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## INTRODUCTION:

### Void and Voidable:

- A contract will be void or voidable because of something that happened at the time when the contract was entered into which affected the ability of one party to consent to the contract.
- These circumstances are called 'vitiating factors' and can be grouped together under the following headings:
  - Mistake
  - Misrepresentation (the statutory form of which is referred to as Misleading or Deceptive Conduct)
  - Duress
  - Undue Influence
  - Unconscionability (which exists as both an equitable principle and as a concept under statute)
- Sometimes the circumstances are insufficient for the contract to be void or voidable but will just give one of the parties a right to receive damages (that is, financial compensation) from the other party.

### Void:

- If a contract is void that means that the contract never existed, even if the contract is in writing. In a void contract there are no rights or obligations created.
- Sometimes a contract might be 'void' due to the existence of a vitiating factor.
- The contract is not effective as no property is passed in law.
- A whole contract can be void but only a part of the contract can also be void.

### Voidable:

- The right to unwind the contract or the right to treat the contract as if it never existed.
- For this right of rescission to exist, a relevant vitiating factor needs to exist at the time the contract was entered into.
- Rescission involves restoring the parties to their pre-contractual position.
- This process of restoring the parties to their pre-contractual position is called 'restitutio in integrum'.

- For this right of rescission to exist, it must also be possible to restore the parties to their pre-contractual position at the time at which a party seeks to rescind the contract – that is, it must be possible to achieve restitutio in integrum.
- You can only exercise that right if it is physically possible.
- If the property is sold to an innocent third party then voidable is not possible.
- Voidable can also allow you to get a court order to ‘set aside’ the contract.
- You have the right to rescind the contract and you also have the right to set aside the contract.
- They are essentially the same and you will receive the same outcome, however rescission is done by the individual and setting aside is done by getting a court order.
- You can only rescind or set aside a contract if ‘restitutio in interim’ is possible. Setting aside is essentially a voidable contract.
- **Unless and until the contract is rescinded, the contract is as valid as if there had been no factor giving rise to a possible right of rescission. Therefore:**
  1. If property has been transferred to a party under a voidable contract prior to rescission, that party gains a good title to that property; and
  2. If that property passes to an innocent third person then that third person gains good title and it is no longer possible to achieve restitutio in integrum.

**Difference:**

- The primary difference between void and voidable is that a void contract never existed and a voidable contract gives you the right to rescind or set aside.

### ***BELL V LEVER BROS 1932***

#### **Facts:**

1. Lever Bros (LB) agreed with Bell to terminate Bell's employment contract and to pay Bell £30,000 compensation for that termination.
2. Both parties wrongly assumed that the contract could only be terminated by the payment of compensation.
3. LB later found out that Bell had breached the contract so LB could have terminated the contract without needing to pay compensation.
4. LB argued that the agreement to pay the £30,000 was void for mistake and that it should be able to recover the money.

#### **Held:**

1. Lord Atkin stated that mistake as to the quality of the subject matter of the contract will not be operative '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'. This was not satisfied on the facts.

### ***McRAE v COMMONWEALTH DISPOSALS COMMISSION 1951***

#### **Facts:**

1. The Commission (C) invited tenders for the purchase of an oil tanker lying on 'Jourmaund Reef, approximately 100 miles north of Samarai'. McRae (M) tendered and the tender was accepted, forming a contract.
2. C supplied M with the latitude and longitude at which the tanker was alleged to be lying.
3. After incurring considerable expense in fitting out a salvage vessel, M could not locate the oil tanker and it became obvious that it had not existed at the location at any material time.
4. M sued C claiming damages for breach of contract and the torts of deceit and negligence. LFS 213; BTS 176; EC
5. C argued the contract was void for common mistake.

#### **Held:**

1. The contract was not void for common mistake.
2. The court construed the contract and concluded that C had promised M that the tanker existed at a particular location in the ocean. M had entered into the contract based on this promise. It was not the case that both parties had acted on the basis that the tanker existed. As there was no tanker, there was a breach of contract for which M was entitled to damages.
3. The court held (at 410) that even if common mistake was established, C could still not avoid the contract because any mistake was induced by the serious fault of C's own employees, who asserted the existence of a tanker recklessly and without any reasonable ground.