

CONTRACTUAL MISTAKES BILL

EXPLANATORY NOTE

THIS Bill, which reforms the law relating to the effect of mistakes on contracts, implements the report of the Contracts and Commercial Law Reform Committee presented to the Minister of Justice in May 1976.

Clause 1 relates to the Short Title of the Bill.

Clause 2 is an interpretation clause.

Clause 3 provides that the Act shall bind the Crown.

Clause 4: Subclause (1) provides that except as expressly provided in the Act, the Act is to have effect in place of the rules of the common law and of equity governing the circumstances in which relief may be granted, on the grounds of mistake, to a party to a contract or to a person claiming through or under any such party.

Subclause (2) provides that nothing in the Act shall affect—

- (a) The doctrine of non est factum:
- (b) The law relating to the rectification of contracts:
- (c) The law relating to undue influence, fraud, breach of fiduciary duty, or misrepresentation, whether fraudulent or innocent:
- (d) The provisions of the Illegal Contracts Act 1970 or of sections 94A and 94B of the Judicature Act 1908.

Subclause (3) declares that nothing in the Act is to deprive a Court of the power to exercise its discretion to withhold a decree of specific performance in any case.

Clause 5 sets out the grounds on which a Court may grant relief under the Act.

Paragraph (b) of subclause (1) of this clause differs slightly from the paragraph recommended by the Contracts and Commercial Law Reform Committee. The paragraph requires that before relief can be granted the mistake must have resulted at the time of the contract—

- (a) In a significantly unequal exchange of values; or
- (b) In the conferment of a benefit, or in the imposition or inclusion of an obligation, which was, in all the circumstances, a benefit or obligation significantly disproportionate to the consideration therefor.

In the Committee's draft the word "substantially" appeared once and governed only the term "unequal exchange of values". In the present Bill the word "significantly" (which is used instead of the word "substantially") appears twice in paragraph (b) and governs, in addition to the term "unequal exchange of values", the references to the conferment, imposition, or inclusion of a benefit or obligation disproportionate to the consideration therefor.

Clause 6 sets out the nature of the relief that may be granted under the Act.

Clause 7 protects the rights of third persons.

Clause 8 confers on Magistrates' Courts the jurisdiction to grant relief under this Act in certain cases.

Clause 9 provides that the Act shall not apply to contracts entered into before the commencement of the Act.

Hon. Mr Thomson

CONTRACTUAL MISTAKES

ANALYSIS

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A BILL INTITULED

An Act to reform the law relating to the effect of mistakes on contracts

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. **Short Title**—This Act may be cited as the Contractual Mistakes Act 1977.

2. **Interpretation**—(1) In this Act, unless the context otherwise requires,—

“Court” means the Supreme Court or a Magistrate’s Court that has jurisdiction under section 8 of this Act:

“Mistake”—

(a) Means a mistake, whether of law or of fact; and

(b) Includes—

(i) An erroneous opinion; and

- (ii) An erroneous calculation; and
- (iii) An error in the manner in which a document is expressed; but

(c) Does not include any matter of expectation which concerns, or is dependent on, an event occurring or failing to occur after a particular contract is entered into. 5

(2) For the purposes of this Act, and without limiting the meaning of the term "mistake of law", a mistake in the interpretation of a document is a mistake of law. 10

(3) There is a contract for the purposes of this Act where a contract would have come into existence but for circumstances of the kind described in section 5 (1) (a) of this Act.

3. Act to bind the Crown—This Act shall bind the Crown.

4. Act to be a Code—(1) Except as otherwise expressly provided in this Act, this Act shall have effect in place of the rules of the common law and of equity governing the circumstances in which relief may be granted, on the grounds of mistake, to a party to a contract or to a person claiming through or under any such party. 15 20

(2) Nothing in this Act shall affect—

(a) The doctrine of non est factum:

(b) The law relating to the rectification of contracts:

(c) The law relating to undue influence, fraud, breach of fiduciary duty, or misrepresentation, whether fraudulent or innocent: 25

(d) The provisions of the Illegal Contracts Act 1970 or of sections 94A and 94B of the Judicature Act 1908.

