

MISREPRESENTATION ACT

CHAPTER 82:35

Act
12 of 1983

Current Authorised Pages

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Note on Subsidiary Legislation

This Chapter contains no subsidiary legislation.

CHAPTER 82:35

MISREPRESENTATION ACT

ARRANGEMENT OF SECTIONS

SECTION

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CHAPTER 82:35

MISREPRESENTATION ACT

12 of 1983. **An Act to amend the law relating to innocent misrepresentations.**

Commencement.
[228/1986].

[20TH OCTOBER 1986]

Short title.

1. This Act may be cited as the Misrepresentation Act.

Removal of
certain bars to
rescission for
innocent
misrepresentation.

2. Where a person has entered into a contract after a misrepresentation has been made to him, and—

(a) the misrepresentation has become a term of the contract; or

(b) the contract has been performed,

or both, then, if otherwise he would be entitled to rescind the contract without alleging fraud, he shall be so entitled, subject to this Act, notwithstanding the matters mentioned in paragraphs (a) and (b).

Damages for
misrepresentation.

3. (1) Where a person has entered into a contract after a misrepresentation has been made to him by another party thereto and as a result thereof he has suffered loss, then, if the person making the misrepresentation would be liable to damages in respect thereof had the misrepresentation been made fraudulently, that person shall be so liable notwithstanding that the misrepresentation was not made fraudulently, unless he proves that he had reasonable ground to believe and did believe up to the time the contract was made that the facts represented were true.

(2) Where a person has entered into a contract after a misrepresentation has been made to him otherwise than fraudulently, and he would be entitled, by reason of the misrepresentation, to rescind the contract, then, if it is claimed, in any proceedings arising out of the contract, that the contract ought to be or has been rescinded, the Court or arbitrator may declare the contract subsisting and award damages in lieu of rescission, if of opinion that it would be equitable to do so, having regard to the nature of the misrepresentation and the loss that would be caused by it if the contract were upheld, as well as to the loss that rescission would cause to the other party.

(3) Damages may be awarded against a person under subsection (2) whether or not he is liable to damages under subsection (1), but where he is so liable any award under subsection (2) shall be taken into account in assessing his liability under subsection (1).

4. If a contract contains a term which would exclude or restrict—

Avoidance of provision excluding liability for misrepresentation.

- (a) any liability to which a party to a contract may be subject by reason of any misrepresentation made by him before the contract was made; or
- (b) any remedy available to another party to the contract by reason of such a misrepresentation,

that term shall be of no effect except in so far as it satisfies the requirement of reasonableness as stated in section 5 and it is for those claiming that the term satisfies that requirement to show that it does.

5. (1) In relation to a contract term, the requirement of reasonableness for the purposes of section 4 is that the term shall have been a fair and reasonable one to be included having regard to the circumstances which were or ought reasonably to have been known to or in the contemplation of the parties when the contract was made.

The “reasonableness” test.

(2) A contract term is to be taken for the purposes of this Act, as satisfying the requirement of reasonableness, if it is incorporated or approved by, or incorporated pursuant to a decision or ruling of, a competent authority acting in the exercise of any statutory jurisdiction or function and is not a term in a contract to which the competent authority is itself a party.

(3) In this section “competent authority” means any Court, arbitrator or arbiter, government department or public authority.

6. Nothing in this Act shall apply in relation to any misrepresentation or contract of sale which is made before the commencement of this Act.

Saving for past transactions.