THE CONTRACTUAL MISTAKES BILL 1977

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Introduction

I must begin by confessing two good reasons why I should not be giving this paper at all. As one who has been involved with the reform of the law of mistake from its early stages, it is difficult for me to discuss it except in terms of glowing admiration. Moreover, as one who has contributed an article on the subject,[1] I have perhaps already said enough about statutory reform in this area, and should let others have their say. It is therefore with some misgivings that I stand before you today.

Nevertheless, I welcome this opportunity to comment on the Bill, which you have in front of you. The main objectives have already been set out in the Report of the Contracts and Commercial Law Reform Committee.[2] The previous law, and possible methods of reform, have been discussed in my own article. What I want to do today is talk about the problems facing the draftsman of the legislation, and what he has done to cope with those problems. This is a major reform, and it often happens that drafting difficulties obscure the broader aims of such reforms, especially in their early years. If we recognise the difficulties, realising that they are often due not so much to inept drafting as to the inherent nature of the subject matter and the basic approach which has been taken in reforming the law, the advantages of a new law can be realised more quickly. I hope what I have to say will help you come to grips with the reform as it is now drafted.

The most important part of the Bill is Clause 6. Here we step out into the unknown by giving far more extensive remedies in cases of mistake. I have always thought that the existing remedies are inadequate. Modern advances in legal technique, especially in the law of restitution, enable us to adjust our remedies much more closely to the needs of the particular case. Clause 6 should make it a great deal easier to raise, plead and argue a case of mistake once artificial restrictions on the remedies available are removed. Before we get to that point, though, we must ask ourselves, what is a mistake? And what happens to those other legal doctrines that we often use where the parties are mistaken? Technically, these questions are the most difficult for a legislator to answer.

1. The meaning of "mistake"

The Bill has, as you will see, gone through two stages of drafting. The first was done under the *aegis* of the Contracts and Commercial Law Reform Committee and appended to its report. That bill was introduced into the House, but when it reached the Statutes Revision Committee substantial changes were made. The part of the bill which was most severely affected was the definition of "mistake" in Clause 2.

In its original form, the definition in Clause 2 was meant to remove all doubts about what is a "mistake" in law. All matters about which a person might, in the

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1. Sutton, "Reform of the Law of Mistake in Contract" (1976) 7 N.Z.U.L.R. 40.
2. *Report on the Effect of Mistakes on Contracts* (1976). See Harrison, (1977) 3 Rec. Law (N.S.) 24.

ordinary sense, be "mistaken" were included. The old, unsatisfactory distinction between errors of fact and errors of law was done away with. With it, went the tenet that an error about the interpretation of a document was a "mistake of law" and hence had no remedy. Actually, these doctrines have little sway in modern law. The rule that there could be no relief for a mistake of law[3] was abrogated by statute in 1958.[4] Though that reform did not in terms apply to mistaken contracts, such modest authority as there is on the subject derives its force entirely from the now reformed law of money paid under mistake and could hardly survive in New Zealand after the 1958 legislation. In any event, courts of equity assert a jurisdiction to give a remedy for a mistake of law where the mistake concerns "private rights".[5] The exception, it seems, largely eats up the rule. So Clause 2 was largely a "tidying-up" operation, getting rid of outmoded doctrine and removing speculation about the meaning of "mistake". To this end, various other possible sources of argument were removed, by providing that errors of opinion, errors of calculation and errors of expression in documents could come within the ambit of the reform, as long as the requirements set out in the Bill were otherwise complied with. If you look in the contract textbooks, you will find nothing to say that such errors cannot be operative in appropriate cases, but on the other hand you can find nothing to say that they can. The original Clause 2 forestalled any argument on the point.

The new Clause 2 has a much less clearly defined purpose. It still recognises errors both of fact and law, and specifically declares that an error in interpretation of a document is a "mistake of law" which may now have its remedy under the Act. But all mention of the other types of mistake is simply deleted. Why? Several guesses might by made. One is that the terms "law or fact" were thought to cover all possible kinds of mistake, so the other words in the old Clause 2 were otiose. Another guess, is that the words "law or fact" were intended to circumscribe some new definition of mistake. Some types of error (who knows what?) will remain excluded from the legislation, so that no matter how important they are to the contract in question, they cannot be a ground for relief under the new legislation. Yet a third guess is that Clause 2 now refers back to the previous law to determine what is a sufficient "mistake" to justify the court's intervention. There is not much to be said for this last interpretation, since the Contracts and Commercial Law Reform Committee was anxious to get rid of all the technicalities and inconclusive case law which surround the present legal definitions of operative mistake.

