

[Equitable Remedies in the Doctrine of Mistake](#)

Posted on [May 8, 2016](#) Written By [Olanrewaju Olamide](#) Posted in [Law Of Contract](#) Tagged [Cooper vs Phibbs](#), [Equitable remedies](#), [Equity](#), [Joscelyne vs Nissen](#), [Mistake](#), [Resitutio in integrum](#), [Solle vs Butcher](#)



The Rationale for Equitable Remedies

As can be seen from cases like *Cundy vs. Lindsay*, the common law doesn't pay much attention to the interest of third parties in a contract. If it can just be proved that there was a mistake, the contract would be made void. Due to this rigidity and harshness, equity has stepped up to provide some remedies in order to ameliorate the plight of the parties. These equitable remedies in cases of mistake include:

1. Rescission
2. Rectification
3. Refusal of Specific Performance

In order for any of these equitable remedies to be granted, the stipulations by Lord Denning in the case of *Solle vs. Butcher*^[1] have to be met:

- Where the mistake is common or mutual, it must be of a fundamental nature and neither flimsy nor minor.
- Where it is a unilateral mistake, it must have been induced by the other party, or he had constructive knowledge of the mistake.
- It must be unequitable for the party seeking to enforce his strict rights under the law to have the law enforced in his favour.

Rescission

The remedy of rescission is used in order to set aside a contract entered into on the basis of a mistake. The court, in this case effectively releases the parties from any obligations regarding that contract, making it unenforceable. In the case of *Cooper vs. Phibbs*^[2], the court rescinded contract when it was discovered that the mistaken party bought what already belonged to him.

However, there are some limitations to the applicability of the right of rescission:

- **Lapse of Time:** The equitable remedy of rescission would not be applicable if there has been a lapse of a reasonable period of time after the agreement of the contract. This is embodied in the equitable maxim: "delay defeats equity". The test of what is a reasonable time depends on the circumstance of each individual case.
- **Third Party Rights:** The equitable remedy of rescission would not be applicable if the goods have been acquired for value by an innocent third party before the application for rescission.
- **Impossibility of Restoration:** The equitable remedy of rescission would not apply where *restitutio in integrum*^[3] cannot be achieved due to the destruction, consumption or modification of the subject matter.

Rectification

The equitable remedy of rectification is used when the written contract doesn't convey the real intention of the parties to the contract. In this case, the court would order a modification of the written document in order to make sure that it reflects the real intention of the parties.

In the case of *Joscelyne vs. Nissen*^[4], a father agreed to let his daughter take over his car hire business on the condition that she would take care of certain household expenses. However, due to a mistake, the written agreement did not place these responsibilities on the daughter. The court ordered a rectification of the agreement in order to make it reflect the true intention of the parties.

In order for this remedy to apply, the following requirements have to be met:

- There was a prior agreement between the parties before the written agreement.
- The intention of the parties must remain unchanged from the time of the prior agreement till the time of the written agreement in contention.

- The written agreement must be different from what the parties originally intended.
- The evidence for mistake must be clear and unambiguous.

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Refusal of Specific Performance

The court would refuse to order the specific performance of a contract when it can be proved that the person applying for it is acting to exploit the mistake of the other party.

In the case of *Abdul Yusuf vs. Nigeria Tobacco Company*^[5], the defendant made a typographical error in drafting the contract of the plaintiff in transporting some of its goods. Due to this mistake, the price to be paid was unduly high. The defendant requested the plaintiff and other drivers to return their contracts for correction. The plaintiff refused and sought to have the contract enforced. The court refused to grant the equitable remedy of specific performance based on the fact that it would be inequitable to do so since the plaintiff was trying to exploit the defendant's mistake.

It should however be noted that in a scenario in which the terms of the contract are clear and unambiguous, the contract would be enforced. In the case of *Tamplin vs. James*, the defendant bid for and bought an inn auctioned by the plaintiff on the belief that since the plaintiff owned an adjacent garden he would also sell it with the inn. However, during the auction, the plan of the inn to be sold was clearly displayed and it did not include the garden in question. The court held that in this situation, the terms were clear and unambiguous. As a result, the contract had to be enforced.

References

^[1] [1950] 1 KB 671

^[2] Supra

^[3] Restoration to the previous condition

^[4] [1970] 2 QB 86

^[5] (1974) NCLR. 236