Ch J. L. Adams
Central 10388
By agreement in writing, land sold for $16,000, of which $1,000 paid on signing agreement and balance payable by 6 annual installments on Dec 1st ea. yr. Agreement provided that if purchaser should make default in any payment, landlord shall have liberty to cancel agreement and retain, as liquidated dam., payments already made, minus lot 9 convey.

Defeat having been made in the payment of first installment, under cancelled agreement; assagine of purchaser awarded for specific plea. Held, that purchaser having made tons of corn, specific plea could not be decreed, that the prejudice of money paid was penalty from which relief should be granted on proper terms.
Law Quarterly Review.

Steedman v. Drinkle. may mislead the careless student.

P. C. said that nevertheless the lessee promised for forgiveness of instalments on default, the stipulation was penal and could be relieved against.

Student must be warned that had a fixed sum been set down as liquidated damage, possession may have been sufficient.

The decision in no way impeaches the authority of the cases which decide that a purchaser may retain the deposit by way of liquidated damage.

Home v. Smith.
Sheedman v. B.

By a

1000 dol. per

annual in

of purchase

at thirty

payments of

Defame

statement,

red for a

time of coun

do. infringe

relief re.
Lecture 68

If a purchaser makes default in payment of an installment, and sum is made of the essence of the contract, the purchaser can't on payment get specific performance but the vendor cannot under a clause retain the installments paid.

Steadman v. Dunkil 1916 A.C.

But, unless sum was made of essence of contract, but vendor gave sum for the payment of an installment then warrants the condition as to non continued default the purchaser on payment was granted S.P.

Klein's Case

Goods Act 1895.

Superstructures as to value for payment are not of the essence of the contract, but whether any other condition is of the essence depends on what parties intended as shown by the language used and the circumstances of the case.

N.B. Goods Act says nothing re. essence of the case, but says it depends on the terms of the contract; but of course if terms are ambiguous you will refer to cases. Explain them.

Sumi may be made of essence by

1. Repossess terms (2) implication.
Perry v. Sherlock

Lien not made, I presume expressly, and held so by implication.

"Lien"

Lien. Com. Law.

Mere possession + detention

No right of sale!
Perry v. Sherlock 14 V. L. R.

This was not expressly made if the essence of the contract but this was a stipulation that if the purchaser did not only pay the balance of the purchase money the deposit should be forfeited and vendee at law be suing with the goods present.

Summ. Held - This stipulation made two of the essence, but also that on a default the vendor might declare the deposit forfeited and recall.

Later cases support the decision on rescission and resale that now deposit cannot be forfeited.

Lien

Some law - lien is based on possession and ejects when modified by statute gives nearly a right to detention. A right to claim the property until some claim has been paid or discharged. At Sr. the landlord has the right to retain but no right to sue.

Right of distress is a notable lien.

At th. the landlord could only hold the goods of his tenant until rent was paid; Statute gave him the right to sell.

Landlord can seize any goods on premises but of chase he has no rights here to take nature
Security
Possession not necessary
(e.g. vendor's lien)

May be enforced by judicial sale

Legal Lien - e.g.

lien on chattel for money due or to be repaid

Good Act

Drinker's lien on good or fruit
declaration and the landlord has given them up, and taking a declaration, landlord pays one and all.

**Equitable Lien.**

- Not based on possession, and is equity.
- May be enforced by a judicial sale.
- E.g., vendor's lien which arises upon conveyance.
- In certain cases, possession not required by C.L.

**Legal Lien.**

i. Money payable to repay debt, debt may be kept until payment.
ii. Goods Act. Loan vendor a lien on goods sold but not delivered, and vendor has a right to sale.

iii. Flasker's Lien.

Flasker is bound to take in both baggage and luggage, and must keep the baggage safely. (Flasker's Carrier Act), and has a lien on the goods for keeping them as well as for food & lodging if he asks. This lien is enforceable against both the one who hires, notwithstanding that the baggage is not the owner.
Solicitor to lien on client’s papers for fees.

Dr. Raper Road - Granted CoY

Coy. wound up, solicitor N. discharged, and new solicitor appointed. Held N. to read lien on, and was entitled therein until his costs were paid, all documents which had come into his possession, and on which he had acquired a lien, like the order for winding up, but must deliver those acquired in the course of the winding up.

"Particular Lien" — a particular charge arising re. their particular goods.

"General Lien" — on a general balance of account e.g. Solicitor’s Lien.
A coffee-palace has been declared an inn

Miller v. Federal Coffee Palace 154 L.R.

iv. Solicitor has lien for his fees on all papers
belonging to his client.