We do not know why these alterations have been made. They do not seem to assist in operation of the legislation, and they sow the seeds of uncertainty where previously the definition was tolerably clear. Perhaps the previous definition will be restored before the Bill becomes law.

The previous clause also defined the respective ambits of the law of mistake and the law of frustration. Where a so-called "mistake" concerned an event which was to occur after the contract was made, the Bill would have no operation at all. The parties were left to the law of frustration and their remedies under the Frustrated Contracts Act 1944 (see Clause 2, "mistake" para. (c)).

3. See Sutton, "Kelly v Solari" (1966) 2 N.Z.U.L.R. 173.
4. Judicature Act 1908, s. 94A, as inserted by Judicature Amendment Act 1958, s.2.
5. See *Cooper v Phibbs* (1867) L.R. 2 H.L. 149, 170; *Beauchamp v Winn* (1873) L.R. 6 H.L. 223; *Solle v Butcher* [1950] 1 K.B. 671, 693.

This definition has been removed, and the Frustrated Contracts Act 1944 now appears as one of the legal doctrines which are to operate concurrently with the new legislation. Again, we do not know why this change was made. It could lead to considerable debate and confusion of legal doctrine.

All illustration is the recent case of *Amalgamated Investment and Property Co. Ltd v John Walker & Son Ltd.*[6] The day after a property was sold, it was designated a historic place. Overnight its value was dramatically reduced. Was this a case of mistake or one of frustration? The Court held there was no mistake since the unexpected event occurred after the contract was entered into. When the matter was looked at from the point of view of the law of frustration, that principle was found to have no application because the purchaser took the risk of any changes in condition of the property after he bought it. If the Bill in its present form becomes law, there may be argument that the parties made a mistake about a future event and are entitled to relief as for an ordinary mistake. Perhaps the argument would not succeed. But the earlier draft made the matter clear.

2. A "code" of mistake

How can a statutory reform be a "code", and at the same time an integral part of a much larger body of case and statute law? That is the question posed by the Clause 4. The law governing the setting aside of contracts generally is like a "seamless web". A number of different lines of doctrine converge on any particular case in which the defence of mistake is raised. Among the most important are the rules governing offer and acceptance, the doctrine of the "implied term" in contract law, and the law of innocent misrepresentation. A case of mistake may also be dealt with by these other doctrines. Indeed, according to some theorists "mistake" does not exist as an independent doctrine at all; cases which appear to be cases of mistake are dealt with entirely by these other doctrines, when the law is properly analysed. How then can the new law be a "code"? You cannot do away with these other doctrines altogether, since they are not confined in their operation to cases of mistake. On the other hand, you cannot ignore them since their unfettered application might cut right across what you are trying to do with the new law of mistake.

The method the draftsman has chosen is complex. First, Clause 4 declares the new legislation to take effect in place of the existing rules "governing the circumstances in which relief may be granted, on the ground of mistake". Note that is is confined to cases of ***mistake***; where the related doctrines to which I have referred deal with cases which do not involve any mistake, their operation is entirely unfettered. Note also that the code deals only with what ***relief*** may be given for mistake. It does not purport to effect the underlying doctrinal basis of the law, though in many respects that basis will ultimately be irrelevant. So if, for example, a "contract" is no contract at all, Clause 4 does not turn it into a contract. The court in its discretion may do so, by validating it under Clause 6 (2) (a). Until that happens, it remains just as much a "non-contract" as it ever was. So the effect of the "codification" is strictly limited. Secondly, certain well recognised doctrines which may also come into operation in conjunction with the law of mistake are expressly preserved by Clause 4 (2). Among these are the

6. [1977] 1 W.L.R. 164; [1976] 3 All E.R. 509.

law of *non est factum* (I will mention an illustration presently), of rectification of contracts, of undue influence and breach of fiduciary duty. Since they are preserved, the intending plaintiff will still have a choice whether he relies on these older law, or the new law, or both. Similarly the intended defendant may content himself with his protection under the doctrine the plaintiff has chosen, or he himself may move out and seek some other or supplementary remedy under the new legislation.

