

CONTRACT – Mistake (lecture 15)

The effect of a mistake on the validity of a contract depends on the type and nature of the mistake made. The general rule is that where a mistake has been made by the parties, at common law the contract may be deemed void, as if the contract had never existed. Equity takes a more flexible approach in that contracts containing mistakes may be treated as voidable (weakens or destroys), where either party can terminate the contract. However, a fundamental mistake, often referred to as operative mistake, may render the contract void ab initio (void from the beginning). NB Mistaken facts must exist BEFORE contract concluded – *Amalgamated Investment & Property Co. Ltd v John Walker & Sons Ltd*. Also, there is no equity in mistake. TYPES OF MISTAKE: Common mistake (both parties make the same mistake); mutual mistake (both parties mistaken in different ways); unilateral mistake (both parties agree, but one is mistaken).

COMMON MISTAKE – there is agreement but on mistaken facts which existed BEFORE the contract was made. Events which occur AFTER the contract are not mistakes but may frustrate the contract.

1. Common mistake as to existence of subject matter

*Res Extincta – at the time of the contract but unknown to the parties the subject matter of the contract has ceased to exist – *Couturier v Hastie/ McRae v Commonwealth Disposals Commission*

*Codified in s6 SGA 1979

*Res Sua – at the time of the contract but unknown to the parties the subject matter already belongs to the purchaser – *Cooper v Phibbs*

2. Common mistake as to a fundamental fact or quality

*Mistake as to quality does not avoid a contract UNLESS: mistake is so fundamental as to destroy nature of agreement i.e. the 'Essential Difference' Test – *Bell v Lever Bros*

*The *Bell v Lever Bros* test was recently reconfirmed in *Great Peace Shipping Ltd v Tsavliris Salvage (CI)* (It was held that in the contract was essentially different by the distance in ships, so not mistake)

**Nicholson & Venn v Smith Marriot; Leaf v International Galleries; Associated Japanese Bank v Credit du Nord*

*Note the interpretation of *Great Peace* in *Champion Investments Ltd v Ahmed* - mistake is now similar to frustration.

MUTUAL MISTAKE – NON-AGREEMENT MISTAKE

*Such ambiguity that no agreement could be found – no 'consensus ad idem'.

**Smith v Hughes* – test for agreement is objective

**Raffles v Wichelhaus* – "where an objective appraisal of the facts reveals no agreement has been reached as to the terms of the contract." This will give mutual mistake. Here, both parties got confused on the delivery date of the linen as two ships were called the same thing. Clearly, there was no agreement.

UNILATERAL MISTAKE

1. Unilateral mistake as to the expression of offeror's intention

*The offeror makes a mistake in expressing their intention and other party knows or is deemed to know of that mistake – *Hartog v Colin & Shields*

2. Unilateral mistake as to nature of the document

*General rule – bound by signature (*L'Estrange v Graucob*).

*Exception – Non Est Factum (not my deed). Where person signing: unable to understand the document being signed; believes is signing a substantially different document – *Thoroughgood's Case/Foster v Mackinnon*

*No negligence (*Saunders v Anglia Building Society*), but note also *Lloyds Bank v Waterhouse*

3. Unilateral mistake as to identity

*Must be mistake as to identity not attributes.

*If contract not void for mistake, it may be voidable for misrepresentation.

*EQUITY'S DARLING - s23 SGA 1979 – "when the seller of goods has a voidable title thereto, but his title has not been avoided at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of seller's defect in title."

FACE TO FACE DEALING

*Presumption? Seller is dealing with person in front of them. Seller is concerned with attributes not identity. Contract NOT VOID for mistake as to identity.

**Phillips v Brooks*; s23 SGA 1979; cf *Ingram v Little* (in this instance the contract is void for mistake as they wouldn't have told the car if they hadn't of believed who he was).

*Remedy in FM – *Lewis v Averay*

DISTANCE SELLING

*Presumption? Seller is dealing with the person the buyer's documents say they are. Identity is crucial to formation of contract. Contract IS VOID for mistake (*Shogun Finance Ltd v Hudson*)

**Cundy v Lindsay*; cf *King's Norton Metal v Edridge Merrett & Co* (it was no void for mistake as they were interested in attributes, not identity)