LAW FOR BUSINESS

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Defective Agreements

LEARNING OBJECTIVES

1. Describe the mistakes that invalidate a contract.
2. State what types of mistakes normally do not invalidate contracts.
3. Identify the situations in which fraud, duress, or undue influence is present.

PREVIEW CASE

Merrimack Mutual Fire Insurance Co. issued a homeowner’s policy including a personal umbrella liability policy to Mr. and Mrs. Ronald Dufault. The policy covered relatives of the insured who lived in the same household and owned a motor vehicle. Frank Beauparlant was involved in an automobile accident with the Dufault's son who lived with his parents and owned a pickup truck. Merrimack asked the court to rule that it was not liable for the son’s accident. It alleged that the Dufaults did not intend the umbrella policy to cover him. Therefore, Merrimack said there was a mutual mistake about the policy covering the son. Looking at the terms of the policy, was the Dufaults’ son covered? What do you think the intention of Merrimack was at the time the policy was issued?

Even when an offer and an acceptance have been made, situations exist in which the resulting contract is defective. Some mistakes make contracts defective. In addition, fraud, duress, or undue influence makes contracts voidable because they are defective. A victim of an act rendering a contract defective has a choice of remedies.

Mistakes

Whether a mistake affects the validity of a contract normally depends on whether just one of the parties or both parties have made a mistake. A
**Unilateral Mistake**
Mistake by one party to a contract

**Mutual Mistake**
Mistake by both parties to a contract

**LO 1**
Invalidating mistakes

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**Mistakes that Invalidate Contracts**

For a mistake to invalidate a contract, the mistake ordinarily must be a mutual one about a material fact. However, there are some very limited cases in which a unilateral mistake will invalidate a contract.

**Mutual Mistakes**

When a mutual mistake concerns a material fact, some courts say such a contract is void because no genuine assent by the parties existed. Other courts say the contract is voidable. Some courts are not precise about whether the contract is void or voidable. However they classify a mutual-mistake contract, courts do not find them enforceable.

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**COURT CASE**

**Facts:** Mark Wallace filed a workers’ compensation claim against Summerhill Nursing Home for injuries suffered in a work-related accident. While the claim was pending, Summerhill’s workers’ compensation carrier voluntarily paid Wallace partial disability of $8,784. A settlement agreement was eventually reached by which Summerhill agreed to pay Wallace $7,938 representing 17.5 percent partial permanent disability. Neither the attorneys negotiating the agreement nor the judge who approved it knew of the voluntary payments when they agreed on $7,938. Wallace sued for payment under the settlement agreement.

**Outcome:** Because Wallace had already received an amount greater than the amount of the settlement agreement, there was a mutual mistake regarding Wallace’s entitlement to further payments. The agreement was not enforceable.


The area of mistake is one in which significant variations exist among the states and also where exceptions to the general rules have been established by courts in order to avoid harsh results. In some states, it is much easier than in other states to get the courts to agree with a party that a contract should not be enforced when there has been a mistake.

**Unilateral Mistakes**

As a general rule, a unilateral mistake made at the time of contracting has no effect on the validity of a contract. However, when there has been a unilateral mistake of a fact, the mistaken party sometimes receives relief. Courts will generally allow a unilateral mistake of fact to impair the enforceability of a contract if the nonmistaken party has caused the mistake or knew or should have known of the other party’s mistake, and the mistaken party exercised ordinary care. Courts
show extreme unwillingness to allow one party to hold the other to a contract if the first party knows that the other one has made a mistake.

COURT CASE

**Facts:** DSP Venture Group, Inc., contracted to buy real property owned by Minnie Allen from Richard Allen, Minnie’s grandson and beneficiary of her will. The contract provided for closing in thirty days, subject to probate of the will so that Richard had title. The contract also provided that if there were any defects in the title, DSP had seven days to notify Richard. He then had thirty days to cure the defects, and closing would be within ten days of that. Within seven days of signing the contract, DSP notified Richard of a title defect, and it was cured. Shortly thereafter, Richard contracted to sell the property to a third party for $25,000 more. DSP sued to enforce its contract. Richard alleged he could avoid the contract with DSP because he was mistaken in thinking the contract required closing in seven days no matter what. He had not read the contract.