The effect must be that the so-called "code" of mistake has to adapt itself to the underlying legal situation in which the parties find themselves. I take as an illustration of these observations, the recent case of *United Dominions Trust Ltd v Western.*[7] A man bought a motor car on hire purchase. He signed the hire purchase form in blank, leaving the seller to fill in the agreed details. The seller filled them in wrongly, so that more was shown as owing by the buyer than he had agreed. The agreement was discounted to a financier. The buyer said this was a case of *non est factum*: this was not his document and he was not liable on it to the financier. But the Court did not agree. Applying well-established principles,[8] it held that the financier could enforce the document as it was written. This, of course, was not a case of mistake at all and the new legislation would have no effect on the result. Suppose, however, we alter the facts slightly and assume that the buyer of the car signed a completed agreement in which the wrong amount had previously been inserted in error. This now becomes a case of mistake, and the legislation could apply. But to what state of affairs? This will depend upon whether the buyer can invoke the doctrine of *non est factum.* If he can, then he can avoid liability to the financier unless and until the financier obtains an order under Clause 6 (2) (a). If he cannot invoke the doctrine (which is more likely), then it is he who must seek relief under the new legislation. He cannot then seek it as against the financier because of Clause 7, which protects third parties where they have taken a disposition of property or an assignment of a chose in action under s. 130 of the Property Law Act 1952. But he can seek it as against the original seller, with a view no doubt to making him restore any benefit he has received as a result of discounting the agreement at the higher figure. In this example, the Court's powers take shape according to the underlying legal structure of the situation.

The Statutes Revision Committee has added a new Clause 3A which might be thought to alter the Bill's original purpose. But on closer inspection the new clause does not change the basic conception. Subclause (1) (which might have been better as a preamble) speaks broadly about the "arbitrary effects of mistakes on contracts", which are to be cured by the new powers. Subcause (2) confirms that the powers are in addition to, and not in substitution for, powers to grant relief in respect of matters *other than mistakes.* These statements seem to endorse the view I have put forward about the "code"of mistake. There is, of course, the admonitory statement about the "general security of contract relationships" in the last line, but the import of that is obscure. A court, indeed, may make contract relationships more secure if it interferes freely in cases of mistake, since the parties are then secure against the risk of having the words of their contract turned against them in situations to which the parties never

7. [1976] Q.B. 513; [1975] 3 All E.R. 1017.
8. See *Saunders v Anglia Building Society* [1971] A.C. 1004, aff'g *Gallie v Lee* [1969] 2 Ch. 17.

thought they would apply. Naturally the courts will want to take into account any acts that the other party has honestly taken relying on the contract, and they are given broad powers under the new legislation to conform their remedies to that end, so he too will be "secure" in his transaction.

3. **Mistake which qualifies for relief**

Before a mistake can be a grounds for relief, the requirements of Clause 5 must be fulfilled. The Clause has been slightly re-drafted from its original form, but without any substantial change in meaning. The Clause now speaks in various places about the parties having to be "influenced in their decision" to enter the contract by the mistake. Previously they were said to be "relying on" the mistake. Neither phrase is an entirely happy one. Often people who are mistaken never turn their minds to the fact about which they are mistaken. If they do not think of it, how can it be said they "rely on it" or are "influenced by it"? Nevertheless they would never have entered into the contract had they known the truth. It is more accurate to say that they enter the contract "under" their mistaken belief, but for some reason the draftsman has not used this natural terminology.

The requirements of Clause 5 may seem rather loose and flexible. But any attempt categorically to define what is and what is not operative mistake is doomed to failure. Too much turns on the facts of each case, and the importance the mistaken fact has to the contract as a whole. Nevertheless the problem of definition cannot be ignored. At the very least, the mind of the judge or magistrate should be encouraged to run along lines which are generally helpful in determining the merits of the particular case. It is especially important, in cases of mistake, to steer clear of artificial distinctions which might appear attractive as a means of resolving the particular case, yet cannot provide a real basis for reaching a just result nor stand up as a guide for decision in later cases. Perhaps our definition can achieve no more than that. The concepts traditionally used in cases of mistake are very elastic, and past experience would suggest that they are not likely to deter a judge if he thinks that the claim to relief is meritorious. Moreover, it must be borne in mind that even if he finds that the mistake comes within the terms of Clause 5, he is not compelled to give relief. So the definition of operative of "available" mistake in Clause 5 serves a much more restricted role than did its counterpart under the common law doctrines of mistake.

There are three basic requirements which must be fulfilled before a Court may give relief for a mistake.