If client discharges his solicitor and engages another, former has lien on client's papers to meet debt.

Neither the client who has discharged his solicitor nor those claiming under him can obtain the production of the papers.

Dru Rapide Road cay 1909 1 Ch.

But solicitor must produce the papers of client as soon after the mandate of the party. Solicitor's lien on papers and not acting lien (not goods).

Particular lien on goods is confined to particular charge arising in relation to those goods.

General lien extends not only to the particular charge on goods but also to a general balance of account. However, only when the estate of the goods has been approved.

i.e., a Banker's lien is general, but in confined to paper.

Ditto re Warehamman's Solicitor's lien.
Schleier's equitable lien expired by court when
1. Collision between parcel & defendant's lien & equity lien

2. Parter ask et. treaties equitable settlement.

Woodcock & Mitchell: A solicitor can only seek the assistance of the court in enforcement of his fee when there has been collusion between the parties, or when the parties have come before the court both to aid in carrying out any arrangement in the action between the parties.

Equitable Stay - arises by express contract
Equity Lien - arises by rule of equity
equitable lien. A solicitor's lien on a fund recovered — e.g. damages. The court will enlarge the lien when the parties by collusive arrangement agree to dispense with the equitable right or when the parties are to count to satisfy a settlement into which the court has consented.


Collusive — the intent and not the effect is looked at. Hence a bona fide settlement of cross claims which depenses the validity of lien is no ground for the court's interference, nor does it give the solicitor the right to demand funds coming through his hands.

re equitable lien generally. There is no act, but an equitable lien and an eq. charge on the effect but as regards lien origiue an eq. charge arises by inferno contact, i.e. eq. lien is conferred by a rule of equity.

Both are alike both except by statute law.

(by Real Property Act)

Sundia's lien for unpaid purchase money interest arises when a conveyance before payment is filed. Strictly speaking it is not correct today because solicitor's lien arises upon conveyance before purchase.
Vender's lien does not arise on conveyance, but when the purchase money falls due!

In equity, the receipt clause can be rebutted.

If consideration for conveyance is a bond or covenant, then no lien arises; must sue on the bond or covenant.

But this not so if the bond or covenant is a mere collateral security, and real cannot be payment of money!
money is paid — Harris as soon as purchase money
is due.

1. Declaration in such a that money is due.
2. That vendee has a lien
3. Or else sale as agent of receiver

at law a receipt is the body of deed was sufficient of payment, but in equity there could be rebutted; a
second purchase but only. Then if he had notice
or there was not a receipt.

Conveyance act has altered this; and another second receipt is not of itself notice the second purchase
of a lien. (Receipt indeed is now sufficient)

If the deed. For a conveyance is not payment of
money, but giving of security, or a bond, bill, note,
or covenant. A covenant for payment of purchaser money
no lien arises, for vendor has not what he bargained
for. But the mere giving of a note, bill, bond, or
covenant does not itself rebut the claim for a lien.
It depends upon the terms of the conveyance as to
whether the bond is what is meant. And the bond, note,
security for payment of purchaser money
"a purchase has a lien for his deposit and principal
and hopes conveyance." Robert Nathan 10 H.L.C.
Parke's Line

company "hearn" our share for money owing.

Must be printed in the article.

Mistake = ministerial error arising from ignorance, surprise, or misplaced confidence.
So a partner has a lien on assets at the time of dissolution for money owing him in respect of the partnership.

Henny v. Murdy 12 A. Cas.

A so-called company lien on the salaries of shareholders does not arise in law, or in equity unless the contract or the agreement, that a shall arise. The articles of association are the contract, or by the articles the Co. is often given a so-called lien over its shares for money owing. This is strictly an eq. charge and not a lien.

Lecture 69. Mistake.

Some misunderstandings or omission or error arise from ignorance, surprise, or inexcusable confidence.

Mistakes of Law - Ignorantia legisandra vacat.
"MISTAKE"

Of Law - "Ignorantia juris non excusat."

But "Private Act + Foreign Law are fact."

Maxim refers to general law, and not a mistake
acquittal of private right.

eg. When man contracted to buy land, but found it
was his own — relief granted.  

Ghimisd v. Keating

When mistake mutual as to private right?

When unilateral, but produced by other party
of two persons bound by a bond, and obtine
release one, leaving the mistake of law, he the former
alone. No relief.

Again, a person who had a power of attorney executed
absolutely without reserving power of revocation;
between his because it was voluntary deed it was
usurpable. Relief was refused.

