

Void Contracts: A contract is void if it is worthless, that is, not really a contract at all. Some contracts made by minors, for example, are automatically void. Contracts may be declared void on the basis that they oblige the contracting parties to commit illegal acts. Damages cannot be claimed by a party injured by attempting to comply with a void contract. For example, if I contract to pay someone to shoot a TV game show host, and the would-be murderer decides to take the money and run without satisfying his part of the deal, then the courts will not assist me to recover the money. The illegality need not be as serious as murder for this to be the case. Some contracts may not be strictly void, but can be declared void. The distinction is important because when goods or property are exchanged under a voidable contract, title is passed. With a void contract no title passes, because effectively the contract never existed.

Voidable Contracts: Unlike a void contract, whose legal status is as if it never existed, a voidable contract is one that remains in force until it is declared void by one of the contracting parties. For example, one of the parties may fraudulently misrepresent a service to be offered. The offended party may then declare the contract void and refuse to be bound by it. However, if goods are exchanged under the contract before it is voided, then title is passed. With a void contract no title passes, because effectively the contract never existed.

1. In this case Karen orders a sofa and when it is delivered, finds it is far too large for her living room. She ordered the sofa without consultation of any sales assistant or knowledgeable persons. This is a mistake on Karen's part as after inspection of the sofa she thought that the sofa would fit. In *Smith v Hughes* [1871] the defendant thought he was buying 'old oats' as opposed to new ones. In that case Blackburn J stated: '*...on the sale of a specific article, unless there be a warranty making it part of the bargain that it possesses some particular quality, the purchaser must take the article he has bought, though it does not possess that quality.*' Therefore the contract of the sale of the sofa is valid.
2. In this situation Sid, the owner of Scrumptious Sofas, has misinformed Karen when telling her the dimensions of the sofa. It must be noted though that he did not do this knowingly. He had actually made a mistake when converting the measurements from metric into feet and inches. This is known as a wholly innocent misrepresentation as Sid did not intend to give her the wrong measurements.

An innocent misrepresentation is a false statement of fact made by one party to another, which, whilst not being a term of the contract, induces the other party to enter the contract. The effect of an actionable misrepresentation is to make the contract voidable, giving the innocent party the right to rescind the contract and/or claim damages. As this is an innocent misrepresentation, Karen can rescind the contract but not claim damages as such, they can only be awarded by the court at its discretion. Again, as with the previous case of *Smith v Hughes*, '*...unless there be a warranty making it part of the bargain that it possesses some particular quality...*' Karen has clearly asked the manager, who is an informed person, for the dimensions of the sofa. He has innocently misinformed her, thus inducing her to enter the contract. Therefore the contract is voidable and gives Karen the right to withdraw from the contract if she so wishes.

3. In this particular situation Safina orders a sofa from Scrumptious Sofas. The sofa she has ordered is the last in a particular line. She has ordered the display model which she has seen in the shop window offered at a reduced price. A sales assistant confirms the sale with Safina and takes a credit card deposit from her. Unbeknownst to either of them, the sofa has actually been destroyed the previous day, due to not complying with current health and safety regulations. This is known as a common mistake.

A common mistake is one when both parties make the same error relating to a fundamental fact. A contract will be void at common law if the subject matter of the agreement is, in fact, *res extincta*, non-existent. Section 6 of the Sale of Goods Act 1979 provides that:

Where there is a contract for the sale of specific goods, and the goods without the knowledge of the sellers have perished at the time when the contract was made, the contract is void.

Therefore, the contract is totally void, and is, as if it never existed.

4. In this case Dan buys a garage from a large oil company. While negotiating the oil company gives Dan an estimate of the profit he should make annually. After two years trading Dan finds he has made nothing like the sum estimated by the oil company. This is known as negligent misrepresentation.

Negligent misrepresentation is a false statement made by a person who had no reasonable grounds for believing it to be true. The oil company, being experts in the field, should have given Dan a more realistic estimate of the profits he was likely to make, as they had special knowledge of the local area and past business. However, they did not and thus induced Dan into buying the garage from them leading him to believe that he could make higher profits than he possibly could. Dan can sue for negligent misrepresentation and can claim damages for financial loss. In the case of *Esso Petroleum v Mardon [1976]*, Esso's experienced representative told Mardon that Esso estimated that the throughput of petrol on a certain site would reach 200,000 gallons. Mardon did all that could be expected of him but the site was not good enough to achieve a throughput of more than 60,000-70,000 gallons. Mardon lost money and was unable to pay for petrol supplied. Mardon claimed damages in respect of the representation alleging that it amounted to a warranty and thus it was negligent misrepresentation. The Court of Appeal affirmed the finding of negligence. On the issue Lord Denning stated: '*... it was a forecast made by a party, Esso, who had special knowledge and skill. They knew the facts. They had much experience and expertise at their disposal. They were in a much better position than Mr Mardon to make a forecast. It seems to me that if such a person makes a forecast - intending that the other should act on it and he does act on it - it can well be interpreted as a warranty that the forecast is sound and reliable in this sense that they made it with reasonable care and skill. If the forecast turned out to be an unsound forecast, such as no person of skill or experience should have made, there is a breach of warranty.*'

As can be seen clearly by the above case there is defiantly a breach of warranty by the oil company, and therefore it gives Dan every right to sue for negligent misrepresentation.

5. In this case Omar has worked for several years for a firm of architects who operate within the West Midlands area. He has knowledge of current projects and has more than routine contact with clients. He has handed in his notice and unknown to him before now; he is now informed that he cannot work for any other firm of architects operating in Europe or the USA for the next ten years, as is in the terms of his contract.

In the case of *Forster v Suggett [1918]* it was held that an employer cannot prevent an employee from using his own skill after he has left even if that skill was learnt from the employer. However, if it is an express term of the contract, as it is with Omar, the test of reasonableness is used to determine whether the restraint clause applies in total, or in part, or not at all. The courts try and strike a balance between protecting the goodwill of the employer and allowing the employee to earn a living. The test of reasonableness is applied to duration of the restraint, the radius of it and the scope of it.

In the case of Omar, it would be unreasonable to expect him not to work for another firm of architects within Europe or the USA for the next ten years. A reasonable restraint would have been that he could not work for a firm of architects within the West Midlands area for two years following his termination of the contract. This would at least give him the option of working within England to earn a reasonable living. Therefore the clause is not valid and hence renders the contract in question void.