(i) **The parties state of mind.**

To what extent is the mistake a shared mistake, as compared with an error which only one party entertains? Present legal doctrines pay considerable attention to that question. So too does Clause 5 (1) (a), which makes reference to three possible situations:

(1) Both parties share the same mistake ("common" mistake);
(2) Both parties make a different mistake about the same fact ("distributed mistake");[9]
(3) One party is in error while the other knows the truth.

9. I have adopted the terminology used by Bronaugh, "Agreement, Mistake and Objectivity in the Bargain Theory of Contract" (1976) 18 William & Mary L.R. 213.

To take an example, suppose A sells a Commer truck to B. A mistake about the make of the truck could take one of three possible forms:

(1) A and B both think it is a Datson truck (common mistake)
(2) A thinks it is a Datsun truck while B thinks it is a Leyland truck (distributed mistake)
(3) A thinks it is a Datsun truck while B knows it is a Commer truck (unilateral mistake).

Under Clause 5 (1) (a), all three types of error are recognised as giving rise to the courts' jurisdiction in mistake. In the case of unilateral mistake, however, a further requirement is added. The party who was mistaken must show that the other party actually knew of his mistake when the contract was entered into. This reservation is probably wise. It is true that an ideal system of justice might make provision for the case where a vendor knows of some hidden defect in the goods or the house he sells, but trusts to luck that the purchaser has not found out. Under existing law the purchaser's rights would depend upon whether there was an implied warranty or fraud by concealment. The new legislation would not change matters, unless the vendor knows that the purchaser believes that there is no such defect. The vendor could probably avoid obtaining such knowledge simply by not raising the question, and by meeting any enquiries on the point by the response "Find out for yourself". But to attempt any reform here would go beyond what is reasonable to expect of legislation whose primary purpose is to clear up the law of mistake.

In dealing with unilateral mistake, the Bill therefore does not extend the law very much, if at all. In a recent decision,[10] Mahon J. accepted that relief could be given in equity for a unilateral mistake, as long as the person who knew the truth took "studied advantage" of the other party's error, seeking to profit from it. Under the Bill, the Court would have a discretiion in all cases where he knows of the other's mistake. Mahon J.'s "studied advantage" test may or may not commend itself as a general guideline for the exercise of the discretion.

(ii) **The effect of the mistake.**

The Contracts and Commercial Law Reform Commitee said in its report, ". . . We see the law of mistake as essentially pragmatic, concerned with the maintenance of substantial justice in contracts rather than the perpetuation of an idealistic concept of 'consent'". Clause 5 (1) (b) therefore requires the court to look at the effect of the mistake to see whether it has resulted in an unequal exchange of values. This may occur either because the contract as a whole becomes unequal when the true facts are known, or because a particular term imposes a disproportionate obligation on one of the parties. Thus, the mistake may result in a car worth $4,000 being sold for $2,000. Or it may mean that the seller, having sold the car at a reasonable price, finds he has to provide further maintenance for $10 per week when the cost of providing it is $20 per week. Perhaps the Committee has oversimplified matters by seeing the adverse effect of mistake only as disproportion in value. I am inclined to agree with Dr Harrison who, in his comment on the report, made reference to a different but equally unfortunate type of effect. He instances ***Raffles v Wichelhaus,***[11] where there

10. *Leighton v Parton* [1976] 1 N.Z.L.R. 165, 168.
11. (1864) 2 H. & C. 906; 159 E.R. 375.

were two ships called the "Peerless", each leaving Bombay but at different times of the year. Goods were sold "ex Peerless", the seller having in mind the one ship and the buyer the other. The contract was held void for mistake. Presumably, goods shipped on the one Peerless would be no more valuable than goods shipped on the other. But the consequences of upholding the contract might be very inconvenient. If the buyer had to accept goods on the ship which arrived later, he could find them useless to meet onward commitments to third parties. If the seller had to provide goods on the earlier ship and had made no arrangements to have goods shipped on it, he too would be in an awkward position. It is not easy to see how, under the new legislation, any relief could be given to the parties in *Raffles v Wichelhaus*.