But manusia refers to the general law of the country
and not to relative of private right of

Cooper v. Phipps 24 R. H. L. plaintiff claimed
become bare defendant & , but afterwards
denounced that he promissory was owner of salmon
fishing lease of which he was claiming. Relief

Bahn 

Thomson v. Bahn 15 R. C. plaintiff aimed
being from right to reestablish interest in land.
But, denounced that land was his own; crown
had sold land to plaintiff to fish, and after by mistake
granted lease defendant. Plaintiff was held
entitled because purchase money as money paid
under a mistake of fact.

Relief may be granted when mistake mutual
as to private right; if it was unilateral, if ille
produced, however innocently, by the other party.

Ignorance of contents of breach Act of
Construction of documents - matter of law

re Robinson - Relief when money unpaid by executor
Parliament not included in the maxim Ignorantia poenae juris exculpat.

Proximate - An error to specific persons, bodies, or localities.

Foreign laws not included in the maxim, as it is a matter of fact in our courts.

Misake as construction of contract, will, or other document is a matter of law, and is in general comes under the maxim, and gives no ground for relief, unless something equitable, as where the mistake induced by the fraud of the other party.

Rip v. Robinson 1911 1 Ch.

Bonds may give certain amounts of relief when money unpaid by tenant may act upon from next payments due.

Dr. Dariell v. Filmer 6 P.C.

By mistake of both parties mortgage deed, deed was discharged on footing of compounding whereby when simple interest only was payable. Redression might be reopened. This exceptional.

In this case it was stated that in equity the court had mistaken in law and mistakes in fact had never been clearly drawn.
But even a mistake of law may be received against, if any equitable ground will not make it inequitable to do so.

Kelly v. The King

The Supreme Court in equitable jurisdiction may grant relief against a mistake of law, if there is any equitable ground which makes it, in the case, inequitable that the party who received the money should retain it. But the court will not grant relief unless it is a simple money demand by one person against another, where there is no financial relation whatever, and there being no equity or comparison by reason of conduct with parties.

If a man grossly ignorant of the plain, settled legal right, it is so induced to give up property, relief granted.
Allan v. Walker 1896 2 C.

"Not accurate to say that remedy can now be

given as a mistake of law. No doubt the jury's decision

was based carefully exercised on Shilling L.J.

Rogers v. Ingram 3 C.C.

explains "that is to say if there is any regular fault

which makes it undue to partake of the case, regnissk

that the party who received the money should retain

it" per Meldrum L.J.

Storg says "In such case, mistake in law

is not the foundation of remedy, but is the medium

of proof. Instead some other known ground of remedy.

Also

Hodgson v. King v. Kelly 24 V.C.

when action of contract comes an end.

Has been laid down as unquestionable doctrine

that, if person acting in ignorance of claim's settled

pound of law is misled figure of position of his

mistake, privity with the new a consequence

a court equity will relieve him from the effect

of the mistake in which party has, upon

claim's settled pounds of law a clean sheet,

and after a prize if not possessed any truth!"
But if a compromise of genuine doubts is not set aside because it turns out that all the rights are on one side.

But this must be done with doubts!!

Compromise may be set aside for mistake of fact, but not for honest mistake of law.
Then at law, knowing he was older son, agreed behind
unreposed for simple with younger brother. Court
granted relief.

But mistake in law is not ground for setting
aside a compromise of difficulties and doubts as to
rights we order toward or end disputes or litigation.
And we Parks. A compromise of family differences,
e.g., construction of well, entered into with due
deliberation, will be upheld, even tho' it should
turn out not the right was all on his side.

Courts of Equity favor the compromise of contested
claims, but if a compromise the finding
there must be some fact doubt as the weight of parties.

There is a duty to disclose material facts likely
to affect mind of other party. If breach of duty,
and others enter into compromise under a
mistake of fact, compromise may be set aside.

If law is clear, and facts are admitted, there is
no room for compromise, for the right are not in
doubt. But if law is doubtful or constructive
judgment doubtful, mistake or rights no ground
for setting aside.

Contracts may be set aside for mistake of
fact.
But of surmise & mistakes of law &c.
Relief granted to those "mock defended themselves."

In contract, mistake no ground, unless produced by other party.

But mistake of material fact by both parties is ground of relief (Continued Hasting?)

e.g. Two ships called "Peerless"; and each party thinking of other one.

Raffles v. W礼包hans
Even in cases of covenants, if suspens occur, mixed up with mistakes in law, or where agreements are ill advised, improper, or made without the knowledge, relief prayed on form. Kal relief granted. Those "malt treated kine alive," and of whom advantage. Taken.

No longer, rules as to contracts will not be relaxed on grounds of mistake as general law by a mistake of both parties, nor of mistake in matter fact to both parties. No natural fact by one party.

