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- > TAKE EXAMS WITH CONFIDENCE

4th edition

BUSINESS LAW

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BUSINESS LAW

Great Peace Shipping Ltd v. Tsavlis Salvage International Ltd (2002) held that a mistake as to quality cannot make a contract voidable in equity. Earlier cases had suggested that it could.

Unilateral mistake

This may mean that no agreement was ever reached. So any 'contract' which seems to have been formed will be void. A **unilateral mistake** may invalidate a contract in the following ways:

- the offer and acceptance were ambiguous, so that it could not objectively be said what was agreed;
- the offeree was mistaken as to the terms which were being offered, and the offeror knew this;
- one party was mistaken as to the identity of the other contracting party.

The first two of these are essentially matters of fact and will depend upon the facts of each individual case. Mistake as to identity needs to be examined in more detail.

KEY DEFINITION: Unilateral mistake

When there is a unilateral mistake only one of the parties to the contract makes a mistake.

Mistake as to identity

A mistake as to the identity of the other contracting party can make a contract void, but only if the following three conditions are satisfied:

1. The parties must not have met face to face.
2. The mistake must have been as to the identity of the other party and not merely as to that party's attributes.
3. The mistake must be a material mistake, that is to say it must have mattered.

KEY CASE

***Cundy v. Lindsay* (1878) 3 App Cas 459 (HL)**

Concerning: when a mistake as to the person will make a contract void

Facts

A rogue knew that the claimants, manufacturers of handkerchiefs, had previously supplied a customer called Blenkiron. So the rogue hired premises close to Blenkiron's address and sent a letter ordering handkerchiefs to be delivered to this address. He ►

3 CONTRACT 3: MISREPRESENTATION, MISTAKE, DURESS, ILLEGALITY, MINORS AND PRIVACY

also disguised his signature to look like Blenkiron's. The manufacturers sent handkerchiefs to Blenkiron at the rogue's hired premises. The rogue got possession of the handkerchiefs and sold 3,000 of them to the defendants.

Legal principle

Where the parties do not meet face to face, a material mistake as to identity will make the contract void. So the claimants got the handkerchiefs back because the contract was void for mistake. No ownership passed to the rogue and so he could not pass ownership to the defendants.

KEY CASE

King's Norton Metal Co Ltd v. Edridge Merrett & Co Ltd (1897) 14 TLR 98 (CA)

Concerning: when a mistake as to the person will make a contract void

Facts

A rogue ordered goods from a manufacturer by letter, using very impressive notepaper which seemed to come from an impressive company. In fact the company did not exist at all. The rogue received the goods and sold them to the defendants.

Legal principle

Where the parties do not meet face to face and one party is mistaken only as to the attributes of the other contracting party, rather than as to that party's identity, the contract will not be void for mistake. So the mistake did not make the contract void, and the manufacturer contracted with the person who wrote the letter, the rogue. Having got ownership, the rogue passed ownership to the defendants.

The facts of the two cases are very similar. The key difference is that in *Cundy* the claimants thought that they knew the identity of the person they were dealing with. They thought they were dealing with Blenkiron, their previous customer. Whereas in *King's Norton* the claimants were mistaken only as to the attributes of who they were dealing with. They knew nothing of the rogue's fictitious company. They thought they were dealing with the person who wrote the letter, whom they took to be creditworthy.



Don't be tempted to . . .

You should not think that the law in this area is settled. In *Shogun Finance Ltd v. Hudson* (2003) the House of Lords approved both of these decisions. However, two Lords in the minority thought that *Cundy v. Lindsay* should be overruled so that a contract was created with the rogue. So *Shogun Finance* did not change the law but you should be aware that it has raised the possibility of the law being changed in the future.

REVISION NOTE

In both of these cases, and in all cases where a rogue's lies induce a person to make a contract, the contract will be *voidable* for fraudulent misrepresentation. However, this is of no use to the claimant where the goods have been sold on to an innocent third party. Once this has happened the right to rescind will be lost because the third party will have acquired rights in the subject matter of the contract which would be affected by rescission. (See above in relation to misrepresentation.) That is why the innocent party tries to make the contract void for mistake. If the contract is *void* it is of no effect at all and so the goods can still be recovered from an innocent third-party purchaser. Ownership will never have passed to the rogue and so will never have passed from the rogue. So if you get an exam question on mistake as to the person where the contract is not void do not forget to go on to consider misrepresentation. (See, for example, *Car & Universal Finance Co Ltd v. Caldwell* (1965).)

The right to sue the rogue

Where an innocent owner of goods sells them to a rogue, and the rogue then sells them to an innocent third party, either the original owner or the innocent third party will not end up with ownership of the goods. The loser will have a remedy against the rogue. The seller can claim for fraudulent misrepresentation. The buyer can claim under s. 12(1) SGA (see p. 26). However, this is of little use if the rogue cannot be found or has no money.

