Solution and Answer Guide

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Chapter 14: Voluntary Consent

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# Critical Thinking Questions in Features

Adapting the Law to the Online Environment

1. Josh pays AcademicShark.com $50 for an essay on the biblical references in Moby Dick. The website promises “a top-notch grade” and includes a disclaimer as described above. Josh hands in the Moby Dick paper without making any changes and receives a C +. Does he have any recourse under contract law should he want a refund? Explain your answer.

Solution

Josh has little legal recourse against AcademicShark.com under contract law. Regardless of the language on the website offering “a top-notch grade” or any other promises about the quality of the essay, the company will rely on the disclaimer to protect itself against being complicit in Josh’s plagiarism. Josh cannot argue that the contract is void for illegality, because plagiarism is not illegal. Furthermore, he is not an innocent party, given that he certainly was aware of the true purpose of the transaction.

Seventeen states have prohibited contract cheating. If Josh lives in one of those states, he might consider trying to void the contract for illegality. There has been little to no enforcement of such state laws, however, and Josh would still be complicit in the matter. Being truly committed to stop the practice, Josh could lobby for a federal law criminalizing the practice. Such a law is unlikely, however, as it might improperly penalize legitimate tutoring efforts.

# Critical Thinking Questions in Cases

Case 14.1

1. In most cases involving the interpretation and application of a contract, a party is not allowed to present evidence outside the document expressing the parties’ agreement. Why not?

Solution

Generally, a court will determine the intent of contracting parties from the language used in their agreement and interpret that language to give effect to the intent as expressed. The court is bound to give effect to the contract according to this intent. A court will not normally interpret the language according to what a party claims was his or intent when the contract was made.

A contracting party’s memory may be faulty, especially if considerable time has passed since a contract was made. At the time, the parties may have had different, subjective, unstated notions of the terms. One of the parties might have changed their minds, or suffered a consequence that would make performance of the deal less appealing. None of these circumstances would seem to justify remaking what are otherwise clearly expressed terms.

Thus, in interpreting and applying a contract, the prime reason for not allowing a party to present evidence outside its expression is fairness. If a court were to always give effect to what one or the other contracting party claimed later had been their intent at the time of the contract, there would be less stability and predictability to the making of a deal. Fraud might also thereby be encouraged.

Case 14.2

1. Did Shivley’s misrepresentations rise to the level of fraud? Explain.

Solution

Yes. Shivley’s misrepresentations to Cronkelton that he had taken the appropriate steps to winterize the property rose to the level of fraud. The elements of fraud are (1) the misrepresentation of a material fact, (2) an intent to deceive, (3) an innocent party’s justifiable reliance on the misrepresentation, and (4) to collect damages, the innocent party must have been harmed as a result of the misrepresentation.

In the *Cronkelton* case, Shivley’s statements were (1) misrepresentations of material fact, (2) made (or concealed) with the intent to mislead, (4) justifiably relied on by Cronkelton, and (5) the cause of damage to Cronkelton. Shivley told Cronkelton that the property would be winterized. When this was not done sufficiently, Shivley did not inform Cronkelton. Cronkelton relied on Shivley’s statements and did not further inspect the property until after the sale when he discovered the damage that freezing had done to the building and equipment.

Case 14.3

1. The gold standard for due process in our judicial system is a jury trial. By undoing the jury’s award of punitive damages in this case, did the court act contrary to due process? Explain.

Solution

No. Due process takes many forms. It provides procedural protections like notice and an opportunity to be heard. But it also protects defendants from bad results that might arise out of good procedures.

After a jury hears evidence, listens to the parties’ arguments, and receives the judge’s instructions, the jury confers and renders a verdict. As in this case, the verdict can include how much a defendant like Silverstar should pay for its reprehensible conduct. If the judge finds the jury’s punitive award to be grossly excessive, it can be reduced, as it was here, in the name of due process.