But if mistake re law or fact produced by other party, contract may be relaxed.

Mistake of natural fact common. Both parties in grounds of relief.

Common grounds of mistake

1. Language may be ambiguous; may relate both two or more things. But if the parties intended the same thing, there is no ground of relief.

eg in "Parlors" case, if both parties had intended the same ship no relief would have been granted. Evidence wt. have been admitted before that they intended same result. But if language job is two ships, ships, or parties mean two ships. Then no contract.
If contact clear and unambiguous, party can't be heard ballyhoo - meant something else.

Mistake as to nature of harassment - [handwritten]

Mistake as to the party - [handwritten]
Dorothy: "false demonstration non nocet" applied.

When there is an added description: which is unnecessary, 
identiifies the knife referred to, the words, causing
the difficulty will be struck out.

"Persons in Smith Street, Collingwood," where
what was intended was Smith that, Fitzroy - Colwood
was struck out. One of error is essential part of
the description, may be matter of specification of the
contract.

If contract clear and unambiguous, one party
will not be held liable, but to mean something
different, to permit such a defense would open
door of perjury and risk of serious injury of contract.

May be a mistake as to the nature of the harm
action, as in Thoroughgood's case. 

[Signature]

In such cases, parties are not at issue.
So, a mistake as both parties. (Burton v. Jones)
- Trademan sold business blanks, and old
customer entered into contract delivering consideration
with original. Contract set aside.

Nash v. Dru, 18 L.T. Plaintiff case, but
court refused relief.
Scott v Kirkaldy  

Men mistake of one party to contract, not induced by other party, is no ground for equitable relief. But may get relief where mistake induced, known innocently, by other party.

Stewart v Kennedy  

Appellant averred that mistake about the contract was induced not because misunderstood and went in otherwise than it really was, and misunderstanding not experienced by other party. "Such a contention is far reaching"—after litigation the matter through all the Courts without success, it would always be open to the defendant to argue the contract, provided he could show that he understood the contract than the interpretation for which he had contended.

But relief of mistake induced, however innocently, by the other party.
Baird's case 1898 Ch. Person took shares in a new society, believing it an old society, and the mistake produced by the agent. Transaction held void.

Mistake at equity may be proved for relief - usually not. But may be so great that difference in equity amounts to a difference in kind.

Unilateral Mistakes. Mistake known of one party before, not induced by other. Not a ground for rescission. Scott v. Littleclay 8 E. & B. 815.

One party can never plead a misunderstanding of his part (not induced by the other party) as the real meaning and effect of the contract or any of its terms.


One party cannot obtain relief on ground that it be placed erroneous construction on terms in which contract expressed.

Steward v. Kennedy 12 A.C.

But may get relief when mistake induced, however unintentionally, by other party.

Wilson v. Sanderson 1897 2 Ch. 534.
Kilding v Sanderson: A written contract cannot be rescinded merely because one of the parties took put an erroneous construction on the words in which it was expressed; and this, again, does not apply because where a mistake by one of the parties as to the meaning of the words used has been induced, however innocently, by the other party.

If the parties are not in agreement as to the subject matter of the contract, there is no real agreement between them.

Page v Marshall: When there is mutual mistake as to a deed a contract is frustrated by assenting the terms really agreed to. When mistake is unilateral, remedy is not rectification but rescission, but Court may give to defendant the option of taking what he plainly meant by his writing, rescission.

Garrard v Franklin?

If a mutual mistake in writing down the contract, this may be ground for rectification; and the mistake may be proved by parol evidence, provided matter not one falling within Bache's hands!

Johnson v Wray
As briefly — the principal can only be gained when mistakes common (not parties) error on
one side may be found in reciting, and for rectifying the instrument. This will be foreign to
one party a contract to never entered into. And defendant may thus make each principal
Reichsver Harrison

Ritchel v. Marshall 28 Oct. 10

Blassy case where no mistake as to agreement entered
in, but no writing or down is writing, or no
putting writing into more formal deed, actual
agreement has not been expressly expressed. This
enable each party to freshen.

Law is this — if two parties contract, and
they really agree to one thing, and set down in
writing another thing, there is a material mistake
and court will substitute the correct for the unwritten
expression. Here the parties have been ad idem;
e.g. parties enter into lease; contract that the
lessee exhbits the renewal prov. to fulfill all
the provisions of the lease. Landlord refused on
ground that he had not fulfilled stipulation to clean
land of farms. Tenant claimed that what agreed to
was to clean away farms from near fences; and
In an action for breach of settlement after the death of the husband, on
the ground that it did not exercise a certain power of appointment in favour of the
wife, in accordance with the arrangement alleged to have been entered
into prior to the marriage, defendants pleaded Statute of Frauds.