**Outcome:** Richard was mistaken about the closing requirement, but DSP was not. This was a unilateral mistake caused by Richard’s failure to read the contract, so this unilateral mistake did not invalidate the contract with DSP.

―DSP Venture Group, Inc. v. Allen, 830 A.2d 850 (D.C.)

A small number of states allow a party who has made a unilateral mistake of fact to raise the mistake as a defense when sued on the contract. This is allowed when the party has not been inexcusably negligent in making the mistake, and the other, nonmistaken, party has not taken actions in reliance on the contract so that failure to enforce it would be unconscionable.

To entitle a party to relief, the mistake must be one of fact, not mere opinion. If A buys a painting from B for $10 and it is actually worth $5,000, even if A knows B is mistaken as to its value, there is a valid contract. B’s opinion as to its value is erroneous, but there is no mistake as to a fact.

Because there are few exceptions to the rule that a unilateral mistake does not affect a contract, it is clear that the law does not save us from the consequences of all mistakes. The exceptions cover a very small percentage of mistakes made in business transactions. Knowledge and diligence, not law, protect businesses against losses caused by mistakes.

**Contract Terms Govern**

It is important to remember that no matter what the law provides when a mistake occurs, the parties may specify a different outcome in their contract. And when the contract specifies what is to happen in the case of a mistake, the contract provision will apply even if the law would be otherwise. The contract also could indicate which party assumes the risk that the facts are not as believed. The law as to mistake applies only in the absence of a governing provision in the contract, as long as that governing provision is not unconscionable.

A contract could specify that it will be void if a specified fact is not as believed. A, owning a stone, could believe it to be worth very little money. However, if A wants to sell the stone to B for $100, the contract could recite that it is void if
the stone is actually a valuable diamond. This applies in spite of the general rule outlined previously that a unilateral mistake does not invalidate a contract.

The contract also could make the realization of certain expectations a condition of the contract. If those expectations were not realized, even if only one party was mistaken about them, the contract would not be binding.

Frequently, contracts are entered into orally and then reduced to writing. If, through an error in keyboarding, the written form does not conform to the oral form, the written form does not bind the parties. The contract is what the parties agreed to orally.

**Mistakes that do not Invalidate Contracts**

It is said that every rule has an exception, and the rules regarding the impact of mistake on contract validity also have exceptions. Most states recognize the exceptions to the rule on mutual mistake; however, significant variation occurs among the states regarding whether exceptions to the unilateral-mistake rule are recognized.

**Unilateral Mistakes**

The rule is that a unilateral mistake has no effect on a contract. Such a mistake will not, for example, invalidate a contract if a unilateral mistake occurs as to price or quantity. Even if the unilateral mistake as to price results from an error in typing or in misunderstanding an oral quotation of the price, the contract is valid.

**PREVIEW CASE REVISITED**

**Facts:** Merrimack Mutual Fire Insurance Co. issued a homeowner’s policy including a personal umbrella liability policy to Mr. and Mrs. Ronald Dufault. The policy covered relatives of the insured who lived in the same household and owned a motor vehicle. Frank Beauparlant was involved in an automobile accident with the Dufaults’ son who lived with his parents and owned a pickup truck. Merrimack asked the court to rule that it was not liable for the son’s accident. It alleged that the Dufaults did not intend the umbrella policy to cover him. Therefore, Merrimack said there was a mutual mistake about the policy covering the son.

**Outcome:** The court pointed out that any mistake in understanding the terms of the contract was a unilateral one on the part of the Dufaults and a unilateral mistake would not avoid the contract. The policy covered the son so Merrimack was liable on the policy.