The result may sometimes seem arbitrary. When it aligns with precedent, however—again, as in this case—it provides the defendant with notice of the potential penalty for certain conduct, and thereby coincides with the standard of due process.

1. Silverstar argued that the ratio between Adeli’s actual harm and the amount of punitive damages should have been a single-digit ratio to comport with due process. How would the application of this principle affect the incidence of fraud in business deals? Discuss.

Solution

If SIlverstar’s argument were a universal principle to be applied to awards of punitive damages, the incidence of fraud in business deals would likely increase.

Punitive damages, Silverstar asserted, must strike a single-digit ratio. The court found precedent providing notice to the defendant, in a case involving the fraudulent sale of a used car, that such an award might in fact exceed that limit. This supported the court’s dismissal of Silverstar’s argument.

To rigidly apply a single-digit ratio principle, as if it were a mathematical formula for due process, would turn fraudulent conduct into a calculable business decision, making the practice of fraud more likely.

# Chapter Review

Practice and Review

Chelene had been a caregiver for Marta’s elderly mother, Janis, for nine years. Shortly before Janis passed away, Chelene convinced her to buy Chelene’s house for Marta. Janis died before the papers were signed, however. Four months later, Marta used her inheritance to buy Chelene’s house without having it inspected. The house was built in the 1950s, and Chelene said it was in “perfect condition.” Nevertheless, one year after the purchase, the basement started leaking. Marta had the paneling removed from the basement walls and discovered that the walls were bowed inward and cracked. Marta then had a civil engineer inspect the basement walls, and he found that the cracks had been caulked and painted over before the paneling was installed. He concluded that the “wall failure” had existed “for at least thirty years” and that the basement walls were “structurally unsound.” Using the information presented in the chapter, answer the following questions.

1. Can Marta avoid the contract on the ground that both parties made a mistake about the condition of the house? Explain.

Solution

Yes, if both parties were ignorant of the fact of the structure, there may be grounds for rescinding the contract. If there is a bilateral (mutual) mistake of material fact, such as structural soundness, then the parties did not know what they were really bargaining for and the contract could be rescinded.

1. Can Marta sue Chelene for fraudulent misrepresentation? Why or why not? What element (or elements) might be lacking?

Solution

Anybody can file suit for anything; carrying the day in court is another matter. In the sale of an old house, the buyer has an obligation to have it inspected by a professional. A seller may very well not know of structural problems. Chelene is a caregiver, not a structural engineer. Unless Marta can show that Chelene put up the paneling to hide the wall problem, she is unlikely to have much of a case.

1. Now assume that Chelene knew that the basement walls were cracked and bowed and that she hired someone to install paneling before offering to sell the house. Did she have a duty to disclose this defect to Marta? Could a court find that Chelene’s silence in this situation constituted misrepresentation? Explain.

Solution

Chelene appears to have lied because she said the house was in perfect condition and she covered up a known problem. Chelene knew of the problem, lied about it, and covered it up. That appears to be misrepresentation by deception. Chelene was not silent because she said the house was in “perfect condition” when she knew the basement was a mess.

1. Can Marta obtain rescission of the contract based on undue influence? If the sale to Janis had been completed before her death, could Janis have obtained rescission based on undue influence? Explain.

Solution

Yes. Chelene was in a position of “trust” for years, which allowed her to take advantage of Marta for personal gain. Marta made the deal on her own behalf. A buyer has some obligation to inspect property; Chelene’s statements may reflect how she felt about the house, but any house more than 50 years old will have problems, so Marta was negligent. Had the sale been to Janis, it would be worthy of more inspection, as she was frail, did not need the house, and was in Chelene’s care. Undue influence could arise there.

Practice and Review: Debate This

1. The concept of caveat emptor (“let the buyer beware”) should be applied to all sales, including those of real property.

Solution

Buyers of personal and real property should take responsibility for obtaining enough information about what they are buying so that they are not “surprised” after the purchase. In the case of real property, buyers should pay for thorough inspections, rather than relying on the honesty of the real property seller. For consumer goods, there is sufficient competition in the marketplace to guarantee that only in exception situations will producers sell defective goods to their customers. Reputation and repeat business are valuable. Actions by supplier that lessen either of these factors will suffer.

