

Advise harriet

Law



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Harriet runs shop that sells rare maps. Ivor visits her shop and selects for purchase an unusual map of the county of Essex. Harriet, believing Ivor to be the husband of Zelda, a wealthy businesswoman, accepts Ivor's cheque for £50 as payment. The cheque is dishonoured. Ivor is, in fact, the Zelda's lover and not her husband. Harriet displays a map of Surrey in her window, with the price tag of £2,000 attached to it. Jocelyn visits her shop and asks if the map is of the sixteenth century or the seventeenth century. Harriet tells him that she has no idea how old it is.

Jocelyn, believing it to be of the sixteenth century, purchases the map. In fact, the map is a clever nineteenth century reproduction worth £100. Kevin purchases a map of France from Harriet. He believes that Michelin produced it. It was actually produced by a less accurate competitor of Michelin's.

Advise Harriet. In order to advise Harriet, we must look at the doctrine of mistake. If a mistake is operative, it can have the effect of rendering a contract void at common law. Even where the contract is valid at law, it may be nevertheless be voidable in equity on the grounds of mistake.

In the first situation between Harriet and Ivor, it is classified as an unilateral mistake to identity. The first requirement to render the contract void is that the identity must be material and fundamental, in other words, one party must regard the identity of the other party as a matter of vital importance. For example, in *Dennant v Skinner*¹, the defendant was dishonest with his own identity and the cheque he gave to the plaintiff was dishonoured. The issue was whether or not the contract was negated by the plaintiff's mistake as to the defendant's identity.

The court held that there was not a mistake, which negated consent and thus avoided the contract. Ivor's situation can be compared to *Cundy v Lindsay*² where the plaintiff thought they were trading with a reputable firm and on this basis shipped the goods to the rogue. It was held in this case that there is no contract. Lord Cairns said, '... how it is impossible to imagine that in that state of things any contract could have arisen between the Respondents and Blenkarn the dishonest man? Of him they knew nothing, and of him they never thought. With him they never intended to deal.

Their minds never even for an instant of time rested on him, and as between him and them there was no consensus of mind which could lead to any agreement or any contract whatsoever. ' In Ivor's case, the identity of Ivor was fundamental to Harriet. She only accepted the cheque due to the fact that she believed Ivor was the husband of a wealthy businesswoman, therefore the cheque should be acceptable. The second requirement is that the other party must be aware of the mistake and it is clear that Ivor fulfils this requirement since he was fraudulent.

The third requirement being the mistaken party must have in mind an identifiable person with whom he or she intends to contract. In *King's Norton Metal Co. v. Etridge*³, the plaintiff received a letter from the rogue and despatched goods to the rogue's company. The court took the view that the plaintiff intended to contract with the writer of the letter and the contract was not void for mistake. Compare this to Ivor's case, it is clear that Harriet intended to trade with Ivor. The problem with these cases mentioned above is that they occurred when the parties communicate to each other in writing and not face-to-face transactions.

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It was said that Ivor visited Harriet's shop, therefore they must have done the transaction face to face. When concerning mistake made during face-to-face transaction, the court generally held there is no contract between the innocent and the rogue. Due to the fact the claimant has seen the rogue himself, the court also taken into account if the claimant has done anything to make sure the payment is acceptable. In *Ingram v Little*⁴, the plaintiff confirmed from the directory at the post office that there were such a person as the rogue describe himself.

When the cheque was dishonoured, it was held that there is no contract for sale between the plaintiff and the rogue. In contrast with a similar situation in *Phillips v Brooks Ltd*⁵ but results in a different conclusion. The jeweller checked the name and address of the rogue and the cheque was dishonoured. In this case, the court judged that there was a contract of sale under which title to the rings had passed to the rogue. The fact that Harriet did not check if Ivor was truly Zelda's husband and accepts the cheque only on the basis of her belief should be taken into account.

However, in the case *Lake v Simmons*⁶ where the jeweller let the woman take away certain necklaces because he was told and believed that she was the wife of a certain man. It was concluded that there could not be a contract since there was no consensus. The contract is void even though the jeweller did not take any step into finding the true identity of the woman. Even though Harriet has not been careful in accepting the cheque, Ivor's dishonest behaviour would render the contract void. As to the second situation, we have to consider if either Harriet believed the map was worth £1, 000 or she merely displayed the price without believing in it. If she believed the map

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was worth £2, 000, it is a bilateral mistake as to the quality of subject matter. Here, both Harriet and Jocelyn had entered into contract on the basis of a false and fundamental assumption as to how old the map is. Harriet was mistaken and set £2, 000 as the price, implies that she thought the map must be rather old and valuable. Jocelyn was also mistaken and believed the map of one of the sixteenth century. The leading case of mistake as to quality is *Bell v. Lever Brothers*⁷.

Lord Atkin stated, 'Mistake as to quality... will not affect assent 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.' In this case, Bell, an employee of Lever, entered into an agreement to terminate his employment under which he was paid £30, 000 compensation. It was later discovered that Bell could have been dismissed without compensation due to certain breach of contract by him and about which he had forgotten.

The House of Lords was prepared to treat the case as a common mistake as to quality, but held the contract valid. Lord Atkin again commented, 'A buys a picture from B: A and B believe it to be the work of an old master, and high price is paid. It turns out to be a modern copy. A has no remedy in the absence of representation or warranty.' The relationship between A and B is similar to that of Harriet and Jocelyn. They both believed the map is an old copy and therefore Jocelyn has no remedy against Harriet because no representation or warranty was made by Harriet.

Harriet could not be liable for something she has not guaranteed. From this case on, it has been decided that a bilateral mistake as to quality can never render the contract void at common law. This decision has been supported by subsequent cases, for example, *Leaf v. International Galleries*⁸. On the other hand, there is some suggestion in the speeches of the House of Lords in *Bell v. Lever Brothers and Associated Japanese Bank Ltd v. Credit du Nord*⁹ that a contract could be void if the mistake as to quality is sufficiently fundamental. If, on the other hand, Harriet did not believe that the map was worth £2, 000, it is a unilateral mistake as to the quality of subject matter. One factor has to be taken into account is that Harriet did not induce the mistake and honestly told Jocelyn that she has no idea how old it is. Harriet is stating her innocence and also excluding herself from liability. Therefore Jocelyn has gone ahead with the purchase based on her own belief. For example, in *Smith v Hughes*¹⁰, the defendant thought he was buying old oats not new oats and refuse the goods. The defendant was mistaken as to the quality of the oats and the plaintiff, without inducing the mistake, was aware of the mistake.

It was held that there would be a contract due to the fact that whether it is old or new oat was not a fundamental issue. Compare this to Jocelyn's situation, Harriet had no knowledge of the mistake that was fundamental and did not induce it. In conclusion, this fundamental mistake could render the contract void. Whereas in Kevin's case, we are not told about first of all if she knew the map was not a Michelin. Second of all, we do not know if Harriet knew Kevin bought the map based on his belief that it is a Michelin.

Lastly, if she has taken any action to induce the mistake, for example, informing Kevin that it is a Michelin.

The issue whether it is Michelin's work was fundamental to the contract. Suppose Harriet knew it was not a Michelin but did not induce the mistake upon Kevin, it is a unilateral mistake as to quality. She would not be liable for a unilateral mistake and the contract will remain valid. However, Harriet would be fraudulent if she induced the mistake. If both Harriet and Kevin were mistaken as to whether or not it is a Michelin, then it would render the contract void for mutual mistake as to the quality of subject matter.