

CONTRACT LAW
PROBLEM QUESTION SOLVING

MISTAKE

Q.1 Following the death of her estranged father, Felicity has inherited his artist's studio and some of what she believes to be his completed works. Felicity's father, 'Clarky', worked in stained glass and his work was considered radical and progressive in the 1960s, particularly among 'A' list celebrities of the time. Unfortunately, owing to the fragility of the work, not much has survived to the present day. His recent death and the originality of his creations have rendered Clarky's work very valuable. Felicity invites Reah to have a look round with a view to purchasing any items she may be interested in. She sees a large panel depicting a dragon. She offers Felicity £50,000 for the piece. Felicity accepts her offer and will deliver on receiving payment in her bank. Reah immediately goes to her insurers to secure adequate cover in the event of an accident. The specialist valuer tells her that what she has is probably work done jointly by Clarky's evening beginner class students whom he would provide with a template of a dragon to fill in, to demonstrate and learn technique. Although attractive, the piece would at most be worth £5,000.

Reah is very upset and wants to know whether she has to proceed with the contract, as she has not bought what she thought she was buying. Advise Reah as to the application of the doctrine of mistake.

Ans. The operation of the doctrine of mistake renders a contract void: that is to say that it will mean that the contract will be treated as though it never existed. If applied, this would mean that Reah would not have a contract with Felicity and, as such, would not have to proceed with the purchase of the glass panel. However, the doctrine of mistake has a very restricted scope of operation and it will not allow a party to a freely entered bargain to escape easily from that agreement simply because the deal struck has not turned out to be as beneficial as anticipated. Reah will have to establish that her mistake was a fundamental one to have the contract set aside on the grounds of mistake. If she cannot do so, then the contract will be enforceable and she will have to pay Felicity £50,000.

Traditionally, the doctrine of mistake under the common law falls into three categories: common, mutual and unilateral. Common mistake is where both parties have made the same mistake, mutual mistake is where both parties have made a mistake but a

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Maureen Spencer, John Spencer



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