Not everyone can be a quality expert. *Caveat emptor* has no place in the modern consumer society. Products are just too complicated for the average consumer to know whether they are defective and perhaps dangerous. As for real property, if a seller willfully hides a costly-to-repair defect from the buyer, the latter should be able to sue for redress. Information is expensive to obtain, for both personal and real property. Buyers should be able to rely on statements made by sellers.

Issue Spotters

1. In selling a house, Matt tells Ann that the wiring, fixtures, and appliances are of a certain quality. Matt knows nothing about the quality, but it is not as specified. Ann buys the house. On learning the true quality, Ann confronts Matt. He says he wasn’t trying to fool her; he was only trying to make a sale. Can she rescind the deal? Why or why not?

Solution

Yes. Rescission may be granted on the basis of fraudulent misrepresentation. The elements of fraudulent misrepresentation include intent to deceive, or *scienter*. *Scienter* exists if a party makes a statement recklessly, without regard to whether it is true or false, or if a party says or implies that a statement is made on some basis such as personal knowledge or personal investigation when it is not.

1. Brad, an accountant, files Dina’s tax returns. When the Internal Revenue Service assesses a large tax against Dina, she retains Brad to contest the assessment. The day before the deadline for replying to the IRS, Brad tells Dina that unless she pays a higher fee, he will withdraw. If Dina agrees to pay, is the contract enforceable? Explain your answer.

Solution

No. Brad exerted economic duress on Dina. The threat to break a contract on the eve of the deadline in this problem was sufficiently coercive to constitute duress. Duress involves coercive conduct—forcing a party to enter into a contract by threatening the party with a wrongful act.

Business Scenarios and Case Problems

1. **Voluntary Consent.** Jerome is an elderly man who lives with his nephew, Philip. Jerome is totally dependent on Philip’s support. Philip tells Jerome that unless Jerome transfers a tract of land he owns to Philip for a price 30 percent below market value, Philip will no longer support and take care of him. Jerome enters into the contract. Discuss fully whether Jerome can set aside this contract. (See *Undue Influence and Duress*.)

Solution

Undue influence arises from a relationship in which one party can, through unfair persuasion, greatly influence or overcome the free will of another. Any contract entered into under excessive or undue influence lacks genuine assent and is therefore voidable. Here, the influence of Philip over his Uncle Jerome is greatly enhanced by Jerome’s reliance on Philip for his support. Although Jerome cannot claim duress, the domination of Philip over Jerome’s decisions results in undue influence. The contract is primarily for the benefit of Philip, and Philip used unfair persuasion in securing the contract from Jerome. Jerome can have the contract set aside.

1. **Fraudulent Misrepresentation.** Grano owns a fortyroom motel on Highway 100. Tanner is interested in purchasing the motel. During the course of negotiations, Grano tells Tanner that the motel netted $30,000 last year and that it will net at least $45,000 next year. The motel books, which Grano turns over to Tanner before the purchase, clearly show that Grano’s motel netted only $15,000 last year. Also, Grano fails to tell Tanner that a bypass to Highway 100 is being planned that will redirect most traffic away from the front of the motel. Tanner purchases the motel. During the first year under Tanner’s operation, the motel nets $18,000. At this time, Tanner learns of the previous low profitability of the motel and the planned bypass. Tanner wants his money back from Grano. Discuss fully Tanner’s probable success in getting his money back. (See *Fraudulent Misrepresentation*.)

