

STUDY UNIT 6 - CONFLICTING RIGHTS. ①

S.N. → STUDY GUIDE

STUDY UNIT 7 - ERROR (MISTAKE).

Consensus : is a primary basis for contractual liability.

- actual agreement bet a parties is a primary basis of a contract - this approach known as intention, will or consensual theory - places emphasis on intention (will) of contracting parties. - Under circumstances intention theory proves ineffectual then contractual liability - secondary basis. A secondary basis is a reasonable reliance of one contracting party a agreement bet a parties exist.

Factors influencing consensus

- If a consensus of one of a parties is legally invalid there can be no contract - If consensus or ostensible agreement is absent - no contract. ✓
- If there is consensus but it has been obtained in an improper manner (duress) there will be a valid contract, but which is voidable @ a instance of a prejudiced party. ✓
- Contract is void (it does not exist) in a case of material mistake where there is no reasonable reliance a agreement exists, since there is absence of consensus or ostensible agreement. ✓
- Contract is voidable - misrepresentation, duress & undue influence since in these cases there is consensus but it has been obtained in an improper manner. ✓

mistake - one or even both contractants act while under some or other incorrect impression which affects the contract bet them.

Material mistake

Elements of consensus

consensus exists when parties

- (1) have agreed on the nature of the obligations they intend to create, i.e. have agreed on the persons bet whom the obligations are to be created and on the contents of the obligations, i.e. the performance to be rendered.
- (2) Have agreed to be bound by the contract, have agreed to create juristic consequences.
- (3) are aware of their agreement.

material mistake

- exclusion of one of the elements of consensus results in a material mistake.

- There will be no consensus

- 1) * owing to some mistake the parties are not agreed about the persons between whom the obligation is to be created.
(Y's offer relates to his Golf GTI X believes it relates to VR6)
- 2) * owing to some mistake the parties are not in agreement regarding the performance to be rendered.
(Y's offer relates to his Golf GTI X believes it relates to VR6)
- 3) * are not in agreement regarding the nature of the contract they wish to conclude.
(Z's believes he has purchased Y's Golf VR6 where he has signed a lease agreement)
- 4) * mistake as to the juristic consequences of the contract
(Y in jest says to Z that Z may purchase his VR6 for 20000 and Z accepts)

Non-material mistake

- A non-material mistake does not affect or exclude an element of consensus & ∴ parties are in agreement & a basis for contractual liability (consensus) is present. ✓

- A mistake relating to performance or person will not be material if it does not affect the mistaken party's decision to agree. eg (X wishing to support Y's new boutique, buys a dress from M whom she assumes to be Y → She makes a material mistake about the other party to the obligation. - If it were no concern of X from whom she bought the dress her mistake would not be material).

Traditional approach to material & non-material mistake

(1) error in negotio - mistake regarding nature of contract being entered into which is material (A intends to purchase while B intends to let).

(2) error in persona - mistake regarding the identity of the other party which is material (Z enters the shop to purchase a packet of cigarettes & mistakes the man behind the counter for a prominent sportsman) eg of an error in persona which is not material. read eg pg 54

(3) error in corpore - mistake regarding the identity of the subject matter of the contract which is material (X intends to sell Golf GTI. Z intends to buy Y's Golf VR6).

(4) error in substantia (error in qualitate) mistake regarding an attribute or characteristic of the subject matter of the contract (Not material) A buys Horse from B thinking it the former July winner when it has never won in July.

4) Error in motive - mistake regarding reason or ground for entering into contract (Not material)
C. A. offers to Buy B's car because he mistakenly believes his car to be stolen.

* ANY ERROR \neq EXCLUDES AN ELEMENT OF CONSENSUS WILL BE MATERIAL EXCEPT FOR ERROR IN PERSONA WILL ONLY BE MATERIAL WHERE IDENTITY OF OTHER CONTRACTING PARTY IS OF ESSENTIAL IMPORTANCE TO MISTAKEN PARTY.

CASES / MISTAKE

① In National & Overseas Distributors Corp v Potato Board mistake of respondent was material, since it related to persons between whom obligations were to be created. ✓

② Steyn v LSA Motors
Respondent's mistake related to other party to a potential contract (it only intended any possible contract could arise, if condition were met, would arise bet itself & a professional golfer & was material)

③ George v Fairhead
Appellant's mistake related to a term which he believed would not be in contract & was material because it related to an aspect of performance.

④ Allen v Sixteen Stirling Investments
mistake related to performance - material

⑤ Du Toit v Atkinson's Motors
mistake related to aspect of performance & thus Material

⑥ Scrap Petroleum Vs Pappadogiannis
mistake related to aspect of performance:
material

* consequences of application of \perp intention theory to all instances of mistake.

(1) Consistent application of \perp will theory would mean \perp every material mistake would exclude contractual liability. \perp wholly subjective approach to contract, which \perp intention theory represents, can lead to inequitable results. for this reason \perp intention theory has been rejected by some jurists & \perp basis of a contract has been sought in something other than subjective agreement bet \perp parties. Courts have expressed preference for \perp reliance theory as alternative basis for contractual liability where consensus has been excluded as a result of material mistake.

