

## CONSUMER PROTECTION FALL 2002

### COMMON LAW DECEIT AND MISREPRESENTATION

In conjunction with the Vokes case (pages 16-19 of the casebook), consider the following outline summarizing the requirements for proving deceit and misrepresentation.

#### I. TORT OF DECEIT

Consumer must prove:

1. Seller made a representation
2. Of present fact, not opinion
3. That fact is material
4. That fact is false
5. Seller knew the representation was false or made the representation in reckless disregard of the facts
6. Seller made the representation for the purpose of inducing the consumer
7. Consumer relied on the representation
8. Consumer was justified in relying on the representation
9. Consumer sustained injury as a result of the misrepresentation.

#### II. MISREPRESENTATION

Consumer must prove the misrepresentation satisfied either #3 or #5. Therefore, unlike in an action in deceit, consumer can succeed even if cannot prove seller knew misrepresentation was false or that seller acted in reckless disregard of truth. In other respects, consumer must prove same elements as in action in deceit.

Vokes exception: Requirement that misrepresentation must be one of fact rather than opinion is subject to exceptions:

1. Fiduciary relationship
2. Artifice or trick
3. Parties not dealing at arm's length
4. Seller has superior knowledge. Consumer does not have equal opportunity to learn truth or falsity of fact represented.

Even where ordinarily seller has no duty to disclose facts and answer inquiries, once seller undertakes to do so, seller must disclose the "whole truth."

Deceit