

UNIVERSITY OF HONG KONG  
FACULTY OF LAW

JDOC1002 LAW OF CONTRACT II

SEMINAR QUESTIONS: MISTAKE

**Question 1**

Fox is a private dealer in antique silverware. He does not have a physical shop but advertises his services through his Instagram account.

In September 2023, Tom contacted Fox, seeking to sell to Fox a silver cream jug in the shape of a cow. Tom had stumbled upon the cow creamer while cleaning out his attic and hoped to sell it for a good price. Fox said: "Leave the item and your contact information behind and I will have it examined." Tom handed the cow creamer to Fox and went home.

When Tom asked Fox for a quote the following week, Fox said to Tom: "I've taken a look at your item. It is of modern Dutch manufacture and not worth very much. I can offer you \$120 for it." Tom agreed and sold the cow creamer to Fox at that price.

One day, Fox decided to give the cow creamer a polish. While rubbing the silver, he discovered a hallmark on the bottom of the cow creamer indicating it was from the 18<sup>th</sup> century and very rare. Fox immediately advertised it for sale for \$6000 on Instagram.

A few days later, Tom saw Fox's advertisement of the cow creamer on Instagram. When he saw the price, he was furious. He immediately contacted Fox demanding to get his cow creamer back. "You tricked me!" he berated Fox. "Give me my cow creamer back!"

Fox replied: "I genuinely thought it was modern Dutch. Besides, a deal's a deal. And I have already sold the cow creamer to Watkyns."

Watkyns was Tom's neighbor. Tom went to see Watkyns, told him what happened and demanded return of the cow creamer. Watkyns refused.

Advise Tom as to whether there is any basis for him to recover the cow creamer from Watkyns under the doctrine of mistake.

## Question 2

Please read the article J Morgan, “Common Mistake in Contract: Rare Success and Common Misapprehensions” (2018) 77 *CLJ* 559. Then answer the following questions.

- (a) According to Morgan, how should common mistake cases be decided?
- (b) How is Morgan’s approach different to the approach under the established case law?
- (c) Do you find Morgan’s proposal for resolving cases of common mistake attractive?