 Held: that partial evidence was admissible in an action for breach
of a settlement, notwithstanding the Statute of Frauds, an
action of that kind must be an act for "chasing away person
upon any agreement made out of consideration of marriage."

To get relief, the mistake must be
material, and evidence clear and conclusive.

Marriage settlement private, own marriage article of both executed
before marriage.

But if settlement executed after marriage, actions prevail.
Wrong parcels of land - inaccuracies, statement of consideration or other terms of the contract or matter in the document; and becomes rectification. The burden is on the clean and conscientious.

Marriage articles and settlement. If in conflict, and both are executed before marriage, settlement prevails unless it appears the ni accord with the articles. If settlement made after marriage, the articles prevail.

Evidence may be verbal (Johnson v. Bragg (Supra)).

In all cases of mistake, legal remedy by Rescission or Rectification. The mistake must be material against whom may recover for rectification or
malt cases of mistake in written instruments.

But Equity grants no relief as against bona fide
purchase without notice, for she "keeps her eye on equal"

Voluntary deeds cannot be rectified against the will
of the donor.

But section of voluntary deed may get rectification on ground
of mistake; yet court will hesitate to do this on his
own evidence as to what his intention was.

Must have "clear proof of intention donor"
Recension of brought?

In all cases of mistake in written instruments, equity will only intervene between the original parties or those claiming under them as executors, assignees, involuntary assignees, mortgagees, creditors, purchasers for value without notice. As against bona fide purchasers without notice, sg. will grants no relief on ground has equitable, an equal.

Voluntary Deeds: Can't be rectified against will of donor. A voluntary must take the gift as is found. New v. Van Trampus 16 T.C. R. 53.

"There is no reported case where judgment has been given in favor of a voluntary seeking breach of a deed." But settlors may seek rectification on grounds of mistake. Lackastin v. Lackastin 30 L.J. N.S.

Court has jurisdiction breach of a voluntary deed if instance of settlor and setttee, there's so on his own evidence re what his intention was.

(Henry Armstrong, Indubhill)

Lister v. Hudson 1 L.R. 4 Eq. In case of a deceased donor Romilly M.R. says upon clear proof of intention of donor which by a mistake was not correctly carried out, the instrument of gift is conclusively rectified. But after donor's death it may be presumed few not object!
In wills, expressions inconsistent with clearly expressed main intention of testator may be discarded or modified.

Probate evidence seldom admits of explanation of ambiguity in a will.

But "Convers Jone"
McCorkan v. Workman. Held - a voluntary deed may be rectified on clear proof of mistake.

Mistake in Wills

Inquiry will rectify a clear mistake or omission of a word if apparent on the face of the will or may be made out from new construction of its terms.

Towers v. Workman. 11 Mo. P. C. 543

When the main purpose and intention of the testator are ascertained, if parts of expressions found in the will are inconsistent with such intention, the court will construe such expressions as used to be construed and construe the will, if it will, as a whole, show that the testator must have intended an inference to arise from the will. Where no words are used to move the testator to alter the will, construe essentially from the implication.

Parol evidence is seldom admissible except to explain an ambiguity of a will. Rule is - parol evidence is admissible except to explain a lapse of words and not a latent ambiguity.

(Convers. Jane - may have 2 - turbine allowed her)

Court will sometimes strike out words. "House in Barton St. N. Mell. a will. No house there. Issue in Barton St. Barton. At Ampilc [sic] Week's. N. Mell and Iss. will express intent of testator.
May explain a latent ambiguity by panel.

Evidence identifying a person misdescribed might be

But first prove there is nobody else who

...insert name... who could!

Evidence to show who bestate really meant.

e.g. Legacy to Mrs. H and her daughter. Mrs. A had 5 daughters.

Evidence admitted to show had I had close friendship c. one.
Le Harve. Latent ambiguity. "Sonny grand nephew Robert O. There was no Robert O. But there was a Richard O. Now court looked at all the documents, great mixture, who drafted the will? They wrote to Alfred O. £100 to brother Robert £100. Was still ambiguous.

Renewed evidence is allowed. Kenneth, a person was described, but you must also know that nobody else who answers name is known. The evidence is not admitted. As to what the testator intended to do, had to show that it thought that the brother of Alfred was Robert, not Richard, otherwise it was his gift to nobody.

[Redacted] Court is allowed. Blood at court documents found out whom the testator had in mind.

June Walton, 80 c.p.

