

ACTIONABLE MISREPRESENTATION

Unambiguous, false, statement of fact, addressed to C, induced C (need not be the only reason but material)	C to prove objective inducement AND D to prove C was not induced, OR C to prove subjective inducement.	No duty to check misrepresentor's statement. If unreasonable not to check/negligent check done - possible contributory negligence.
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Mere Puff - Not Misrepresentation

E.g. 'desirable residence', 'fertile and improvable', 'a fantastic investment opportunity'

Silence - Not Misrepresentation

No duty to disclose facts which, if known, might affect other party's decision to contract.	Impossible to know precisely what should be disclosed.
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Statement of Future Intent. - Not Misrep

Cannot be true or false at the moment it is made.	Representor makes a promise and then it is prevented/circumstances alter so they change their mind.	E.g. wife says she will not remarry and this is her intention. Later, changes her mind and remarries. She did not misrepresent her current intention.
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Statement of Opinion - Not Misrepresentation

Same facts held by D & C. Honestly held by D.	E.g. D said his 'idea was that the land would carry 2000 sheep' (when land has never been used for sheep before).
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Statement of Fact - Misrepresentation

E.g. statements of law, statement asserting a given state of affairs.

Contracts uberrimae fidae - Misrepresentation

Some contracts necessitate one party in particularly strong position to know material facts and disclose those.	E.g. insurer must disclose material facts in a contract of insurance. E.g. fiduciary relationships like, company & directors; trustee & beneficiaries.
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Half-Truths - Misrepresentation

Statement that is technically true but misleading.	E.g. selling property as 'fully let' knowing all tenants have given notice to quit.
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Statement of Opinion > Fact - Misrepresentation

Representor has superior knowledge/experience than representee.	E.g. 'This will make 200,000 gallons of petrol per year' - said when representor had enough experience to know it can't be true.
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Statement of FI > Fact - Misrepresentation

Where X states they intend to do something but know they cannot do it/do not intend to do it.	E.g. 'I will buy it next month for £1000', knowing they cannot afford it or having no intent to buy it.
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Continuing Misrepresentation - Misrep

If statement is made initially which is true but becomes false before contracting, representor must correct misrepresentation.	Existing fact which was true but later becomes false.	E.g. selling a shop stating income of £1000p/m. If income falls to £100p/m, must disclose.
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CATEGORIES OF MISREPRESENTATION

Remedies available depend upon the category of the misrepresentation in question.

Categories - Fraudulent

Proof of fraud: false representation made knowingly or without belief in its proof or made recklessly careless whether it be true or false.	Deliberate/dishonest failure to disclose
Motive = immaterial	Burden of proof on C (extremely difficult)

Categories - Negligent

Where representor cannot prove that they had reasonable grounds to believe (and continued to believe) the statement was true up to time of contract.	Burden of proof on D to prove they had reasonable grounds in believing their statement.	E.g. X told Y £100 cost taken from Doc 1. True cost was found in Doc 2. X failed to show objectively reasonable grounds for disregarding figure in Doc 2 and relying instead on Doc 1.
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Categories - Innocent

Representor had reasonable grounds for belief in the truth of their statement and believed it up to time of contracting.	Burden on neither; innocent is simply a statement not made fraudulently/negligently.
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Rescission

Representee must communicate intention/initiate proceedings for rescission	Only awarded where parties can be restored to original position pre-contract.
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Bars to Rescission

Affirmation	Contract was affirmed through words/conduct
Lapse of time	Action for rescission must be brought promptly
Third party rights accrue	If at any time prior to rescission, person acquiring goods under contract passes good title of those goods to an innocent third party, cannot rescind.
Impossibility	If it is no longer possible to restore parties to previous position. E.g. change in nature/status of shares after being induced to take shares.

REMEDIES FOR MISREPRESENTATION

Voidable but not void.	Rescission, damages, indemnity
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Indemnity

Covers expenses for obligations assumed as direct result of contract	Where action for misrepresentation gives damages, NOT awarded	E.g. If representee induced into buying leasehold property, obligations arising from this (council tax, service charge etc.) would be covered by indemnity
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Damages for Fraudulent Misrep

Places innocent party in position they would have been but for the misrepresentation	C must mitigate losses as soon as fraud discovered
Contrib. not available as defence	Damages reduced by value of any benefit C acquired as a result of contract

Damages for Negligent Misrepresentation

Places innocent party in position they would have been but for the misrepresentation	Damages can also be given in lieu of rescission
Contrib available where loss was partly fault of representee	

Damages for Innocent Misrepresentation

Only entitled to rescission and indemnity (if applicable)	No automatic right to damages	Court has discretion to award damages in lieu of rescission
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EXEMPTING MISREPRESENTATION

Cannot exclude/restrict liability unless it satisfies requirement of reasonableness.

ALTERNATIVE CLAIMS TO MISREPRESENTATION

Claim for breach:	Where misrepresented statement is incorporated into contract
Claim in negligent misstatement:	Where duty of care exists in tort