(3) Nothing in this Act shall deprive a Court of the power to exercise its discretion to withhold a decree of specific performance in any case. 30

5. Grounds for granting relief—(1) A Court may in the course of any proceedings or on application made for the purpose grant relief under section 6 of this Act to a party to a contract— 35

(a) If in entering into that contract—

(i) That party was to the knowledge of the other party or of one or more of the parties to the contract (not being a party or parties having substantially the same interest under the contract as the party seeking relief) relying on a mistake; or 40

(ii) All the parties to the contract were relying on the same mistake; or

5 (iii) That party and at least one other party (not being a party having substantially the same interest under the contract as the party seeking relief) were each relying on a different mistake about the same matter of fact or of law; and

(b) The mistake resulted at the time of the contract—

10 (i) In a significantly unequal exchange of values; or

(ii) In the conferment of a benefit, or in the imposition or inclusion of an obligation, which was, in all the circumstances, a benefit or obligation significantly disproportionate to the consideration therefor; and

15 (c) Where the contract expressly or by implication makes provision for the risk of mistakes, the party seeking relief is not obliged by a term of the contract to assume the risk that his belief about the matter in question might be mistaken.

20 (2) For the purposes of an application for relief under section 6 of this Act in respect of any contract, a mistake, in relation to that contract, does not include a mistake in its interpretation.

25 **6. Nature of relief—**(1) Where by virtue of the provisions of section 5 of this Act the Court has power to grant relief to a party to a contract, it may grant relief not only to that party but also to any person claiming through or under that party.

30 (2) The Court shall have a discretion to make such order as it thinks just and in particular, but not in limitation, it may do one or more of the following things:

(a) Declare the contract to be valid and subsisting in whole or in part or for any particular purpose:

35 (b) Cancel the contract:

(c) Grant relief by way of variation of the contract:

(d) Grant relief by way of restitution or compensation.

(3) An application for relief under this section may be made by—

40 (a) Any person to whom the Court may grant that relief; or

(b) Any other person where it is material for that person to know whether relief under this section will be granted.

(4) The Court may by any order made under this section vest any property that was the subject of the contract, or the whole or part of the consideration for the contract, in any party to the proceedings or may direct any such party to transfer or assign any such property to any other party to the proceedings. 5

(5) Any order made under this section, or any provision of any such order, may be made upon and subject to such terms and conditions as the Court thinks fit.

7. Rights of third persons not affected—(1) Nothing in any order made under this Act shall invalidate— 10

(a) Any disposition of property by a party to a mistaken contract for valuable consideration; or

(b) Any disposition of property made by or through a person who became entitled to the property under a disposition to which paragraph (a) of this subsection applies— 15

if the person to whom the disposition was made was not a party to the mistaken contract and had not at the time of the disposition notice that the property was the subject of, or the whole or part of the consideration for, a mistaken contract and otherwise acts in good faith. 20

(2) In this section—

“Disposition” has the meaning assigned to it by section 2 of the Insolvency Act 1967; and 25

“Mistaken contract” means a contract entered into in the circumstances described in section 5 (1) (a) of this Act.

8. Jurisdiction of Magistrates’ Courts—(1) A Magistrate’s Court shall have jurisdiction to exercise any of the powers conferred by section 5 or section 6 of this Act in any case where— 30

(a) The occasion for the exercise of the power arises in the course of any civil proceedings (other than an application made for the purpose of obtaining relief under section 6 of this Act) properly before the Court; or 35

(b) The value of the consideration for the promise or act of any party to the contract is not more than \$3,000; or

(c) The parties agree, in accordance with section 37 of the Magistrates’ Courts Act 1947, that a Magistrate’s Court shall have jurisdiction to hear and determine the application. 40

(2) For the purposes of section 43 of the Magistrates' Courts Act 1947, an application made to a Magistrate's Court for the purpose of obtaining relief under section 6 of this Act shall be deemed to be an action.

5 **9. Application of Act**—This Act shall not apply to contracts entered into before the commencement of this Act.