(2) Alternatives to & qualifications of \perp will theory, w/s. estoppel, Declaration & Reliance.

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The Reliance theory is applied in 2 ways.
(1) Direct Reliance approach (2) Justus Error approach (indirect approach to 1 reliance theory).

(A) THE DIRECT RELIANCE APPROACH

- Before 1992 courts very seldom used this approach
- Sonap Petroleum case it was applied
- 1 court in Sonap set out 1 test for 1 direct reliance approach as follows:

"... did 1 party whose actual intention did not conform to 1 common intention expressed, lead 1 other party, as a reasonable man to believe 1 his declared intention 1 represented his actual intention?"

~~This 2 enfolded~~
~~this questions~~

This ? entails a threefold enquiry

- (1) Was there a misrepresentation regarding one party's intention
- (2) Who made 1 misrepresentation
- (3) Was 1 other party actually misled & if so would a reasonable man also have been misled?

App of Direct reliance theory

George V fairmead

Du Toit V Atkinson's Motors

Sonap case

(7)

(B) THE IUSTUS ERROR APPROACH (INDIRECT APPLICATION OF RELIANCE THEORY)

This approach is merely Reliance theory in another form

A party to a contract who laboured under a mistake & wishes to escape contractual liability must prove

(1) \pm his mistake is material

(2) \pm his mistake is reasonable

See worksheet

* STEPS TO SOLVE A MISTAKE PROBLEM

① DET. WHETHER MISTAKE IS MATERIAL
• APPLY THE INTENTION THEORY.

* IF BOTH PARTIES HAD \pm SAME PERFORMANCE IN MIND IF NOT, MISTAKE IS MATERIAL

② DECIDE WHETHER DRA OR I.E.A. CAN BE APPLIED TO PROBLEM.

? IS THERE AN APPARENT CONTRACT
IF YES, BOTH CAN BE APPLIED IF NO ONLY DRA CAN BE APPLIED

③ APPLY APPROACH

STUDY UNIT 9 / MISREPRESENTATION

REQUIREMENTS FOR DELICT / CULPABLE MISREP ACT

There must be a misrepresentation, \pm is a false statement of fact, made by a contractant or someone for whose acts \pm particular contractant may be held liable.

- statement may be made by commission i.e. positive conduct or by omission - failure to remove an existing wrong impression under which \pm other party is labouring.

Wrongfulness

- \pm misrep must be wrongful, it must have caused some harm in a legally reprehensible or unreasonable manner.

- Test for wrongfulness - \pm legal convictions of \pm community / \pm boni mores - objective test based on reasonableness.

" \pm basic? is according to \pm legal convictions of \pm community & in \pm light of \pm circumstances of \pm case \pm plaintiff defendant infringed \pm interests of \pm plaintiff in a reasonable or unreasonable manner."

Wrongfulness in \pm case of a commission

misrep in \pm form of commission, wrongfulness is apparent if \pm misrep has induced \pm other party to conclude \pm contract which he would not otherwise have agreed *Ranger v Wykerd, De Jager v Grunder.*

Wrongfulness in case of an omission ^{emission}

misrep by omission - failure to remove an existing incorrect impression will be wrongful if

- (1) There was failure to disclose a material fact
- (2) There was a duty to speak on + part of + misrepresenter & he failed to remove + false impression.

where one person is in some way responsible for + other's false impression he must remove + impression (Trotman v Edwick)

opinion • A rep will only found an action based on misrep if it relates to some past or present fact & accordingly a mere opinion will not suffice.

materiality • is merely a factor to be taken into a/c when det + wrongfulness of a misrep & not a requirement. misrep must not only mislead but should be of such a nature $\hat{=}$ it would also mislead a reasonable man. In + same circumstances. If it is fraudulent, + misrepresenter cannot aver on this ground.

puffing • Mere puffing is not actionable because it is not considered wrongful. Puffing amounts to representations made in course of negotiations which representations praise & commend + properties of + representor's performance.

Fault

- legal blameworthiness or \perp reprehensible state of mind or conduct of \perp misrepresenter. Fault has 2 forms intent (dolus) / Negligence (culpa)

Intent

- legally reprehensible state of mind which consists in directing \perp will @ attaining a particular result while conscious of \perp wrongfulness of \perp conduct

Negligence

consists in \perp lack of \perp necessary degree of care required in circumstances under which \perp reasonable person in \perp position of \perp actor (misrepresenter) would have seen \perp possibility of harm to another (misrepresentee) & thus taken reasonable steps to prevent \perp harm ensuing.

Causation

- \perp misrep. must have caused \perp misrepresentee to enter into \perp contract where he would not have entered into \perp contract at all or, alternatively, caused \perp misrepresentee to assent to terms in \perp contract which he with an unfettered will would not have assented to.

General approach of \perp courts

Factual causation.