Solution

Four basic elements are necessary to prove fraud, thus rendering a contract voidable: (1) an intent to deceive, usually with knowledge of the falsity; (2) a misrepresentation of material facts; (3) a reliance by the innocent party on the misrepresentation; and (4) usually damage or injury caused by the misrepresentation. Statements of events to take place in the future or statements of opinions are generally not treated as representations of fact. Therefore, even though the prediction or opinion may turn out to be incorrect, a contract based on this type of statement would remain enforceable. Grano’s statement that the motel would make at least $45,000 next year would probably be treated as a prediction or opinion; thus, one of the elements necessary to prove fraud—misrepresentation of facts—would be missing. The statement that the motel netted $30,000 last year is a deliberate falsehood (with intent and knowledge). Grano’s defense will be that the books in Tanner’s possession clearly indicated that the figure stated was untrue, and therefore Tanner cannot be said to have purchased the motel in reliance on the falsehood. If the innocent party, Tanner, knew the true facts, or should have known the true facts because they were available to him, Grano’s argument will prevail.

Lastly, the issue centers on Grano’s duty to tell Tanner of the bypass. Ordinarily, neither party in a nonfiduciary relationship has a duty to disclose facts, even when the information might bear materially on the other’s decision to enter into the contract. Exceptions are made, however, when the buyer cannot reasonably be expected to discover the information known by the seller, in which case fairness imposes a duty to speak on the seller. Here, the court can go either way. If the court decides there was no duty to disclose, deems the prediction of future profits to be opinion rather than a statement of fact, and also decides there was no justifiable reliance by Tanner because the books available to Tanner clearly indicated Grano’s profit statement for the last year to be false, then Tanner cannot get his money back on the basis of fraud.

1. **Fraudulent Misrepresentation.** Ricky Wilcox contracted with Fireside Log Homes to build a house. The logs were to be delivered precut and predrilled, but they arrived unfinished. Fireside told Wilcox that cutting and drilling the logs would take only two or three days. In fact, this process slowed the project by five months. To cover costs caused by the delay, Wilcox borrowed an additional $200,000. When the house was finally built, he filed a suit against Fireside. Did Fireside commit fraud? Explain. [Esprit Log and Timber Frame Homes, Inc. v. Wilcox, 302 Ga.App. 550, 691 S.E.2d 344 (2010)] (See *Fraudulent Misrepresentation*.)

Solution

Yes. The first element of proving fraud is to show that misrepresentation of a material fact has occurred. A promise made without a present intent to perform is a misrepresentation of a material fact and is sufficient to support a cause of action for fraud. The other elements are (1) an intent to deceive, (2) an innocent party’s justifiable reliance on the misrepresentation, and (3) the innocent party’s injury.

Here, Fireside promised to deliver precut, predrilled logs. The company knew that the delivery of unfinished logs would cause a long delay. After the logs arrived, Fireside intentionally misrepresented to Wilcox that there would be only a two- or three-day delay while the logs where cut and drilled on site. Wilcox relied on this misrepresentation. When the delay proved much longer, he incurred considerable additional costs. Fireside’s actions amounted to fraud.

In the actual case on which this problem is based, a jury agreed with Wilcox and awarded $200,000 in damages, plus $250,000 in punitive damages and $20,000 in attorneys’ fees.

1. **Fraudulent Misrepresentation.** Marguerite Eaton and Bobby Joe Waldrop moved into a mobile home on land owned by her son, James. Bobby Joe asked James to transfer that portion of the land to him and Marguerite, stating falsely that they had married. James agreed. Marguerite soon transferred her interest in the land to Bobby Joe. When James learned of this transfer and that his mother and Bobby Joe were not married, he filed a suit against Bobby Joe, alleging fraud. Bobby Joe asserted that James had not proved intent to deceive. Do these facts indicate intent to deceive? Explain. [Eaton v. Waldrop, 45 So.3d 371 (Ala. Civ.App. 2010)] (See *Fraudulent Misrepresentation*.)

Solution

Yes. The second element of fraud is knowledge on the part of the misrepresenting party that facts have been falsely represented. Normally called *scienter*, this usually signifies that there was an intent to deceive. *Scienter* clearly exists if a party knows that a fact is not as stated. The other elements are (1) a misrepresentation of a material fact, (2) an innocent party’s justifiable reliance on the misrepresentation, and (3) the innocent party’s injury.

