9. Misrepresentation and Non-Disclosure

This chapter focuses on relief for misrepresentation and for the exceptional cases in which there may be relief for non-disclosure, and considers misrepresentations that have not been incorporated as a term of the contract. In such cases, the misled party will sometimes be entitled to claim tortious damages in respect of loss sustained by reason of the misrepresentation. If the misrepresentation was made fraudulently, damages in the tort of deceit can be recovered. If it was made without reasonable care being taken to ascertain its truth, the misled party may recover damages by virtue of statute, or at common law in the tort of negligence. Where the party making the misrepresentation believed, and had reasonable grounds to believe, that the facts represented were true, although the contract is still voidable at the suit of the misled party, tortious damages cannot be claimed but damages may sometimes be awarded in lieu of rescission. A misrepresentation made by a trader to a consumer may also constitute a ‘prohibited practice’ under the Consumer Protection from Unfair Trading Regulations 2008, which will give the
consumer ‘rights to redress’ under the Regulations. A pre-contractual misrepresentation therefore may give rise to a wide range of remedies: rescission of the contract, as well as damages by statute or at common law, in contract or tort.

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