**Chapter 8: Grounds Upon Which a Contract May Be Impeached: Mistake**

**Equitable Relief** – a discretionary remedy first developed by the courts of equity to undo an injustice  
Circumstances are limited that the courts will recognize a mistake and provide equitable relief.

If words are used inadvertently when stating the terms of the contract, the consequences of the error fall on the one who caused the problem.

**Rectification** – correction of a written document to reflect accurately the contract made by the partiesA party claiming that the arrangement was improperly recorded may ask the court for *rectification* of the contract.

It is not easy to establish the conditions necessary for rectification: if the terms were ambiguous in the original agreement of if the parties carried on subsequent negotiations, a court is very reluctant to alter the final agreement.

Misunderstandings About the Meanings of Words  
- parties may place quite different meanings on words  
- a court will decide which meaning is the more reasonable in light of the circumstances  
- option 1: offeree will be bound by the terms as understood by the offeror  
- option 2: offeror was unwise to use the words they did and the offeree interpreted them more reasonably; the offeror will be bound by the contract in the way the offeree understood it

Mistake in Assumptions  
- the most fundamental of mistakes is a mistake about the very existence of the subject-matter  
- ex. goods in a ship are destroyed when a contract is made

**Set Aside or Rescinded** – cancelled or revoked to return the parties as nearly as possible to their original positions

**Rescission** – an order by a court to rescind

If a contract is void, it is to say that in law it was never formed at all.

**Voidable** – a contract that a court may set aside in an attempt to restore the parties to their original positions

Between the original parties to a contract, equity will often declare a contract to be *voidable* and will order that it be set aside or rescinded, restoring the property to the seller and requiring him to return any benefit he might have received from the rogue.

Between two innocent parties, both victims of a fraud, the loss should be borne by the more careless of the two.

**Non Est Factum** – “it is not my doing”

By signing a document that has been misrepresented to him either innocently or fraudulently, a person may induce an innocent third party to rely on the document. The person who signed may raise the plea *non eat factum*.

A person who relies on a document that they didn’t personally see signed still takes some risk; the signer may be blind, illiterate or at least unable to read English.

Mistakes in Performance

If a recipient is paid more than belonging to them, a court will order him to restore it. It becomes more difficult when the recipient honestly but mistakenly believes that he is entitled to the benefit.

**Quasi-Contract** – an obligation that may arise, not as a result of contractual relations, but because one party has received an unfair benefit at the expense of the other

**Unjust Enrichment** – an unfair benefit

**Restitution** – repayment or recovery of a loss