

Common types of mistake

Mistake as to the existence of the subject

- eg. purchasing a car and both parties believe car to be in garage, but it was stolen unbeknown to both parties

McRae v Commonwealth Disposals Commission (1951) 84 CLR 377, HCA

[Mistake as to existence of subject \(common mistake\)](#)

Facts

- CDC invited tenders to purchase shipwrecked oil tanker *said* to be lying on Jourmaund Reef which contained oil
- McRae won tender but could not find tanker
- No tanker existed
- McRae (plaintiff) sought damages for breach of contract, deceit and negligence
- CDC (defendant) claimed mutual mistake

Finding

- “A party cannot rely on mutual mistake where the mistake consists of a belief ... entertained by him without any reasonable ground, and ... deliberately induced by him in the mind of the other party” - A party cannot rely on a mistake if they have caused the mistaken belief
- “Even if they be credited with a real belief in the existence of a tanker, they were guilty of the grossest negligence”
- “The only ‘mistake’ the plaintiffs made was that they believed what the Commission told them”
- “The only proper construction of the contract is that it included a promise by the Commission that there was a tanker in the position specified”
- **Plaintiff’s appeal allowed - breach of contract**

Mistake as to quality of subject matter

- Both parties mistaken about the same thing
- Eg. age of antique furniture or authenticity of art
- In order to show proof as that there was a mistake to the quality, the party seeking to avoid the contract must meet a high threshold test
- The test is articulated in the case on pg 368 *Associated Jap Bank Ltd v Credit du Nord*

Bell v Lever Bros [1932] AC 161, House of Lords

[Common mistake - quality of subject matter](#)

Facts

- Bell (appellant) entered into agreement to provide services to Lever (respondent) for a period of five years
- Following a merger of Lever and its main competitor Lever no longer required services
- Lever terminated contract in exchange for compensation payment
- Lever later found due to “pooling agreement” termination without compensation would have been legal
- Lever sought repayment on the ground they paid under mistake

Finding

- "A mistaken belief by A that he is contracting with B, whereas in fact he is contracting with C, will negative consent (unintentionally opted in) where it is clear that the intention of A was to only contract with B"
- *"Mistake as to quality of the thing contracted for ... will not affect assent (agreement) unless it is the mistake of both parties, and is as to the existence of some quality which makes the thing without the quality essentially different from the thing as it was believed to be"* - affects agreement only when both parties mistaken, and mistake makes thing essentially different from misconception
- "It would be wrong to decide that an agreement to terminate a definite specified contract is void if it turns out that the contract had already been broken and could have been terminated otherwise" - agreement to terminate does not become void in light of new termination possibility
- "Does the state of new facts destroy the identity of the subject matter as it was in the original state of facts? ... In the present case the identity of the subject matter was not destroyed by mutual mistake" - **mistake related to quality of services not subject matter**
- *"If parties contract under a mutual mistake and misapprehension as to their relative and respective rights the result is that the agreement is liable to be set aside as having proceeded upon a common mistake"*

Parties may be mistaken as to the title of property they are exchanging

- ACL now provides guarantees in relation to title; this means a common mistake action would rarely come about on the issue of title
- Section 51 ACL summarised pg 372
 - "If a person (the supplier) supplies goods to a consumer, there is a guarantee that the supplier will have a right to dispose of the property in the goods when that property is to pass to the consumer"

Svanosio v McNamara (1956) 96 CLR 186, HCA

[Mistake as to title](#)

Facts

- Svanosio (appellant) purchased land from McNamara (respondent) *said* to have a licensed hotel erected on the land
- Both parties mistakenly believed hotel to wholly be on the land; hotel only two thirds actually on land
- Svanosio claimed fundamental mistake permitting avoidance

Finding

- "It may be assumed that all parties believed that the hotel stood wholly on the land sold. In that sense there was a 'common mistake'. It may also be assume that the appellant, if he had known, would not have entered into the contract. But these facts do not make a contract void"
- *"... together with the licensed premises known as the 'Bull's Head Hotel' erected thereon. The words erected thereon have been discovered to be an inaccurate description"*

- “[the contract would not have] precluded the appellant from rescinding the contract before conveyance, but, having failed to take the opportunity which those terms gave him ... he falls within the general and reasonable rule that equity will not interfere unless there is fraud or what amounts practically to a total failure of consideration”
- “The mistaken belief of both parties that the hotel building stood wholly on the subject land ... could not possibly avoid a contract which contemplates and provides for it”

Mistake as to a matter of law

- Relate to what the law means

Factual Error

- Generally, to be operative, a mistake must be about a factual matter and it must exist at the time the contract was created
- Eg. matters of time,