T. gave £100 to each of the daughters. My late friend Izaiah's Seder. There was an I. S. living at his death, but he had no daughters and was unmarried. Father was J. J. Seder, who predeceased. T. had 5 daughters. Chief note. Evidence below.

Has 7 means J. J. and gave £100. This daughter.

June Jeffrey 1904 1st

Legacy 6 N.A. 1 in daughter. Mrs A had 5 of

Evidence admitted. Felon had 7 had close friendship e om
If legacy given Bureaux in a parke. character which he has falsely assumed, and which is justice I regret, gift had.

"£200 to my wife," £300 p.a. so long as she remains my widow.

Second gift failed in consequence of marriage being declared void, so that she was not widow.
daughter to whom he was attached. Hence she was awarded the legacy.

So you mistake in the computation of a legacy or property intended the bequeathed.

But if legacy goes to person under a partial character which he has falsely assumed, and which was alone the reason of the gift, gift all aside, e.g. a gift to my husband when unknown to first wife was still alive.

But would hold contra if T. knew of the husband’s prior marriage because it was not bequeathed of T. or legacy to bequest for his conduct. If legacy revoked because A the legatee is dead, and T was not dead, then gift to A is not revoked.

A false reason given for a legacy does not avoid the legacy.

e.g. T. gave legacy $200 to his wife and $300 annually to her as long as she continued my widow and unmarried.

Divide court declared marriage void and husband died without renunciation.

Held: her intestate title $200, but not the $300 annually, because she had not in status of a widow.
Mr. Hood’s Letter

[No legible text]

Future forgiveness of a fact is a ground for revocation.

Money paid under mistaken law can’t be recovered unless errors show some equitable ground — e.g. misrep. by payee.
The Hood's will. Lady Hood had a general power of appointment over a fund of £2,000 in favour of her children, and she survived also had a power of appointment. On marriage of eldest daughter, she appointed the half of the fund. The Woodcock and lady Hood appointed £1,000 and £1,000 the younger daughter, and late £8,000 held the daughter. Subsequently the solicitor discovered the first of facts which Lady H. had forgotten although she had signed it. Appointment of the £8,000 produced inequality.

Need to prove that failure of a fact as a ground to revocation of a mistake - to ni fuyukiga to eno. fact she presumed was the fact and not exist.

Money paid under mistake.

Money paid under mistake of law, with full knowledge of facts can have a general rule be presumed unless errors show that it is some equitable ground why it should be recognised. — ip. mistake in law due to misrec. by payee or bank. Commonly money paid can only, arguable must, be presumed if paid under mistake of fact.
Generally, only money paid under mistake of fact may be recovered back.

1. Mistake due to fraud of payee
2. Trustee compensating beneficiary; court may allow this balance from future pay.
3. Offic to court receive money by mistake of law.
4. Money paid under compulsion of law.
The construction of a contract or other instrument is clearly a matter of law, and a person pays or incurs of his own free and volitional choice an injury in law unless some legal ground.

In re: *H*xkes 33 Ch. D. It must be certain funds and sent to it a copy of will and a statement of accounts. A mistake had been made in a pay; after 2 years it brought action. Held: It was in error a party to the mistake. It said: There was a common error and you acted on it and now complained.

1. *S*eception if Rule

O. *M*istake due to want of payers

O. When trust co-pays. Temporary court may allow

Unpaid or partial future payments

O. *O*ffer of court who receives money by mistake

Law cannot have action brought against him; trust is back, but court will order him not to keep it.

O. Money paid under compulsion I law. Ex.

Here pay excessive mistake duty on a valuation. Similarly compensate pay a wrongful demand for customs duty.

This note 30 of a wrongful demand for duties tax.

If he should refuse to pay and file. So a

Wrongful payment may not under threat

Dishes
If paid under urgent necessity...

 Bring action for “money had and received”

“ACCIDENT” in equity

= unforeseen events not result of negligence or misconduct

O. “Lost and destroyed instrument.”
If person with full knowledge of facts voluntarily pays money he is not bound today, he can recover back, but if money is paid under compulsion of urgent necessity e.g., threat of refusal of goods he can recover back on "money paid and received." This is an analogy with money paid under duress e.g., Pll. corp. refuses to carry goods unless an illegal charge for goods is paid.

Lecture 71

Accident in equity does not mean inevitable accident, but of God or, but such unforeseen events as are not merely negligent or misconduct in the party.

There are: groups of cases in which equity relieves against accident:

1. Lost and destroyed instruments
2. Defective execution of powers
3. Erroneous payments

1. E.g., lost bonds. Here an action for payment, equity will grant relief only on condition that relief continues being given.

The law also assumed prior action, and allowed...
At common law, you cannot prove contents of a document by secondary evidence.