Here, Bobby Joe knew that he and Marguerite were not married. He falsely represented otherwise to James, while asking James to transfer that portion of James’s land on which he and Marguerite lived to them. On the face of it, this would appear to show Bobby Joe’s intent to deceive. James relied on this misrepresentation when he made the transfer to Bobby Joe and Marguerite. The injury was the loss of that portion of the land.

In the actual case on which this problem is based, the court ruled that James’s “evidence presented a *prima facie* case of misrepresentation without further proof of Waldrop’s intent to deceive.”

1. **Misrepresentation.** Charter One Bank owned a fifteenstory commercial building. A fire inspector told Charter that the building’s drinking-water and fire-suppression systems were linked, which violated building codes. Without disclosing this information, Charter sold the building to Northpoint Properties, Inc. Northpoint spent $280,000 to repair the water and fire-suppression systems and filed a suit against Charter One. Is the seller liable for not disclosing the building’s defects? Discuss. [*Northpoint Properties, Inc. v. Charter One Bank,* 2011-Ohio- 2512 (Ohio App. 8 Dist. 2011) (See *Fraudulent Misrepresentation*.)

Solution

Yes. Ordinarily, neither party to a contract has a duty to disclose facts about the object of their deal. If a seller knows of a serious problem that a buyer cannot reasonably be expected to discover, however, the seller has a duty to speak if the defect is latent and could not readily be ascertained.

In this problem, Charter One was aware of the linked drinking-water and fire suppression lines. Despite Charter One’s knowledge of this fact, it did not provide Northpoint as a potential buyer with this information. This constituted a material misrepresentation as to the actual condition of these systems. If the misrepresentation was made with the intent to induce reliance and Northpoint’s reliance on this misrepresentation was justified—as appears to be the situation—then the seller is liable to the buyer. The appropriate measure of damages is the reasonable cost to repair.

In the actual case on which this problem is based, the court found that all of the elements of fraud were present and that the “cost of repair” was an appropriate measure of damages.

1. **Business Case Problem with Sample Answer— Fraudulent Misrepresentation.** Joy Pervis and Brenda Pauley worked together as talent agents in Georgia. When Pervis “discovered” actress Dakota Fanning, Pervis sent Fanning’s audition tape to Cindy Osbrink, a talent agent in California. Osbrink agreed to represent Fanning in California and to pay 3 percent of Osbrink’s commissions to Pervis and Pauley, who agreed to split the payments equally. Six years later, Pervis told Pauley that their agreement with Osbrink had expired and there would be no more payments. Nevertheless, Pervis continued to receive payments from Osbrink. Each time Pauley asked about commissions, however, Pervis replied that she was not receiving any. Do these facts evidence fraud? Explain. [*In re Pervis,* 512 Bankr. 348 (N.D.Ga. 2014)] (See *Fraudulent Misrepresentation*.)
**—For a sample answer to Problem 14–6, go to Appendix E.**

Solution

Yes. The facts in this problem evidence fraud. There are three elements to fraud: (1) the misrepresentation of a material fact, (2) an intent to deceive, and (3) an innocent party’s justifiable reliance on the misrepresentation. To collect damages, the innocent party must suffer an injury.

Here, Pervis represented to Pauley that no further commission would be paid by Osbrink. This representation was false—despite Pervis’s statement to the contrary, Osbrink continued to send payments to Pervis. Pervis knew the representation was false, as shown by the fact that she made it more than once during the time that she was continuing to receive payments from Osbrink. Each time Pauley asked about commissions, Pervis replied that she was not receiving any. Pauley’s reliance on her business associate’s statements was justified and reasonable. And for the purpose of recovering damages, Pauley suffered an injury in the amount of her share of the commissions that Pervis received as a result of the fraud.

