

CIPS Exam Report for Learner Community:

Qualification:	Professional diploma in procurement and supply
Unit:	PD6 - Legal aspects in P&S (UK)
Exam series:	November 2013

Question 1 – Learning Outcome 1

Assess the factors that may invalidate consent and lead to a void or voidable contract

(25 marks)

This question required an assessment of the four main vitiating factors (mistake, misrepresentation, duress and undue influence). In terms of mistake, areas that could have been covered include the different types of mistake (unilateral, mutual and common mistake). Answers might also have assessed the different circumstances when mistake is accepted. These include mistakes in relation to the existence or the identity of the subject-matter, mistakes concerning the signing documents. The discussion of suitable case law like *Couturier V Hastie* would have enhanced an answer. Strong answers would have been able to recognise that mistake renders a contract void.

Another vitiating factor is misrepresentation which makes a contract voidable. The five main parts which make up misrepresentation; statement, fact, false, contracting party and inducement should have been assessed. The three categories of innocent, negligent and fraudulent should have been explained. Suitable case law, like *With v O'Flanagan*, *Dimmock V Hallett*, *Bisset V Wilkinson*, *Esso Petroleum V Mardon*, *JEB Fasteners V Bloom* or others could have been included.

Duress makes a contract voidable. Economic duress should be explained in terms of illegitimate commercial pressure / coercion. Relevant cases *Pou On v Lau Long*, *Atlas Express v Kafco*, *Universal Tankships*, or others should have been used to support an answer. A strong answer will discuss how a claim for economic duress can be weakened by lack of action by the injured party. Undue influence makes a contract voidable – a person who has been induced into a transaction is entitled in equity to set that contract aside. It is based on the concept that one party has a stronger mind or will than the other; the essence is mental coercion. The different legal approach used when a fiduciary relationship exists is an important component of the discussion.

A fair number of answers launched into the ingredients required for a contract to exist (offer, acceptance etc) rather than addressing the question. Whilst many candidates did recognise the question concerned vitiating factors, there was often a failure to develop answers with suitable case law lacking. The distinction between a void and voidable contract was not always fully understood.

Some common errors included an explanation of conditions and warranties and a good number of candidates

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WJ Hussar



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