**Mutual Mistakes**

The rule given previously is that a mutual mistake will normally make a contract defective. However, this is not true in the case of mistake as to:

1. Value, quality, or price
2. The terms of the contract
3. The law
4. Expectations
Mistakes as to Value, Quality, or Price. A contract is not affected by the fact that the parties made mistaken assumptions as to the value, quality, or price of the subject matter of the contract. Normally, the parties assume the risk that their assumptions regarding these matters can be incorrect. If buyers do not trust their judgment, they have the right to demand a warranty from the seller as to the quality or value of the articles they are buying. Their ability to contract wisely is their chief protection against a bad bargain. If Snead sells Robinson a television set for $350, Robinson cannot rescind the contract merely because the set proved to be worth only $150. This is a mistake as to value and quality. Robinson should obtain as a part of the contract an express warranty as to the set’s quality. Conversely, if the seller parts with a jewel for $50, thinking it is a cheap stone, a complaint cannot later be made if the jewel proves to be worth $2,500.

Mistakes as to the Terms of the Contract. A mistake as to the terms of the contract usually results from failure to understand a contract’s meaning or significance or from failure to read a written contract. Such mistakes in both written and oral contracts do not affect their validity; otherwise, anyone could avoid a contract merely by claiming a mistake as to its terms.

Mistakes of Law. Ordinarily, when the parties make a mutual mistake of law, the contract is fully binding. The parties are expected to have knowledge of the law when making a contract.

Facts: Arthur Ward, Sr., executed a deed conveying real estate to his son, Arthur Ward, Jr. The deed retained a life estate for the father. After Arthur, Sr.’s, two daughters learned of the conveyance, Arthur, Sr., asked his son to deed the property back to him. Arthur, Jr., refused. Arthur, Sr., then sued his son for rescission and reformation of the deed, claiming he thought he could change the deed after he signed it.

Outcome: The court declared that Arthur, Sr., could not have the deed set aside on the ground that he did not understand the legal consequences of executing it. Relief would not be granted merely on the ground of mistake of law.

—Ward v. Ward,
874 N.E.2d 433 (Mass. App. Ct)

Mistakes as to Expectations. When the parties to a contract are mutually mistaken as to their expectations, the contract is binding.

Fraud

One who intends to and does induce another to enter into a contract as a result of an intentionally or recklessly false statement of a material fact commits fraud. The courts recognize two kinds of fraud relating to contracts. These are fraud in the inducement and fraud in the execution.

Fraud in the Inducement

When the party defrauded intended to make the contract, fraud in the inducement occurs. Fraud in the inducement involves a false statement regarding the terms or obligations of the transaction between the parties and not the nature of the document signed. The false statement might relate to the terms of the agreement, the

LO 3
Situations of fraud, duress, or undue influence

Fraud
Inducing another to contract as a result of an intentionally or recklessly false statement of a material fact

Fraud in the Inducement
Defrauded party intended to make a contract
quality of the goods sold, or the seller’s intention to deliver goods. A contract so induced is voidable.

**Court Case**

**Facts:** When Geraldine McKenney died, her son, Joseph, was a banquet steward with no real estate experience who lived in a shelter at a hospital. Her only asset was her home. For ten years, property taxes were not paid. Khalid Eltayeb asked Joseph if he knew taxes of $100,000 were owed and whether he “was in any position to do anything about the property.” Joseph thought he had already lost the house to unpaid taxes. Without disclosing its value or the right to redeem the house, Eltayeb offered to buy Joseph’s interest for $1,200 and introduced him to a man he said had a contract for demolition of the house. The next day, Eltayeb pressed Joseph for a decision and Joseph accepted. Eltayeb paid Joseph $1,200 and took him to his attorney’s office. He had Joseph sign an assignment that showed no value for the property. Eltayeb showed Joseph only pages one, two, and four of a probate petition of Geraldine’s estate requesting Eltayeb be appointed personal representative. Page three, which he did not disclose, listed the home’s value at $150,000. Eltayeb was appointed and deeded the property to himself. Two months later, someone told Joseph the property’s value, so he sued to rescind the assignment claiming fraud in the inducement.

**Outcome:** The court found that Eltayeb knowingly made false representations in order to get Joseph to make the assignment and that Joseph reasonably relied on the false statements. The assignment was rescinded.

—in re Estate of McKenney, 953 A.2d 336 (D.C.)

