

# CASEBRIEFS

## The Understanding Video Lecture Series™

### Mistake

Unilateral and Mutual Mistake

# Mistake

A party (P) may avoid a K on account of mutual mistake if:

- Mistake concerns a “basic assumption”;
- Mistake had a “material effect” on agreed-exchange;
- K did not explicitly or implicitly impose the risk of this type of mistake on P.

# “The rock”

Digger, an excavator, contracts to build a foundation for an office building for O, a landowner, for a fixed price of \$200K.

K is silent on rock risk.

Halfway through, Digger encounters granite far tougher to drill through than either party expected.

*Can Digger be discharged from the contract on account of mutual mistake?*

# **Answer: Assumption of Risk**

- No. Digger had the better expertise about soil conditions.
- He also “knew that he didn’t know” the rock conditions.
  - He would be held to have implicitly assumed the risk of granite, depriving him of the right to use mutual mistake.

# Unilateral Mistake

- One party makes a basic mistake (sometimes a clerical error) however, it doesn't void a contract UNLESS
- Either (a) unconscionable or (b) other party knew or had reason of mistake or caused it.

# Unilateral Mistake Hypo

GC, a general contractor, is bidding to build a building for O. GC gets a bid on the electrical sub-K word from Electric for \$100K (the lowest bid GC gets). GC bids \$1MM for whole job partly in reliance. Bid is binding on GC by O's terms. After GC gets the job from O, Electric writes GC, "My sub-bid was a mistake— I can't do it for less than 140K." Next-lowest bid is \$150K.

- If GC *knew* of Sub-K's mistake, Sub-K can be discharged.

# Another

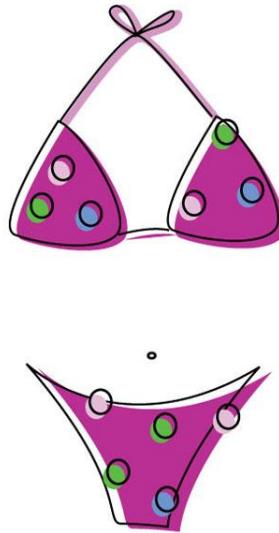
Katie is a purchasing agent for Clothes [a clothing store]. She negotiated a contract with Bikini Co. to purchase a specific number of Bikinis at \$75,000. When Tania, president of Clothes, learned of the contract, she called Katie into her office and said she was so pleased with her deal that she would be promoted to manager of Clothes' NY store. One week later, on 12/3/97, Katie got a call from Stanley, VP of Bikini Co., who said that Bikini's sales rep made an error in calculating the contract price, and as a result, Stanley said that unless Clothes agreed to pay an additional \$15,000, Bikini Co. would not deliver the garments. Katie told Tania of the mistake and Tania reluctantly authorized Katie to make the payment of the additional sum.

Assume that Katie should have known that Bikini Co.'s original price of 75 grand was an error, but she still accepted.

Is there an enforceable contract and why or why not?

# Mistake

- Here, a mistake was made, and Katie SHOULD have known , the facts tell you this. Therefore, the contract won't be enforced.





# Another Rock

Emma decides to purchase a garnet for her 18 year old daughter, as garnet is daughter's birthstone. Both Emma and jeweler discuss the ring, and assume it is a garnet. After the sale, an expert deems the ring to be a ruby. Mutual Mistake?



# Yes, mutual mistake

- Both parties were mistaken as to what the rock WAS.
- Remember that a mistake in value alone is not enough. Here, a ruby is more valuable than a garnet, but that's not the reason why it is a mutual mistake.