(iii) **The terms of the contract.**

No case of mistake in contract can be properly decided without a very careful study of the particular contract in question. There may be provisions in it which expressly or by implication impose the risk of error on one or other of the parties. Such provisions, indeed, may not actually be written in to the contract, but instead be imported from the general custom which prevails in contracts of that kind. It is well established, for instance, that where land is sold defects in title must be raised and dealt with prior to settlement. Clause 5 (1) (c) makes it clear that the court cannot, through the exercise of its jurisdiction in mistake, override the provisions of the contract itself. The matter is not as simple as it may appear, however. Situations can arise where a clause which purports to allocate risk may not cover some highly unusual or unexpected event, notwithstanding that at first blush the words seem extensive enough to include it. Take for example the case of a car sold "as is, where is". Obviously this clause envisages mechanical breakdowns, warrant of fitness problems and the like. But arguably it does not include the situation where unknown to both parties the car has been destroyed by fire, or stolen by thieves. Using established principles of construction, the court in such cases may step around the contractual provision by giving it a more restricted meaning, in view of the unreasonable consequences which might follow if the wording of the provision is applied literally. Similarly, a clause which purported to place the risk of all mistakes on one of the parties and thereby ousts the jurisdiction of the court under the new legislation, would no doubt likewise receive a restricted construction. So you cannot put too much reliance on the express terms of a contract, when by hypothesis they relate to some event that the parties did not expect to happen.

These then are the essentials of operative mistake. But Clause 5 (2) (a) goes on to exclude one particular type of mistake from its operation. This is mistake about the interpretation of the contract one is entering into. It is not clear why it should be necessary to place such an absolute embargo on this form of mistake. Indeed, one or two cases may be cited in which even under existing law, such a mistake has been accepted as operative mistake.[12] Usually, of course, the error is unilateral and not known to the other party. Alternatively, the parties may recognise the ambiguity in their contract and decide to leave it to a court to decide in the event that the matter should ever be disputed; in this latter case

12. *Hickman v Berens* [1895] 2 Ch. 638; *Wilding v Sanderson* [1897] 2 Ch. 534, 550.

there is probably no element of mistake at all. Possibly the legislature has in mind that kind of "jockeying for position", and is anxious to ensure that the loser in the race is not able to turn the tables by invoking the law of mistake. There may, however, be other very deserving cases where it is entirely appropriate to grant relief for mistake. Take, for example, the situation where one party inserts into a contract some provision which has an established legal meaning, which is not apparent to the other party on a layman's reading of the contract. If the knowledgeable party realises that the matter is important to the person with whom he is dealing, and that he has genuinely mistaken the meaning of the provision, should he be entitled to enforce the contract in its strict legal sense? As often happens in cases of mistake, the type of mistake involved is no indication at all of the merits of the mistaken party's claim. Perhaps it would have been better to say nothing at all about such mistakes, leaving it to the courts to deal with each case on its own merits.

4. Remedies

The remedies provided for in the new legislation are all discretionary. They are listed in Clause 6. As I have said, this part of the reform is probably the most significant and far-reaching. I hope that I will not seem to minimise their importance by giving them only a passing reference today. I have already set out elsewhere[13] how I think these remedies ought to be exercised. To say more than that, or to indicate views about how these powers will be exercised, would be to indulge in crystal-ball gazing. So I content myself with drawing to your particular attention two new remedies of fundamental importance.

The first is the remedy of ***validation***, given by Clause 6 (2) (a). I have already pointed out how, under existing law, a mistaken contract may be no contract at all, as for example where A addresses an offer to B, believing him to be C, and B purports to accept the offer. Until we get to Clause 6, there is nothing in the Bill which would convert that "non-contract" into a contract. Yet the parties may have acted upon what they think is a contract over a period of time, so that the most sensible remedy will often be to treat the transaction as a valid contract. It can, of course, be varied (Clause 6 (2) (c)) and other supplementary relief can also be given. The effect is that, in determining the substance of the relief to be given, the pre-existing legal doctrine which declares the transaction not to be a contract at all becomes largely irrelevant.

The second is the remedy of "restitution or compensation". Often, under existing law, a contract which is affected by mistake will have to stand because it is too late to rescind it. Since the only remedy is rescission, nothing more can be done. Yet one party may be clearly enriched as a result of the mistake. He may have sold property for twice its value, for example. Why does present law allow him to keep the profit? Not in order to enforce his expectations under the original contract, because he did not have any. If the other party had moved in time, the contract would have been set aside. Present law is apparently slow to act because of the fear that no remedy can be given which will not upset an arrangement which has been relied upon over a period of time. As long as the only available remedy is rescission, this view is justified. But by the remedy of restitution or compensation, the court can make the party who has profited

13. (1976) 7 N.Z.U.L.R. at 52-57.

disgorge at least a part of that profit, without unduly disturbing the parties' basic legal relationship. The remedy is discretionary, so that if one party really has altered his position to his detriment on the faith of the transaction, this can be taken into account in determining what relief should be given against him. The court is looking for an unjust enrichment in a very broad sense; this may be found even though it is far too late to restore the parties precisely to the position they occupied before the mistaken transaction.

