

Relevant law

Misrepresentation:

Definition of what is meant by an actionable misrepresentation:

An actionable misrepresentation is a statement of material fact (1) made prior to the contract (2) by one party to the contract to the other which is false or misleading (3) and which induced the other party to enter into the contract (4).

Presumed undue influence – special relationship

Within class 2a, there is a presumption of undue influence which arises when there is a special relationship between the parties. The party alleging undue influence has to prove the existence of the relationship. The burden then falls on the other party to prove that there has been no undue influence. They must show that:

- the party alleging undue influence had full knowledge of the character and effect of the contract when entering into it; satisfied if
- the party alleging undue influence had independent and impartial advice before entering into the contract.

There are certain **special relationships** which give rise to a presumption of class 2a undue influence: Parent–child, Religious leader–disciple, Trustee–beneficiary, Doctor–patient, Solicitor–client.

You should note that the relationship between **husband and wife** was specifically excluded from the class 2a special relationship in Midland Bank v Shepherd [1988] BTLc 395.

Equity

Equity is not an independent body of law; rather, it is synonymous with corrective justice and complements common law to counterbalance its inflexible rules. It refers to a particular set of remedies and associated procedures involved with civil law. A court will usually award equitable remedies when a legal remedy is insufficient or inadequate. Courts may choose whether they wish to apply these principles:

1. Equity will not suffer a wrong to be without a remedy.
 2. Equity follows the law.
 3. He who seeks equity must do equity (remedy provided where you have acted equitable in the transaction)
 4. He who comes to equity must come with clean hands (relates to the past conduct of parties)
 6. Equality is Equity.
 7. Equity looks to the intent rather than the form (Parkin v Thorold 1852, contract can be corrected when the terms are not correctly recorded)
 8. Equity looks on that as done which ought to have been done (look at contract from the enforceable side and the situation they would be in had the contract been completed)
- etc.

Case law

Yerkey v. Jones (1939) The High Court considered the enforceability of a guarantee provided by a married woman to secure her husband's debts. Dixon J. in said that:

"the final question [was] whether the grounds on which the creditor believed the document was fairly obtained and executed by a woman sufficiently understanding its purport and effect were such that it would be inequitable to fix the creditor with the consequences of the husband's improper and unfair dealing with his wife."

Midland Bank v. Shepherd (1985) does not treat wives who become sureties for their husband's debts any differently from other sureties (property was not considered there): "The relationship of husband and wife does not, as a matter of law, raise a presumption of undue influence within class 2A."

National Westminster Bank v. Morgan [1985] AC 686: The House of Lords held that in order to set aside the transaction for reasons of undue influence, one party had to be victimised by the other.