**Fraud in the Execution**

The defrauded party might also be tricked into signing a contract under circumstances in which the nature of the writing could not be understood. The law calls this fraud in the execution or fraud in the factum. In this case, the victim unknowingly signs a contract. A person who cannot read or who cannot read the language in which the contract is written could be a victim of this type of fraud. When fraud in the execution occurs, the contract is void.

Fraud also may be classified according to whether a party engages in some activity that causes the fraud or does nothing. A party who actually does something or takes steps to cause a fraud commits active fraud. Sometimes a party may be guilty of fraud without engaging in any activity at all. Passive fraud results from the failure to disclose information when there is a party guilty of fraud without engaging in any activity at all. Passive fraud results from the failure to disclose information when there is a duty to do so.

**Active Fraud**

Active fraud may occur either by express misrepresentation or by concealment of material facts.

**Express Misrepresentation.** Fraud, as a result of express misrepresentation, consists of four elements, each of which must be present to constitute fraud:

1. **Misrepresentation:** a false statement of a material fact.
2. Must be made by one who knew it to be false or made it in reckless disregard of its truth or falsity.
3. Must be made with intent to induce the innocent party to act.
4. The innocent party justifiably relies on the false statement and makes a contract.

If these four elements are present, a party who has been harmed is entitled to relief in court.

**Concealment of Material Facts.** If one actively conceals material facts for the purpose of preventing the other contracting party from discovering them, such concealment results in fraud even without false statements.

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**COURT CASE**

**Facts:** Michael and Kathy Gregg contracted to buy a house from Silvio and Judy DiPaulo. The DiPaulos supplied a disclosure report stating they knew of no termite infestation or structural defects caused by previous termite infestation. During a home inspection, they denied any past or current termite problems. Three months after buying the home, the Greggs found it was infested with termites and found patchwork on the drywall and other efforts to hide the termite infestation.

**Outcome:** The court said that sellers had a duty to disclose defects that could not be discovered on an inspection. Failure to do so in order to induce the Greggs to buy the house was fraud.


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Merely refraining from disclosing pertinent facts unknown to the other party is not fraud in some states. In those states, there must be an active concealment. However, in other states, refraining from disclosing relevant facts does constitute fraud.

**Passive Fraud**

If one’s relationship with another relies on trust and confidence, then silence may constitute passive fraud. Such a relationship exists between partners in a business firm, an agent and principal, a lawyer and client, a guardian and ward, a physician and patient, and in many other trust relationships. In the case of an attorney-client relationship, for example, the attorney has a duty to reveal anything material to the client’s interests, and silence has the same effect as making a false statement that there was no material fact to be told to the client. The client could, in such a case, avoid the contract.

Silence, when one has no duty to speak, is not fraud. If Lawrence offers to sell Marconi, a diamond merchant, a gem for $500 that is actually worth $15,000, Marconi’s superior knowledge of value does not, in itself, impose a duty to speak.

**Innocent Misrepresentation**

When a contract is being negotiated, one party could easily make a statement believing it to be true when it is in fact false. Such a statement, made in the belief that it is true, is called an **innocent misrepresentation**. Courts generally hold that if it was reasonable for the misled party to have relied on the innocent misrepresentation, the contract is voidable.
Statements of Opinion

Statements of opinion, as contrasted with statements of fact, do not, as a rule, constitute fraud. The person hearing the statement realizes or ought to realize that the other party is merely stating a view and not a fact. But if the speaker is an expert or has special knowledge not available to the other party and should realize that the other party relies on this expert opinion, then a misstatement of opinion or value, intentionally made, would amount to fraud.

Such expressions as “This is the best buy in town,” “The price of this stock will double in the next twelve months,” and “This business will net you $25,000 a year” are all statements of opinion, not statements of fact. However, the statement “This business has netted the owner $25,000” is not an opinion or a prophecy, but a historical fact.

Duress

For a contract to be valid, all parties must enter into it of their own free wills. Duress is a means of destroying another’s free will by one party obtaining consent to a contract as a result of a wrongful threat to do the other person or family members some harm. Duress causes a person to agree to a contract he or she would not otherwise agree to. Normally, to constitute duress, the threat must be made by the other party and must be illegal or wrongful. A contract made because of duress is voidable.

