

UNIT 2 – CONTRACTUAL MISTAKES

3 categories of mistakes

1. **Unilateral mistake** – where one of the parties was mistaken as to some of elements of the transaction. Relief available when one party's mistake is known to the other party.
 - Eg. A bought a property thinking it goes with the land when in fact it doesn't or A sold a car to B who claimed to be reliable and in return received worthless cheque.
2. **Common mistake** – where both of the parties had a misunderstanding of the facts surrounding the circumstances. Relief may be available where the mistake had an effect of negating consent to the bargain that was entered into.
 - For eg A purchased a painting from B and they both thought it was painted by C when in fact it was not. Or A bought a car from B that is being shipped to C not knowing that the ship carrying the car had sunk.
 - Relief is available

For both mistakes, it is fundamental for parties to demonstrate that the mistake was a **fundamental** one that both parties had not intended or expected to be bound by its outcome.

Bell v Lever Bros Ltd – "House of Lords held that "In order for the contract to be void by common mistake the mistake must involve the actual subject-matter of the agreement and must be of such a "fundamental character as to constitute an underlying assumption without which the parties would not have entered into the agreements.

From the facts the Court found that the mistake was not sufficiently close to the actual subject-matter of the agreement. The parties got exactly what they had bargained for. Effectively, the mistake must nullify or negative consent of the parties in order for the agreement to be void."

Facts – Bell worked for Lever Bros Ltd while at the same time had some personal business dealings on the side which is contrary to his contract with. When he was made redundant, Lever Bros Ltd offered to pay him but when they found out about Bell's side business dealings, they decided to rescind their offer.

3. **Mutual mistake** – where both parties are at cross purposes with another/ were mistaken on what each other thought they were agreeing to. In these circumstances, it appears there is "a deceptive surface of appearance of agreement which conceals a failure of actual agreement."
- A thought he will be buying a Toyota Corolla from B and thought B knew this. On the other hand B thought A will be purchasing his Toyota Corona which he also owned.
- Relief is too complex even for the court as can be seen in leading cases which have often difficult to understand or reconcile with each, hence the law remain uncertain and unpredictable.

Contract and Commercial Law Act 2017

- Main purpose of the legislation is to set criteria to determine whether or not a mistake "qualifies" for a potential relief:

Fix The Mistake Unit 2

RC Schank



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