Equity grants relief when there is some other ground in addition to mere loss - e.g. that plaintiff exposed himself in future assertion of his right.

Relief may be given to fanner if plaintiff not in possession.
Secondary evidence in proof of accident.

Lost Deeds — Here law denied quick relief in some cases, for secondary evidence as to transfer was admissible. But if the plaintiff alleged that deed was either concealed or destroyed by defendant; he did not know which, equity will decree that plaintiff hold, enjoy the land until defendant admits destruction of the deed.

Relief may begin in favour of plaintiff not in possession.

**Williams v. Williams**

Levate deed leaving the two plaintiffs (nephew, son) and defendant (the son-in-law). — Proof given that defendant had made a will demising land to defendant. The plaintiffs, that will had been destroyed by defendant, who had taken possession of the land as his own. Deeds made ordering defendant repay up possession.

Generally equity will only grant relief where there is some other ground in addition. Token loss of the deed, e.g., that loss leaves plaintiff exposed to additional future assessment of his rights. If mere loss of deed may get relief in court of law by giving secondary evidence.

Lost Negotiable Debts

Formerly Equity pane
Lost negotiable instrument — held entity to demand application from drawee on giving him an indemnity.

If negotiable instrument destroyed, one on the original endorsement?

Destroyed bond — from destruction that it was accidental; after their not allowed, but up destruction in the defence.

(2) "Defective execution of powers."

General rule — Equity will not relieve against non-execution of mere power.
relief, but this no longer necessary

I think this $70.71 where Bill or note lost
before due, the holder entitled demand duplicate
form drawn on going in or otherwise
(This remedy is still inadequate. No parent obtain
new endorsement or acceptance on the duplicate bill or
note.)

Destruction Negot. First. Plaintiff must use as
law on the original consideration; same must hold
for non-negot. First. But courts have in both
cases admitted secondary evidence

E.g., Destruction Bond. Declaratory payment on
destruction bond, plaintiff does not sue on wrong;
consideration, but on proof of destruction of the bond,
and that destruction was accidental, defendants
will not be allowed back to destruction in his
defence.

2. Defective endorsement of power.

Equity will not relieve against non-neg-
of non-power. E.g. A has done 7 power or trust
power in favor of B, when he is interrupted
and dies before he can execute the power.
Equity grants B no relief.
Juxtaposition
1. When occurring where permitted by law.
2. When power is coupled with a trust, the class takes on its own.

re Weeke's Sett[tl] Mr. Hume is a gift to A for life with a
power to appoint among a class, but no gift to the class or
to any one in default of appointment. The court is not bound, within
more, to imply a gift to the class or default of the power long excised.
In order to imply a gift there must be a clear indication in the
will that the testator intended the power to be regarded in the
nature of a trust, so that the class or some of the class should
take
Exceptions. (i) When execution of power has been prevented by fraud. E.g. A has power of appeal and ex-tenant property goes to B. An about to appeal in favour of C, when B falsely tells him that C has been provided for by some other person; and believing this, A does not appoint another. These facts, C will get relief.

(ii) When power is not bare power, but is coupled with a trust. E.g. A for life, with power to appoint among members of a class. Here, if the ex-tenant chooses to set up an impugnation, the class, and A has only a power of election, then on ex-tenant the class will take equally among themselves. Here the power is said to be coupled with a trust. This is the usual case, but if there is no such implication, the class will not take on ex-tenant, and equity will give no relief if no appointee.

re Wekes' case 1894 1 Ch

Equity will receive a case of defective execution of power. In certain cases, and in favour of certain persons.
In case of defective execution of power, equity refuses in favour of purchasers, creators, wives, legatees, executors,endants.

In certain cases -

Defect not of essence or antecedent power. x

Power to be executed by deed is executed by will — relief granted.

But not mere venue!
What purposes? Equity will relieve in favour of:

1. Purchaser
2. Creditors
3. Wife
4. Legitimate child (but not grandchild)
5. A Charity

But not in favour of a husband, unless he is an indebted husband at the time, when he is deemed a 'purchaser' for consideration (marriage)

What cases? Equity will relieve against certain defaulter:

Any which are not of essence and substance of the power - e.g. want of a deed, signatures, witnesses, defects of execution or relators. That is where the intention is clear.

If power required to be executed by deed or other writing, and is in fact executed by will, relief will be granted.

But if power required to be executed by will, and is executed by deed, relief will not be granted.

If the deed being irrevocable, it cannot destroy the power. Intention was that done old.
Where power only be exercised with consent of certain person, that consent cannot be questioned with.