**Court Case**

**Facts:** Amy Maida was employed by RLS Legal Solutions, LLC. RLS told her to sign an employment agreement containing an arbitration provision. Maida initially refused to sign the agreement because she did not agree to the arbitration provision. RLS withheld her pay for work already performed because she did not sign the agreement. Maida was afraid she would not be able to pay her mortgage, car loan, and insurance without her compensation. She finally signed the agreement but told RLS she was signing under duress. Maida sued RLS.

**Outcome:** RLS was not entitled to withhold pay to which Maida was entitled on condition that she sign an agreement to arbitrate. This was duress.

—*In re RLS Legal Solutions, LLC*, 156 S.W.3d 160 (Tex. App.)

Duress is classified according to the nature of the threat as physical, emotional, or economic.

**Physical Duress**

When one party makes a threat of violence to another person who then agrees to a contract to avoid injury, physical duress occurs. Holding a gun to another’s head or threatening to beat a person clearly risks injury to a human being and is unlawful.
Emotional Duress

Emotional duress occurs when one party’s threats of something less than physical violence result in such psychological pressure that the victim does not act under free will. Courts will consider the age, health, and experience of the victim in determining whether emotional duress occurred.

COURT CASE

**Facts:** John Hollett was thirty years older than Erin and a successful businessman. Two days before their scheduled wedding, Erin learned he wanted her to sign a prenuptial agreement. John’s lawyers had hired a recent law school graduate to counsel Erin, who had dropped out of high school. The lawyer arranged to meet Erin at John’s lawyers’ office the next day, one day before the scheduled wedding. All the arrangements for an elaborate 200-guest wedding had been made and paid for, and Erin’s parents had flown in from Thailand. During the meeting with the lawyer and negotiations with John’s lawyers, Erin sobbed for three or four hours and was frequently unable to speak with her lawyer. Her lawyer got some provisions of the agreement changed in her favor but she remembered almost nothing about the conference. The agreement was signed the morning of the wedding. Erin and John were married until John died eleven years later. Erin asked the court to invalidate the agreement on the basis of emotional duress.

**Outcome:** The court found that Erin’s signing of the prenuptial agreement was involuntary as a result of duress. It was invalid.

—In re Estate of Hollett, 834 A.2d 348 (N.H.)

Economic Duress

When one party wrongly threatens to injure another person financially in order to get agreement to a contract, economic duress occurs. However, duress does not exist when a person agrees to a contract merely because of difficult financial circumstances that are not the fault of the other party. Also, duress does not exist when a person drives a hard bargain and takes advantage of the other’s urgent need to make the contract.

Undue Influence

One person may exercise such influence over the mind of another that the latter does not exercise free will. Although there is no force or threat of harm (which would be duress), a contract between two such people is nevertheless regarded as voidable. If a party in a confidential or fiduciary relationship to another induces the execution of a contract against the other person’s free will, the agreement is voidable because of **undue influence**. If, under any relationship, one is in a position to take undue advantage of another, undue influence may render the contract voidable. Relationships that may result in undue influence are family relationships, a guardian and ward, an attorney and client, a physician and patient, and any other relationship in which confidence reposed on one side results in domination by the other. Undue influence may result also from sickness, infirmity, or serious distress.
In undue influence, there are no threats to harm the person or property of another as in duress. The relationship of the two parties must be such that one relies on the other so much that he or she yields because it is not possible to hold out against the superior position, intelligence, or personality of the other party. Whether undue influence exists is a question for the court (usually the jury) to determine. Not every influence is regarded as undue; for example, a nagging spouse is ordinarily not regarded as exercising undue influence. In addition, persuasion and argument are not per se undue influence. The key element is that the dominated party is helpless in the hands of the other.

