </ul>	
<p>The fact that the parties have used the terms penalty or liquidated damages is not itself decisive</p>	
<p>It will be a penalty if the sum stipulate is extravagant and unconscionable in amount in comparison with the greatest loss which could conceivably be proved to have resulted from the breach</p> <p>A fixed sum will be held to be a penalty if the breach consists only of the payment of a sum of money which sum is greater than the sum which ought to have been paid</p> <p>If a single lump sum is made payable by way of compensation on the occurrence of one or more or all of several events some of which may occasion serious damage and others trivial damage, there is a presumption that it is a penalty</p> <p>A fixed sum payable upon breach may qualify as liquidated damages even if the consequences of each breach is incapable of precise calculation as long as it is justifiable as a genuine pre-estimate of</p>	<p>Dunlop Pneumatic Tyres v New Garage Motor Co</p>

Contract II

Principle	Authority
possible loss	
<b>Recovery of Non-Economic Loss</b>	
The courts have traditionally refused to award damages for non-pecuniary losses or to award damages for mere distress, disappointment or injured feelings suffered as a result of a breach of contract	<u>Addis v Gramophone Co. Ltd</u> [P sought to recover damages for indignity suffered as a result of being sacked from his job in a humiliating manner i.e. after being given notice, a successor was appointed and he was prevented from acting as manager. Held; he was not entitled to be compensated for injury to his feelings]
In appropriate circumstances, damages may be awarded to compensate the plaintiff for mental distress, disappointed, etc	<u>Jarvis v Swan's Tours</u> [packaged tour fell short of standard promised and so spoilt client's holiday. Held; damage can be recovered under a contract to provide entertainment and enjoyment for disappointment]
	<u>Heywood v Wellers</u> [if purpose of a contract is to provide protection from harassment and because of its breach the plaintiff is harassed, damages for the resulting distress are recoverable]
<b>Specific Performance</b>	
It will only be granted if it's just and equitable so to do.	
It will be granted - where damages will not adequately compensate the plaintiff - where the plaintiff cannot get a satisfactory substitute or where the seller refuses to deliver specific or ascertained goods - where quantum of damage is difficult to assess and would be unfair to the plaintiff	S58, Act 137 <u>Cohen v Roche</u> [8 Hepplewhite chairs] <u>Domins Fisheries v Bremen-Vegesacker</u> [sale of fishing vessel to GoG after down payment been made by P]
In contracts involving the sale of land, court have traditionally taken view that damages are inadequate thus the remedy of specific performance is normally available to either party	<u>Redco Ltd v Sarpong</u> [down payment for house, remainder to be paid upon completion, substantial amount paid but house not delivered for 7 years when price was about 6x more. Held; conditions set out in contract fulfilled by P thus he's entitled to specific performance] <u>Djan v Owoo</u> [a contract in writing for the transfer of an interest in land would not be complete in terms of s2 of NRCD 175 unless it has the names of the parties, a description of the property, the purchase price and should be signed by the vendor] <u>Prah v Anane</u> [agreement to allow D to pull down house if they will build one for P. house demolished but no show on D's part. Held P had fulfilled her part of the contract thus entitled to claim full value of the contract]
Specific performance won't be ordered where the terms of the contract are incomplete or vague	<u>Asare v Antwi</u> [no identified plot for which part payment was made]
Specific performance wont be ordered if it will be impossible for the defendant to comply with the order	Watts v Spence
Specific performance will not be ordered iro contracts involving the application of personal skill	<u>Page One Records v Britton</u> [refusal of injunction which would have restrained a pop group from employing anyone as their manager other than the plaintiff with whom they had fallen out i.e. forcing the group to employ the manager]  Lumley v Wagner
Specific performance will not be ordered where there is no mutuality e.g. against a minor	Lartey v Bannerman
<b>Injunction</b>	
It's an order of the court to a party to a contract to do or to refrain from doing a specified act. it operates in personam	
A prohibitory injunction orders a defendant not to do something in breach of a contract he has entered into and it enjoins the defendant to	

Contract II

Principle	Authority
refrain from a particular type of conduct a.k.a. restrictive injunction	
A mandatory injunction requires a defendant to reverse the effects of an existing breach. It's restoratory in its effect and more or less orders the defendant to undo what he has done	
With a mandatory injunction, the court may refuse relief if the hardship cause to the defendant by compliance with the order outweighs the consequential advantages to the plaintiff	Charrington v Simons & Co
An injunction may be interlocutory/interim and meant to regulate the position of the parties pending a hearing or final determination of a suit or perpetual which is given after the plaintiff's right has been established	
Prima facie, an injunction will not be granted to restrain actionable wrongs for which damages are the proper and adequate remedy	
The court won't order the defendant to do the impossible nor will it order an injunction which will not confer an appreciable benefit on the plaintiff and would be detrimental to the defendant	<u>Charrington v Simons &amp; Co</u> [ <i>orchard owner; covenant not to resurface a track so as to raise the level of the track above the level of the surrounding land</i> ]
An injunction will not be granted if the effect is to directly or indirectly compel the defendant to do acts, the performance of which the court would not grant specific performance e.g. personal services	
A service contract may contain negative obligations which could be enforced by injunction without compelling positive performance of the whole contract	<u>Lumley v Wagner</u> [singer not compelled to sing but an injunction could lie to restrain her from breaking her undertaking not to sing elsewhere during the agreed period]

Bell v Lever Bros – once a contract has been made, i.e. once the parties, whatever their innermost states of mind, have to all outward appearances agreed with sufficient certainty in the same terms on the same subject matter, then the contract is good unless and until it is set aside for failure of some condition on which the existence of the contract depends or for fraud or on some equitable ground. Neither party can rely on its own mistake to say it was a nullity from the beginning, no matter that it was a mistake which to his mind was fundamental, and no matter that the other party knew that he was under a mistake