

Zambia

## Misrepresentation Act, 1968

### Chapter 69

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## Misrepresentation Act, 1968

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## Zambia

# Misrepresentation Act, 1968

## Chapter 69

Commenced on 7 October 1968

*[This is the version of this document at 31 December 1996.]*

**An Act to make provision for the alteration and amendment of the law relating to innocent misrepresentations, and to amend sections 11 and 35 of the Sale of Goods Act, 1893, of the United Kingdom, as in force in Zambia.**

### 1. Short title

This Act may be cited as the Misrepresentation Act.

### 2. Removal of certain bars to rescission for innocent misrepresentation

Where a person has entered into a contract after a misrepresentation has been made to him, and—

- (a) the misrepresentation has become a term of the contract; or
- (b) the contract has been performed;

or both, then, if otherwise he would be entitled to rescind the contract without alleging fraud, he shall be so entitled, subject to the provisions of this Act, notwithstanding the matters mentioned in paragraphs (a) and (b).

### 3. Damages for misrepresentation

- (1) Where a person has entered into a contract after a misrepresentation has been made to him by another party thereto, and as a result thereof he has suffered loss, then, if the person making the misrepresentation would be liable to damages in respect thereof had the misrepresentation been made fraudulently, that person shall be so liable notwithstanding that the misrepresentation was not made fraudulently, unless he proves that he had reasonable grounds to believe and did believe up to the time the contract was made that the facts as represented were true.
- (2) Where a person has entered into a contract after a misrepresentation has been made to him otherwise than fraudulently, and he would be entitled by reason of the misrepresentation to rescind the contract, then, if it is claimed in any proceedings arising out of the contract that the contract ought to be or has been rescinded, the court or arbitrator may declare the contract subsisting and award damages in lieu of rescission, if of opinion that it would be equitable to do so, having regard to the nature of the misrepresentation and the loss that would be caused by it if the contract were upheld, as well as to the loss that rescission would cause to the other party.
- (3) Damages may be awarded against a person under subsection (2), whether or not he is liable for damages under subsection (1), but where he is so liable, any award under the said subsection (2) shall be taken into account in assessing his liability under the said subsection (1).

### 4. Avoidance of certain provisions excluding liability for misrepresentation

If any agreement (whether made before or after the commencement of this Act) contains a provision which would exclude or restrict—

- (a) any liability to which a party to a contract may be subject by reason of any misrepresentation made by him before the contract was made; or

- (b) any remedy available to another party to the contract by reason of such a misrepresentation;

that provision shall be of no effect except to the extent (if any) that in any proceedings arising out of the contract, the court or arbitrator may allow reliance on it as being fair and reasonable in the circumstances of the case.

## **5. Amendment of the Sale of Goods Act, 1893, as in force in Zambia**

- (1) Paragraph (c) of section 11(1) of the Sale of Goods Act, 1893, of the United Kingdom (condition to be treated as warranty where the buyer has accepted the goods or where the property in specific goods has passed) is amended by the deletion of the words "or where the contract is for specific goods, the property in which has passed to the buyer".
- (2) Section 35 of the Sale of Goods Act, 1893, of the United Kingdom (acceptance) is amended by the insertion before the words "when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller" of the words "except where section 34 of this Act otherwise provides".

## **6. Saving for past transactions**

Nothing in this Act shall apply in relation to any misrepresentation or contract of sale which is made before the commencement of this Act.