In the actual case on which this problem is based, Pauley filed a suit in a Georgia state court against Pervis, who filed for bankruptcy in a federal bankruptcy court to stay the state action. The federal court held Pervis liable on the ground of fraud for the amount of the commissions that were not paid to Pauley, and denied Pervis a discharge of the debt.

1. **A Question of Ethics—The IDDR Approach and Fraudulent Misrepresentation.** Data Consulting Group contracted with Weston Medsurg Center, PLLC, a health-care facility in Charlotte, North Carolina, to install, maintain, and manage Weston’s computers and software. At about the same time, Ginger Blackwood began to work for Weston as a medical billing and coding specialist. Soon, she was submitting false time reports and converting Weston documents and data to her own purposes. On her request, Data Consulting manager Nasko Dinev removed evidence of her actions from her work computer. [*Weston Medsurg Center, PLLC v. Blackwood*, 795 S.E.2d 829 (2017)] (See *Fraudulent Misrepresentation*.)
2. What should Weston do when it learns of these activities? With respect to this situation, identify and consider the firm’s primary ethical dilemma using the IDDR approach.

Solution

When Weston discovers the conduct identified in the facts, it might choose to fire Blackwood, stop paying Data Consulting, and file a suit against Blackwood, Data Consulting, and Dinev. Weston’s primary ethical dilemma with respect to this situation is in deciding which legal steps to take.

When an innocent party consents to a contract with fraudulent terms, the contract can be avoided because the innocent party did not voluntarilyconsent to the terms. Among the elements required to prove fraud, one party must intend to deceive the other by means of a misrepresentation of a material fact. The innocent party must justifiably rely on the misrepresentation and, to recover damages, suffer harm.

In this problem, Weston contracted with Data Consulting to install, maintain, and manage Weston’s computers and software. At the same time, Blackwood, a Weston medical billing and coding specialist, submitted false time reports and converted her employer’s data for her own purposes. Dinev, a Data Consulting manager, helped her remove evidence of her transgressions from her work computer.

Weston’s discovery of these activities could prompt the company to terminate Blackwood, stop paying Data Consulting, and bring an action against Blackwood, Data Consulting, and Dinev for breach of contract and fraud. The first step of the IDDR approach requires a statement of the ethical issue and an identification of the stakeholders and the relevant ethical standards. From an ethical perspective, Weston’s chief dilemma is to decide which of the actions to take. Stakeholders include Weston’s owners and employees, including Blackwood, and its suppliers and others with whom it contracts, such as Data Consulting. But perhaps the most important stakeholders are Weston’s patients, whose privacy and confidentiality might be at risk depending on what data has been converted or lost. Ethical standards to which Weston might adhere include its statements of policy to its owners, employees, and patients.

The second step of the IDDR approach is a *Discussion* of actions that might resolve the issue. If Weston were to proceed with all of the possible actions stated above, from a legal perspective, the company is likely to prevail against any challenge to a decision to discharge Blackwood. She clearly breached her employment contract. Weston might not prevail against a claim by Data Consulting to recover any amount owed on its contract, however, absent proof that Data Consulting colluded with Blackwood and Dinev to commit fraud. Weston could succeed in a fraud claim against Blackwood and Dinev if the firm could prove an injury.

Stakeholders include Weston’s owners and employees, including Blackwood, and its suppliers and others with whom it contracts, such as Data Consulting. But perhaps the most important stakeholders are Weston’s patients, whose privacy and confidentiality might be at risk depending on what data has been converted or lost. The disadvantages of the actions arise from their expense, such as the cost of litigation and any payment that might yet have to be made to Data Consulting. If Weston were not to take any of these actions, however, its loss of credibility among its owners, employees, and patients, with a consequent loss of investment, productive work, and business revenue, could more than exceed this expense.

The third step of the IDDR approach is to state a *Decision* and its reasons. Here, Weston would seem to have only one clear decision—to discharge Blackwood and initiate legal action against her and the others. The reasons are set out in the paragraphs above. Withholding payment from Data Consulting might also be advisable under the circumstances—it could heighten the contractor’s awareness of its manager’s part in Blackwood’s fraud and motivate that company to consider its own ethical practices. But Weston should be prepared to eventually pay what may be owed under its contract with Data Consulting—there is no indication that the contractor is liable for fraud or a contract breach.

