

Supplement to AAT Paper 6

Chapter 6 – Validity of Contract

Answer to Exam – Type question 5

- C2. (a) Rescission for misrepresentation is a remedy made by the court formally setting aside the contract and putting the contracting parties back, as far as possible, into the position as though the contract had never been made. It is available for fraudulent, negligent and innocent misrepresentation but the injured party has to elect either to rescind or to affirm the contract as the remedy of rescission does not occur automatically and misrepresentation merely renders the contract voidable.

Rescission is discretionary. The court must ensure that the injured party is not unjustly enriched at the expense of the misrepresenter. Thus, the right to rescind may be lost under certain circumstances. It is barred if it is impossible to restore things to the pre-contractual position for example where the goods under sale have been altered.

Rescission is also extinguished if the misled party has affirmed the contract after he has discovered the truth.

Rescission is also lost if an innocent third party has acquired the right to the goods by acting in good faith and giving consideration.

Rescission is also not permitted if there was a lapse of time. In *Leaf v International Galleries (1950)*, the court held that the plaintiff had lost his right of rescission because he discovered the truth 5 years after the contract. The Court of Appeal stated that "it behoves the purchaser either to verify, or as the case may be, to disprove the representation within a reasonable time, or else stand or fall by it."

Rescission is also lost if the court exercises its discretion under section 3(2) Misrepresentation Ordinance to award damages instead of rescission.

(10 marks)

- (b) Hui has to establish first that there is a misrepresentation on the part of Wong. A misrepresentation is an unambiguous false statement of existing fact made by one party in a contract to the other, at or before the time the contract was made, which induces the other to enter into the contract.

The statement must be one of fact and not of opinion. In *Smith v Land & House Property Corp (1884)*, it was held that a statement of an "opinion" can be treated as a misrepresentation if it contained an implied assertion that the misrepresenter knew of no facts leading to the conclusion. The statement made by Wong is obviously a false statement of fact.

Secondly, the statement must be addressed to the misled party by the other contracting party. It must have reached the person. Here there is a direct communication between Wong and Hui.

Thirdly, the statement must induce the misled party into the contract. In other words, the misled party must have relied on the statement. However, the misrepresentation need not be the sole inducement. The misled party will not be able to show inducement if he knew the truth or where he did not allow the representation to affect his judgment. For example, in *Smith v Chadwick (1884)*, a misled party did not rely on a false statement in the prospectus as it was regarded as being unimportant. Also, in *Attwood v Small (1836)*, the misled party relied upon his own information and judgment. Whether a person has actually been induced is an issue of fact. Hui may have difficulty in establishing misrepresentation unless he could overcome this third hurdle.

(10 marks)

(Total: 20 marks)