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[What Is Rescission in Contracts Law?](#)

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From legal perspective, rescission of a contract is distinguishable from cancellation of a contract. Rescission reverts the contract to the day it had not been signed as if the contract had not been made. In fact, the rescinded contract becomes a nullity as if it had never existed. As such, it behooves us to ascertain how and when a contract is rescinded and what would be the legal implications of such rescission or lack thereof.

SOME BASICS OF CONTRACT RESCISSION

Contract rescission negates the existence of a contract and restores the parties to the day the contract had not been signed and obligates them to return whatever consideration had been received. Contract rescission can occur without litigation and by the assent and agreement of parties involved. Nonetheless, rescission would also be available in litigation as a remedy for lack of MUTUAL ASSENT grounds for mistake, fraud, etc. or lack of MATERIAL CONSIDERATION for an otherwise validly formed enforceable contract.

Under CA statute, a party to a contract may rescind the contract by giving notice to the other party and offering to return the consideration received. CA Civil Code Sections 1688-1693.

SOME DISTINCTIONS BETWEEN RESCISSION AND CANCELLATION OF CONTRACT

Rescission and cancellation are to some extent similar remedies yet there are salient distinctions between them.

First, cancellation is a remedy effectuated only by a court. This means only a court can order an instrument be cancelled, under the governing CA Statute (Civil Code Section 3412). On the other



hand, as elucidated before, rescission can be effectuated by mutual assent of the parties themselves or through a legal action after a unilateral notice and offer to restore by the rescinding party is given.

Second, cancellation of a contract only cancels the instrument. On the other hand, rescission of a contract terminates the whole contract including the instrument.

Third, cancellation of a contract leaves the parties as they are at the time of cancellation. Nonetheless, rescission of contract require the parties to return any consideration each has received and restore them to when the contract had not been signed or made.

SOME GROUNDS FOR RESCISSION

1. Mutual Consent of Parties

The parties could rescind the contract regardless of the express terms of the contract. In fact, with mutual consent or assent of parties, no grounds are needed to rescind.

It is important to note, when parties agree to mutually rescind a contract, a binding agreement to rescind is created. Such binding agreement is effective even if one of the parties later changes mind. The problem is often parties do not mutually consent to rescind or rescission is impossible since parties have to return in full their consideration to the other party.

2. UNILATERAL MISTAKE

An agreement may be rescinded if the rescinding party's assent was predicated on a mistake in fact or law the non-rescinding party knew about or suspected of yet took advantage of such mistake. In the past, there must have been a mutual mistake of the parties for rescission. However, the recent trend seems to allow unilateral mistake when the non-rescinding party shares the misunderstanding, contributes to it by misrepresentation, EVEN IF innocently.

Nonetheless, unilateral mistake may NOT be a basis for rescission when the rescinding party could have ascertained the mistake by reasonable due diligence. In addition, some courts have held unilateral mistake in value and quantity are not material since parties assume these risks when entering into an agreement.

3. FRAUD

When a party has been induced to enter into a transaction, the defrauded party can rescind the contract and seek restitution for the lost profits.

Fraud could be constructive or actual.



A. CONSTRUCTIVE FRAUD

Constructive fraud is when one party gains advantage over another. Constructive fraud could be predicated on a fiduciary relationship between the parties, when such relationship requires full disclosure. Constructive fraud could also be predicated on when one party uses superior knowledge to gain an UNREASONABLE advantage.

B. ACTUAL FRAUD

Actual fraud could be predicated, among other things, upon:

- A suggestion of a fact to be true when the one making it does not believe it to be true.
- A suggestion or assertion to be true when the one making it does not have a reasonable basis for it to be true.
- A concealment or nondisclosure of a fact by the one with knowledge or belief in the fact.
- A promise but the one making it has no intention of performing it.

SALIENT CAVEAT

This article NEITHER supplants NOR supplements the breadth and depth of such esoteric subject matter. In fact, this article ONLY provides a rudimentary synopsis of such esoteric expansive subject matter.

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