

13-834. Misrepresentation.

_____ (*name of defendant*) claims that the contract upon which _____ (*name of plaintiff*) relies is void because of misrepresentation by _____ (*name of plaintiff*).

To establish the defense of misrepresentation, _____ (*name of defendant*) must prove all of the following:

1. That _____ (*name of plaintiff*) made a misrepresentation;
2. That the misrepresentation was [fraudulent] [or] [material];
3. That _____ (*name of defendant*) would not have entered into the contract if [he][she][it] had known that the representation was untrue; and
4. That _____ (*name of defendant*)'s reliance on the misrepresentation was justified.

[A material misrepresentation is any untrue statement upon which the other party did in fact rely in entering into the contract, and without which the other party would not have entered into the agreement.]

[A misrepresentation is fraudulent if one party makes it with the intent to deceive and to cause the other party to act on it. If a fraudulent misrepresentation is at issue, it must be proven by clear and convincing evidence.]

USE NOTES

Use this instruction when the defendant contends that a contract is void because of a misrepresentation by the plaintiff. Include the first bracketed paragraph when a material misrepresentation is alleged. Include the second bracketed paragraph when a fraudulent misrepresentation is alleged. If the defendant contends that the misrepresentation was fraudulent, the jury should also be instructed that a fraudulent misrepresentation must be proven by clear and convincing evidence. See UJI 13-405 NMRA.

[Adopted by Supreme Court Order No. 20-8300-006, effective for all cases pending or filed on or after December 31, 2020.]