

ASPEN PARALEGAL SERIES

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Basic Contract Law for Paralegals
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Chapter 6

CONTRACTUAL INTENT

Learning Objectives

After studying this chapter you will be able to:

- Define what is meant by “contractual intent”
- Define “fraud”
- Differentiate fraud from misrepresentation
- Explain the concept of duress
- List the three types of duress that may be encountered in contract law
- Discuss what is meant by undue influence
- Define a contract of adhesion
- Discuss the effect of a mistake on contract formation
- Discuss the enforceability of contract entered into with a unilateral mistake
- Understand how the concept of contractual intent may be applied to void contracts

Contractual Intent

The parties to the contract must actually intend to enter into a contract for the same bargain at the same time.

Fraud

Five elements of contractual fraud:

1. The misrepresentation
2. of a material fact
3. made with the intent to deceive and
4. relied on by the other party
5. to his or her detriment

Duress

Duress connotes some form of force or coercion exercised over one party to the contract in order to induce that party's promise to contract

Forms of Duress

- Physical duress
- Economic duress
- Mental duress

Contract of Adhesion

- A type of contract known as a contract of adhesion also falls under the category of duress.
- A contract of adhesion is a contract in which one side has an unfair bargaining position, a position that is so unequal that the other party's assent is suspect.
- Even though no actual duress exists, because of the inequality of the parties the contract is called into question.
- These types of contracts are voidable by the innocent party because of the unconscionable aspect of the other side's bargaining position.

Mistake

Mistake occurs when one (or both) of the parties is under a misconception as to the subject matter of the contract.

Categories of Mistake

- **Mutual mistake:** this type of mistake goes to a basic assumption of the agreement, the mistake has a material adverse effect on the parties, and the mistake was of the type that could not be foreseen.
- **Unilateral mistake:** concerns a situation in which only one party to the contract is mistaken because of some typewritten or computation error.