- is \perp part of \perp test for causation \perp is used to det whether \perp misrep actually caused \perp contract
Courts apply \perp conditio sine qua non test; but for test

"Would \perp contract or \perp specific terms contained therein have resulted but for \perp misrep"

Legal causation

Legal causation

- used to det whether a factual consequence may be considered legally close enough to \perp conduct \perp caused it to justify liability (which consequences should be imputed to him)
- legal causation arises when det for which undesirable or harmful consequences caused by \perp wrongdoer's wrongful, culpable act he should be held accountable or liable.

Damage

where \perp conclusion of \perp contract as a result of \perp misrepresentation caused actual damage, \perp misrepresentee may claim his loss from \perp misrepresantor.

- in \perp case of culpable misrep proof of damage is not required to justify a rescission

Remedies for fraudulent & negligent misrep.

Twofold remedies available to injured party

- (1) he may rescind (cancel or impugn) \perp contract
- (2) whether he rescinds or upholds \perp contract he may claim damages to compensate him should he have suffered actual loss.

Rescission

- culp misrep - contract is voidable.

If aggrieved party decide to rescind \perp contract \perp obligation bet \perp parties will be terminated with retrospective effect. Parties must restore to each other what has already been performed in terms of \perp contract so \perp they may be in \perp position they was by \perp contract was concluded.

②
rescission leads to restitution or restitutio in integrum (literally return to previous position)

Dolus dans

↓ misrepresentee may elect to cancel where ↓ facts show ± if it had not been for ↓ misrep he would have not entered into ↓ contract.

In ↓ context of fraud. — dolus dans causam. this is true for neg misrep as well.

Dolus incidens

But what if facts show ± if there had been no misrep would he have still entered into ↓ contract, but on different terms? Dolus incidens in contractum.

There is ~~no~~ merit in ↓ contention ± since a contractants consent has been obtained in an improper manner, he should be afforded ↓ opportunity to withdraw from ↓ contractual relationship under all circumstances.

* Exercising ↓ election to rescind or uphold ↓ contract
refers to W/S

Innocent misrep (Non-culpable)

- No delictual liability will arise where \perp wrongdoer does not culpably cause \perp loss suffered by \perp aggrieved party (law of delict). However in contract there is a deviation from strict delictual principles.

Requirements

There must be a precontractual false statement of fact made innocently by one of \perp contracting parties & which induces \perp other party to enter into \perp contract or to agree to terms \perp he would not have agreed to had he known \perp truth.

Remedies

1) Rescission & restitution (see above)

2) Damages

Hall v Milner - court held in case of innocent misrep \perp purchaser was entitled to claim a reduction of \perp purchase price (restitutional damages) with \perp actio quanti minoris. Misrepresentee could claim \perp diff bet \perp price paid & actual value of thing purchased

Actio Redhibitoria - cancellation of contract & restitution was claimed & Actio quanti minoris - reduction of purchase price.

Pharm v Paizes (Innocent misrep)

Court asked to decide upon \perp ffg?

- (1) Can an innocent misrep entitle a buyer to a reduction of \perp price under \perp actio $\&$ minoris
- (2) If so under what circumstances

④
The appellate Division answered as follows.

- (1) actio Redhibitoria or actio quanti minoris available if the res vendita suffered from a latent defect at the time of sale.
- (2) The above also available if the seller made a dictum et promissum & it turned out to be false.
- (3) Dictum et promissum is a material statement made by the seller to the buyer during negotiations, bearing on the quality of the res vendita & going beyond mere praise & commendation.
- (4) Whether a statement by the seller goes beyond mere praise or commendation will depend on the circumstances of each case.

Phame V Paizes (Position regarding innocent misrep)

- (1) Buyer who has been misled by a representation amounting to a dictum et promissum made by the seller, may claim rescission & restitution with the actio Redhibitoria or restitutional damages with the actio quanti minoris. He can also raise an exceptio redhibitoria or the exceptio quanti minoris as a defence to an action by the seller.
- (2) If the seller's ~~mere~~ representation does not amount to a dictum et promissum or if the representation is made to a party to any contract other than a contract of sale, the misrepresentee can claim rescission & restitution based on innocent misrep. He does not have an action for restitutional damages.

(15)

Exclusionary Clauses - limits ↓ remedies available to parties in a contract eg: common ↓ excluding liability for misrep. Remedies for intentional misrep cannot be excluded.

STUDY UNIT 10 / DURESS.

Compulsion may be exercised by a direct application of physical force or indirectly by way of a "threat of harm" 2 kinds of duress

- 1) Physical force or violence → *vis absoluta*
- 2) Threats which induce a person to act → *vis compulsiva* (moral compulsion)

vis absoluta → ↓ overwhelmed party does not act in ↓ legal sense of ↓ word: there is no voluntary human action on his part see examp pg 96

vis compulsiva → ↓ aggrieved party has indeed acted & has expressed his will even though this will has been attained by improper means.

will of aggrieved party is affected by duress, expression of his intent valid & free is thus agreement.