**Validity of contract**

- for a contract to be valid, it must meet certain conditions:

**1) a contract is valid, if it contains all elements declared by law**

**&**

**2) it does not contain vitiating factors**

**Vitiating factors** – okolnosti vyvolavajuce neplatnost zmluvy:

1. **Misrepresentation**

- representations are the statements made before forming the contract

- misrepresentation is a situation, in which the contractual party enters into the contract because he believes that this information is correct. However, it is not

- misinterpretation applies only to fundamental elements

Categories of misinterpretation:

* **Fraudulent m. –** the person deliberately provides dishonest information
* **Negligent m.**
* **Wholly innocent m.**

- there is a possibility to rescind the contract. However, in only first two categories there is a possibility to claim damages

1. **A mistake**

- not misleading, but misunderstanding

Categories:

* **Common (mutual) mistake** – both contractual parties are mistaken as to the same issue
* **Bilateral mistake** – both parties are mistaken as to different things
* **Unilateral mistake** – only one person is mistaken

1. **Duress**

- a thread of violence to the person or to the close to the person or unlawful constraint

- this original definition has nothing to do with the property

- 1976 **– doctrine of undue influence** – covers also a thread to the property of the person

1. **Incapacity** *– zmluvna nesposobilost*
2. **Illegality of the contract**

- not only against the law, but also against public policy

*Canada – Royal bank of Canada v. Newell*

*- a woman forged the signature of her husband on 40 checks in the total value of $18 000*

*- the man signed a contract prepared by the bank by which he gained/took full liability for these checks*

*- the court declared, that this contract is not valid, because it’s aim was to protect the woman from criminal prosecution*

**Terms of the Contract**

* **Conditions** – fundamental elements of the contract

- the contract can be discharged and damages can be claimed

* **Warranty** – less important

- only damages can be claimed but the contract still exists

* **Express** – agreed to by the parties
* **Implied** – inferred from the law or precedents