**Facts:** When Agnes Seals was eighty years old, she was in declining health and recently had to move out of her apartment because of a fire next door. She sold her building to David Aviles. Seals had met Aviles at the bank, and he had promised to take care of her for life if she transferred the building to him. He paid $10,000 down and executed a $40,000 mortgage. Aviles's lawyer brought the lawyer with whom he shared office space to represent Seals at the closing. She had never seen him, and he did not recommend that Seals get an appraisal before the sale or prepare any documents assuring Seals's right to live in the building. Aviles's mortgage payments were never deposited into Seals's account, but were redeposited into Aviles's account. He ran up $30,000 in charges on Seals's credit cards. After Seals's death, the beneficiaries under her will sued Aviles. A doctor testified that Seals suffered from severe Alzheimer's dementia at the time of the sale. Other witnesses testified that sixteen months after the sale, Seals was completely homebound and dependent on others, particularly Aviles.

**Outcome:** Aviles's free use of Seals's money and credit cards coupled with her weakened condition and reliance on him implied he intended to obtain Seals's building through improper means.


**Remedies for Breach of Contract Because of Fraud, Duress, or Undue Influence**

Because some mistakes, such as fraud in the inducement, duress, and undue influence, render contracts voidable, not void, you must know what to do if you are a victim of one of these acts. If you do not take steps to protect your rights, your right to avoid the contract's provisions may be lost. Furthermore, you may ratify the contract by some act or word indicating an intention to be bound. After you affirm or ratify the contract, you are as fully bound by it as if there had been no mistake, fraud, duress, or undue influence. But still you may sue for whatever damages you have sustained.

If the contract is voidable, you might elect to *rescind* it or set it aside. Rescission seeks to put the parties in the position they were in before the contract was made. In order to rescind, you must first return or offer to return what you received under the contract. After this is done, you are in a position to take one of four actions, depending on the circumstances:

1. You may bring a suit to recover any money, goods, or other things of value given up, plus damages.
2. If the contract is executory on your part, you may refuse to perform. If the other party sues, you can plead mistake, fraud, duress, or undue influence as a complete defense.

3. You may bring a suit to have the contract judicially declared void.

4. If a written contract does not accurately express the parties’ agreement, you may sue for reformation, or correction, of the contract.

In no case can the wrongdoer set the contract aside and thus profit from the wrong. If the agreement is void, neither party may enforce it so no special act is required for setting the agreement aside.

QUESTIONS

1. What is the difference between a mutual mistake and a unilateral mistake?
2. Why is the area of mistake one in which significant variations exist among the states regarding the enforceability of contracts?
3. When will courts allow a unilateral mistake of fact to impair the enforceability of a contract?
4. When an oral contract is reduced to writing and through an error in keyboarding the written form does not conform to the oral form, does the written form bind the parties? Explain.
5. What types of mutual mistakes do not make a contract defective?
6. Explain the difference between fraud in the inducement and fraud in the execution of a contract.
7. When can a statement of opinion constitute fraud?
8. What is duress?
9. Why should the victims of acts that make contracts voidable, such as duress or undue influence, take steps to protect their rights?
10. If an agreement is void, what must a party do to set it aside?

CASE PROBLEMS

1. A month before they were divorced, Margaret Janusz and Francis Gilliam entered into a property settlement agreement. The agreement provided that Gilliam would continue funding and maintain in effect his survivor’s annuity through the federal Civil Service Retirement System. The annuity would pay a monthly amount to Janusz after Gilliam’s death. Several years after the divorce, the federal Office of Personnel Management told Janusz that pursuant to federal law she was not eligible for Gilliam’s survivor benefits. Janusz sued to rescind the settlement agreement on the basis of mutual mistake of fact. Was the agreement rescinded?

2. Randall Shanks was a successful attorney and Teresa, his fiancée, was a secretary and office manager in his office. To preserve his assets for his children from a prior marriage, Randall suggested they sign a premarital agreement and Teresa agreed. Randall drafted an agreement and gave it to Teresa ten days before their wedding. He responded to Teresa’s questions about it, but he told her to get independent legal advice. Teresa consulted an attorney licensed in another state who concluded the agreement would force Teresa to waive all rights as a spouse. She
told Teresa to get advice from an attorney licensed in the state. Teresa returned the agreement to Randall and asked him to make some changes the attorney had suggested. Randall gave a revised agreement to Teresa and told her to review it with her lawyer. Teresa did not seek further legal advice. Randall and Teresa signed the agreement and were married. The marriage failed, and when Randall asked for enforcement of the premarital agreement, Teresa alleged undue influence. Was there undue influence?