Mistake as to what is being signed (*non est factum*)

If a person signs a document, while making a fundamental mistake as to the type of document which is being signed, the contract will be void for a type of mistake known as ***non est factum***, which means 'it is not my deed'. A person who is careless in signing a document cannot rely on *non est factum*.

KEY CASE

***Saunders v. Anglia Building Society* [1970] AC 1004 (HL)**

Concerning: the requirements of non est factum

Facts

A man tricked his elderly aunt into signing a document which immediately gave her house away. He told his aunt that the document gave the house away after her death, but that she would be allowed to live there for the rest of her life. The aunt signed the document without reading it because her glasses were broken.

Legal principle

Non est factum will apply only where the document signed was of a fundamentally different character from what the person thought they were signing. So here the contract was not void for *non est factum*.

■ Duress

Traditionally the common law doctrine of duress would make a contract voidable only if a person was forced into making it by the threat of unlawful, physical violence. More recently a doctrine of economic duress has arisen. Under this doctrine a person can also avoid a contract if he or she was pushed into it in such a way that there was no real consent, even if there was no threat of physical violence.

■ Undue influence

This is an equitable doctrine under which a contract can be voidable because one of the parties unduly influenced the other into making it. The party alleging undue influence must first prove that trust and confidence was placed in the other party. In the following relationships this is presumed:

- doctor and patient;
- solicitor and client;
- parent and child;
- guardian and ward;
- trustee and beneficiary;
- religious adviser and disciple.

Outside these relationships, it is necessary for the person alleging undue influence to prove that there actually was a relationship of trust and confidence.

The next step is that the person alleging undue influence must prove that there was a transaction which calls for explanation. If this is proved, the other party will have to prove that there was no undue influence. One way of proving this is to show that the party alleging undue influence took independent legal advice before making the contract.

■ Illegal contracts

The following types of contract are illegal on grounds of public policy and are therefore unenforceable:

- contracts tending to promote corruption in public life;
- contracts tending to impede the administration of justice;
- contracts to trade with enemy nations in time of war;

- contracts to commit a tort, crime or fraud;
- contracts tending to promote sexual immorality;
- contracts to defraud Revenue & Customs.

Contracts in restraint of trade

Contracts in restraint of trade attempt to prevent a person from working or from carrying on a business. They are void unless they can be proved to be reasonable. The only grounds upon which they can be reasonable are that they attempt to protect trade secrets, trade connections or confidential information. Even then, they must not be too wide in their scope. If an offending clause can be struck out without affecting the meaning of the rest of the contract, the rest of the contract will stand. If this cannot be done the whole contract will be void.

Contractual capacity of minors

A **minor** is defined by s. 1 of the Family Law Reform Act 1969 as a person who is under 18 years of age. Contracts made by minors might be valid, voidable or void, depending upon the type of contract made.

Valid contracts

The following will be considered valid:

- contracts for necessary goods (for which a reasonable price must be paid);
- contracts for necessary services;
- beneficial contracts of employment.

Voidable contracts

These include contracts of continuing obligation, such as:

- contracts of partnership;
- contracts to buy shares;
- contracts to take leases of land.

Void contracts

Contracts which are not classed as valid or voidable will be void.

■ Privity of contract

The concept of **privity** holds that a contract is private between the parties who created it. The contract cannot be enforced by anyone else and neither can it impose a burden on anybody else. This is the position at common law, except that certain consumer contracts made specifically to benefit third parties, such as the booking of a holiday or a taxi, might allow such a third party to claim damages if the contract is breached.

Contracts (Rights of Third Parties) Act 1999

The CRTPA 1999 can allow a third party to enforce a contract or part of a contract. It sets out two routes which a third party can take.

EXAM TIP

There are few significant cases on the Act yet. Be aware of the two routes and be ready, with examples, to demonstrate the effect of s. 1(1)(a), s. 1(1)(b), s. 1(2) and s. 1(3).

First, the s. 1(1)(a) route, which applies if the contract expressly provided that a third party could enforce it or parts of it. All that is then required is that s. 1(3) is satisfied. Section 1(3) requires that the third party is expressly identified.

Second, the s. 1(1)(b) route, which applies if the contract purported to confer a benefit on a third party. This route is used where the contract did not expressly provide that the third party could enforce the contract. After s. 1(1)(b) has been satisfied, the third party must next satisfy s. 1(2), which provides that the third party will still not be able to enforce the contract if it appeared that the parties did not intend him or her to be able to enforce it. After s. 1(2) has been satisfied, s. 1(3) must be satisfied.

EXAM TIP

Show awareness of the policy behind s. 1(2). If a contract does not expressly provide that a third party can enforce it, it would be absurd to allow a third party to enforce it just because it happened to confer a benefit upon him or her. For example, if a contractor agreed to build a new road for a local authority, but failed to do so, then the local authority could sue him or her for breach of contract. But if there was no s. 1(2), any motorist who would have used the new road would also have a right to sue.