The last step of the approach is a *Review* of the success or failure of the proposed actions to resolve the issue, and satisfy the stakeholders. If Weston were to take the suggested legal actions, it could embolden its owners, employees, and patients to continue their investments, work efforts, and trust in the medical center. This would clearly be a success.

1. Suppose that despite Dinev’s efforts, Weston is later able to recover the data that was removed from Blackwood’s work computer. How might this affect Weston’s choices? Discuss.

Solution

If Weston were able to recover all of the deleted data—through the efforts of other Data Consulting employees, for example—it might thereby be able to recoup overpayments to Blackwood based on her false time reports. If she were to make restitution, this might mitigate what Weston could otherwise recover in a suit. Similarly, Data Consulting’s undoing what its manager did might limit what Weston might otherwise recover against the contractor.

In the actual case on which this problem is based, Weston learned of Blackwood and Dinev’s activities and stopped paying Data Consulting. Data Consulting filed a claim in a North Carolina state court against Weston, and was awarded $5,441.60 for services rendered and unpaid. Weston filed claims of fraud against Blackwood and Dinev. At the same time, the firm was able to recover the data that had been removed from its computer. A jury ruled in the defendants’ favor but denied them attorneys’ fees. A state intermediate appellate court affirmed these results.

Critical Thinking and Writing Assignments

1. **Time-Limited Group Assignment—Fraudulent Misrepresentation.** Radiah Givens was involved romantically with Joseph Rosenzweig. She moved into an apartment on which he made the down payment. She signed the mortgage, but he made the payments and paid household expenses. They later married. She had their marriage annulled, however, when she learned that he was married to someone else. Rosenzweig then filed a suit against her to collect on the mortgage. (See *The Fraudulent Misrepresentation*.)
2. The first group should decide whether Rosenzweig committed fraud.

Solution

Yes. Rosenzweig could have committed fraud against Givens. Fraud requires (1) a misrepresentation of a material fact, (2) an intent to deceive, (3) an innocent party’s justifiable reliance on the misrepresentation, and (4) the innocent party’s injury. Rosenzweig misrepresented to Givens, with whom he was romantically involved, that he was not married. Of course, he knew that the truth was otherwise. This meets the first two requirements for a finding of fraud. Agreements between spouses involve a fiduciary relationship that requires the utmost good faith. A similar fiduciary relationship may have existed between Givens and Rosenzweig. Givens justifiably relied on this relationship when she believed Rosenzweig’s misrepresentation, signed the mortgage, and married him. As for injury, besides the mental and emotional anguish that these circumstances undoubtedly inflicted on Givens, she may have suffered other losses—giving up educational or employment opportunities, for example.

1. The second group should evaluate whether Rosenzweig’s conduct was deceitful, and if so, whether his deceitfulness should affect the decision in this case.

Solution

Yes. Rosenzweig’s conduct was deceitful. Rosenzweig certainly appears to have suffered from some deficiencies of character and he likely would be subject to sanctions by the state attorneys’ professional responsibility organization. But a desire to see a scoundrel punished should not motivate the application of the legal principles in this, or any other, case. Here, Rosenzweig’s deceit did not concern the mortgage contract, and thus it should not affect the outcome. But Rosenzweig is not the mortgagor and does not appear to be the mortgagee, so unless there is a different contract between Givens and Rosenzweig, there is no basis for a decision in his favor.

1. The third group should consider how fraud is related to ethics. Can a contracting party act ethically and still commit fraud? How?

Solution

It might be possible to act ethically and still commit fraud. For example, if fraud were committed in the service of an ethical duty or directed towards an ethical end—such as perpetrating fraud to subvert a greater evil by deceiving a party into foregoing a wrong—it could be interpreted as an ethical act.