Such a view of "restitution" may seem strange and novel to some people, who view the concept of "restitutio in integrum" in a very literal sense. But in the modern economy, very few assets are of such significance that a money award is not an adequate reflection of their original worth. A man's total wealth is much more important to him that the individual assets which go to make up that worth, and which may be exchanged and replaced many times over during his lifetime. In recognising unjust enrichment in cases of mistake and giving remedies for it, the courts should be encouraged to move with the times, taking a wide view of the mistaken transaction as an accretion to the defendant's general wealth. On this view, an award of compensation arising out of a mistaken contract, or any other mistaken transaction for that matter, is not strange at all.

5. Third parties

The rights of third parties are generally protected by Clause 7 of the Bill. No order of the Court will invalidate dispositions made to those who are not parties to the mistaken contract itself. Thus, if A and B make a mistaken contract under which B is sold goods which he subsequently transfers to C, then no order the Court can make will affect C's title.

It is not quite as simple as that, however. There are some cases where Courts have in the past regarded an error as being so fundamental that no contract at all comes into existence. For instance, in the example I have just given A may believe that B is in fact X, a reputable person. B is really a rogue who, having obtained credit on the pretence that he is X, re-sells the goods to C and decamps with the proceeds. In some cases[14] though not all, courts have held that there is no contract of sale as between A and B, so that title remains with A. B's sale to C does not confer title on C, who must restore the goods to A or be liable in conversion or detinue. The justification for this ruling must be that a supposed contract between A and the purported X cannot be turned into a contract between A and the real B; the security of A's transaction demands no less. So C misses out.

The new Bill would not change that result, because if the Court makes no order at all C will still be left without title. No order the court does make, therefore, "invalidates" B's disposition to C because it is ineffective anyway. The Contracts and Commercial Law Reform Committee recommended (para. 30) that C should have the right to seek the Court's assistance (in its discretion) to validate the transaction between A, B and C to the extent of giving C a good title. This recommendation is worked out in a rather elaborate manner in my own article.[15] The Bill does not seem to achieve that result, however, at least in

14. *Cundy v Lindsay* (1878) 3 App. Cas. 459; *Ingram v Little* [1961] 1 Q.B. 31. Compare *Phillips v Brooks Ltd* [1919] 2 K.B. 243; *Lewis v Averay* [1972] 1 Q.B. 198.
15. (1976) 7 N.Z.U.L.R. 61-65. Compare Harding & Rowell, "Protection of Property versus Protection of Commercial Transactions" (1977) 26 I.C.L.Q. 354.

the case of rogues who misrepresent their identity. Under Clause 5, relief may only be sought by a party who enters a contract under a *mistake,* which does not apply to the rogue. It is true that Clause 6 gives certain rights to third parties, but Clause 6 (1) requires that the person through whom the third party claims (that is, the rogue) must have had a right to relief. So the innocent third party would seem unable to institute proceedings with a view to obtaining an order in his favour. If the original seller A were to institute proceedings under the new legislation the Court might allow him relief only on condition that C's title is validated. (See Clause 6 (4)). But A can circumvent this by taking proceedings against C based solely on his own right of title, and there would not seem much that C can do about it.

In conclusion I might say that there are obvious drafting difficulties with legislation of this kind. I have taken up quite a lot of time exploring them because, if the Bill becomes law, these matters will have to be sorted out before the full beneficial effects of the reform are realised. You might say, why have such complex legislation in the first place? The answer to this question lies, I think, in the way in which the Contracts and Commercial Law Reform Committee has had to go about reforming the law of contract. If it had been practical to codify the whole of the law of contract in one single reform, many of these complications would have been avoided. As the experience of the Law Reform Commission in England has shown, however, this is not a realistic way of tackling the problem of reform. Instead, our Committee has grappled with particular problems where it is clear that the law is not working satisfactorily. Having formulated a future policy for dealing with these problems, the Committee still has to fit the resulting reform in with the existing body of case law which is changed only to the extent necessary to give effect to the reform. It is this process which is complex, and requires the exercise of imagination both by the Law Draftsman and by lawyers who are called upon to put the new legislation into effect.

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