LO 1

3. While working, an ore bucket hit Henry Kruzich on the side of his face causing a severe head injury. Old Republic Insurance Co. insured his employer’s workers’ compensation plan. It paid Kruzich total disability and medical benefits. Kruzich ultimately needed domiciliary care, so Old Republic started paying Henry’s wife, Kathy, to stay at home and care for him. Six years after the accident, Henry and Old Republic signed a settlement agreement for $132,701 that ended “fully and forever . . . all present and future domiciliary care” benefits. Ten years later, Henry was diagnosed with Parkinson’s disease most likely from the accident. Henry sought rescission of the settlement agreement on the basis of mutual mistake of fact saying that at the time of the settlement neither party knew there was any connection between head injuries and Parkinson’s disease. Was the agreement rescinded?

LO 2

4. Carolina Marble and Tile employed Jimmy Foster to do tile and brick work. He complained of headaches and ringing in his ears after working where jackhammers were in use. Foster and Carolina entered into a workers’ compensation agreement by which Carolina would pay Foster temporary total disability benefits for tinnitus (the perception of ringing, or other sounds when no external sound is present) and hearing loss. Two years later, Carolina tried to stop the benefits because state law provided there were to be no compensation awards for tinnitus. Could Carolina set aside its agreement to pay the benefits?

LO 3

5. New Horizon Deli, Inc., leased property from 1266 Apartment Corp. After the lease expired, New Horizon continued in possession and paid rent each month. Three years later, Russell Dizon, the president of New Horizon, fell in front of the property allegedly on ice resulting from an accumulation of inadequately cleared snow. Later, 1266 offered a three-year lease with a $500 increase in monthly rent. A few months later, Dizon sued 1266 for his injuries from his fall. During further negotiations, 1266 said it would not sign a lease as long as Dizon maintained his personal injury action. When New Horizon failed to vacate, 1266 sued for eviction. New Horizon alleged 1266 subjected it to economic duress. Did it?

LO 1

6. Orange County, New York, deeded two lots to Josclynne and Harriet Grier. At the time of the execution of the deeds, all the parties believed Orange County owned the property. When it later turned out that the county did not own the lots, the county asked the court to vacate the deeds. How should the court rule on the case?

LO 2

7. As an employee at the New Hampshire State Prison, Catherine Barney made contributions to the New Hampshire Retirement System (NHRS). Several years later, her employment was terminated. Under financial pressure, Barney withdrew her retirement contributions after reading and signing an application that stated that she waived all her rights to any funds from NHRS. When she later believed she would have been eligible for disability benefits, Barney claimed her withdrawal constituted a unilateral mistake. Was it?

LO 3

8. When Craig Catrett bought a truck with 4,700 miles on it from Landmark Dodge, it had the manufacturer’s new vehicle price sticker inside it. A salesman said it was a “demonstrator.” Catrett also bought an extended warranty. The warranty con-
tract said it only applied to new vehicles. However, the tag application, purchase contract, and finance agreement indicated the truck was “used.” Later, when Catrett took the truck to Landmark for service, he found out the front end was misaligned and a nonfactory weld had broken, making the truck inoperable and unsafe. He discovered the truck was not a demonstrator but previously had been owned and involved in two wrecks. The prior owner had told Landmark it had been in a collision. Catrett sued for fraud. Landmark argued Catrett did not show justifiable reliance on its false statement. Did he?

9. D. R. was a multihandicapped student needing special education. D. R.’s parents and the school board signed an agreement that required the board to pay the placement costs for D. R. at a residential school, the Benedictine School, at the current annual rate of $30,000. The agreement required the board to pay for the next year 90 percent of any increase over the previous rate. The board was to pay no other costs for D. R.’s placement. Several months later, the board received an estimate of $62,487 for the next year’s cost at Benedictine for D. R. The $62,487 included the services of a one-to-one aide for D. R. during his waking hours. The board refused to pay for the aide. In the proceedings that followed, D. R.’s parents asserted that because the need for the aide was not anticipated when the agreement was signed, there was a mutual mistake of fact and the agreement was defective. Was it?