

[AS REPORTED FROM THE STATUTES REVISION COMMITTEE]  
*House of Representatives, 29 July 1977*

Words struck out are shown with black rule at beginning and after last line; words inserted are shown in roman underlined with a double rule, or with double rule before first line and after last line.

*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 or a Small Claims Tribunal that has jurisdiction under section 8A of this Act;

“Mistake”—

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

(b) Includes—

(i) An erroneous opinion; and

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- (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", but subject to section 5 (2) (a) of this Act, 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. 15

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

*New*

**3A. Purpose of Act**—(1) The purpose of this Act is to mitigate the arbitrary effects of mistakes on contracts by conferring on Courts and arbitrators appropriate powers to grant relief in the circumstances mentioned in section 5 of this Act. 20

(2) These powers are in addition to and not in substitution for existing powers to grant relief in respect of matters other than mistakes and are not to be exercised in such a way as to prejudice the general security of contractual relationships. 25

**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. 30

(2) Nothing in this Act shall affect—

- (a) The doctrine of non est factum:
- (b) The law relating to the rectification of contracts: 35
- (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: 40

(e) The Frustrated Contracts Act 1944.

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

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**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—

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(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

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

(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

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

(i) In a significantly unequal exchange of values;

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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

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(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.

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(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.

*New*

**5. Relief may be granted where mistake by one party is known to opposing party or is common or mutual—**(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 any party to a contract— 5

(a) If in entering into that contract—

(i) That party was influenced in his decision to enter into the contract by a mistake that was material to him, and the existence of the mistake was known to the other party or one or more of the other parties to the contract (not being a party or parties having substantially the same interest under the contract as the party seeking relief); or 10

(ii) All the parties to the contract were influenced in their respective decisions to enter into the contract by the same mistake; or 15

(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 influenced in their respective decisions to enter into the contract by a different mistake about the same matter of fact or of law; and 20

(b) The mistake or mistakes, as the case may be, resulted at the time of the contract— 25

(i) In a substantially 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 substantially disproportionate to the consideration therefore; and 30

(c) Where the contract expressly or by implication makes provision for the risk of mistakes, the party seeking relief or the party through or under whom relief is sought, as the case may require, is not obliged by a term of the contract to assume the risk that his belief about the matter in question might be mistaken. 35

(2) For the purposes of an application for relief under section 6 of this Act in respect of any contract,— 40

(a) A mistake, in relation to that contract, does not include a mistake in its interpretation:

*New*

5 (b) The decision of a party to that contract to enter into it is not made under the influence of a mistake if, before he enters into it and at a time when he can elect not to enter into it, he becomes aware of the mistake but elects to enter into the contract notwithstanding the mistake.

10 **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.

*New*

15 (1A) The extent to which the party seeking relief, or the party through or under whom relief is sought, as the case may require, caused the mistake shall be one of the considerations to be taken into account by the Court in deciding whether to grant relief under this section.

20 (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:

25 (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—

30 (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.

35 (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.

40 (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—

- (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—

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.

*New*

**(1A)** Nothing in any order made under this Act shall affect the operation of section 130 of the Property Law Act 1952.

(2) In this section—

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

“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—

- (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
- (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.

(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.

*New*

**8A. Jurisdiction of Small Claims Tribunals—**(1) A Small Claims Tribunal established under the Small Claims Tribunals Act 1976 shall have jurisdiction to exercise any of the powers conferred by section 5 or section 6 of this Act in any case where—

- (a) The occasion for the exercise of the power arises in the course of proceedings properly before that Tribunal; and
  - 10 (b) The value of the consideration for the promise or act of any party to the contract is not more than \$500.
- (2) An order of a Small Claims Tribunal under section 5 or section 6 of this Act shall not—
- 15 (a) Require a person to pay money exceeding \$500;
  - (b) Declare a person not liable to another for a sum exceeding that figure;
  - (c) Vest any property exceeding \$500 in value in any person;
  - 20 (d) Direct the transfer or assignment of any such property—
- and an order of a Tribunal which exceeds any such restriction shall be entirely of no effect.

**8B. Amendment to Arbitration Act 1908—**The Second Schedule to the Arbitration Act 1908 is hereby amended by inserting, after clause 10 (as added by section 9 of the Arbitration Amendment Act 1938), the following clause:

“10A. The arbitrators or umpire shall have the same power as the Court to exercise any of the powers conferred by section 5 or section 6 of the Contractual Mistakes Act 1977.”

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