The intention between the parties must clearly appear in writing, or no trouble granted.

E.g. improper execution of the appropriate inst.

Powers of appointments by will is now clearly executed if executed same as will

(Wills Act.)
return control over power until he was dead.

When a power is only held exercised with consent
of certain person, that consent cannot be disrelished
with, i.e., legitimacy can give no relief

Question - what constitutes such a defective exercise
of power as entails party liability has been literally
interpreted. Not sufficient that there should have
been a mere floating, indefinite intention, because
the power. Some steps must be taken: some act
done, with this definite intention; all that is
necessary is that intention because the person should
clearly appear in writing.

E.g. if done, deemed an interdependent testament
or entailed upon a contract between or by others
promised testament, that is sufficient. The instrument
shall be informal, or not within the scope of
the power; a defect may arise from the unknown
existence of the appropriate instrument

Wills Act §9 provides that no appraisal made
shall be valid unless it is counted like a will.

Every will, so far as attestation; and executor concerned,
shall be valid executor of power in accordance. Nevertheless
notwithstanding that is expressly required to counted
in some other ways, a will come sufficiently a certain.
Power of attorney by Deed. validly executed by a deed + 2 witnesses.

But also by any other way prescribed and deposed.

(N.B. In will must execute like a will, and no other way anywhere.)

All this is based on Equity's desire to carry out

intention.
Real Property Act 194

Deed executed in presence and attested by

two witnesses shall with perfect tenement, and
attestation, be valid execution of power of attorney
by deed or other instrument notwithstanding the same other
form of attestation or execution be presented. But
attestation in writing presented will be valid!

(Note: This differs from Will Act - Kine's must be

executed as a will, not otherwise sufficient.)

Wills Act §25

General devise of real estate,
a general devise of personal estate, a trust, or deemed
benevolent, any real or personal estate which the devisee
has power to appoint generally.

Reason why

a power will not include a case of

an executory power, that clause is given a discretion
because the power and, and for equity purposes
such a case would be to discharge the discretion,
and thus destroy the intention of the party who created
power. But in case of apparent executory power,
equity interposes to carry out the intention of the
power creating the power, and of person executing
a purporting to create power.
Erroneous Payments.

No relief when estate distributed on wrong principles of law.

If exec. pays legacy thinking that all claims have been met, deficiency of assets results in new claims, relief granted, provided no negligence.

If executor distributes assets after paying all claims pursuant to will, or of which he personally knows, then he is protected.

Money paid to executors/his sufferer is not cancel in mistake may be recovered.
Equity gives no relief when executor has distributed estate on wrong principles of law.

When executor or administrator pay legacies in belief that all liabilities have been met, and then it turns out owing towns claims that there is deficiency of assets, relief will be given provided there has been no neglect or carelessness in payment.

Trust Act 1831

If trustee distributes assets leaving several claims unpaid, payment respecting (or of which he has notice?) is not protested.

This applies to the claims as well as creditors.

Disregarding here not paid and paying claims of which he has knowledge or reason that no claim has been made.

Another trustee pays an executor a debt by mistake. trustee pays debt to create a lien upon property. Debtor may recover from executor a person to whom money was paid; i.e., may recover from legatee creditors (person to whom money paid).
If executor pays away proceeds of judgment, which is then recovered, may receive the money from payer.

Secured becomes incumbent after payer comes in full; must refund; unless assets originally insufficient, and the shortage is due to the executor's waste.

Relief of estate lost by "incurable accident."

But remember — Paradisi v. Lane.
Secured

If a judgment is reversed, the person who received money from the estate may recover money from the estate or creditors who have paid.

Some legacies are paid in full, and others not; and executors become insolvent. The former must refund a portion for benefit of others, but not if there was no original deficiency of assets—shortages due to waste by executors or improvident disbursements remedied in equity.

A legacy in someone's fee is lost by "meritful accident" (fire, robbery, adverse confidence, etc."

Again, if a legatee divided his estate, and funds to provide annuity of £100 a year for widow; she does so, but by Act of Parliament. The intestate on joint accounts in which he invested is reduced to half sum proven insuff. Executors is granted relief.

No relief will be granted when heir is a common tenant and the building destroyed by fire, lightning, or king's enemies.

Paradise: Jane

Again, if contention was made at once, the fault by a third party who does without having fixed the price, concerns fails.
"Fraud"

Some laws gave adequate remedy in some cases—
1. Action for damages
2. Defense of fraud, no action for damage
3. In some cases, contract declared void.
   (e.g. Thoroughgood's Case)

If a contract void (not voidable) third parties
cannot acquire no rights under it
To suppress muck, like fixed during the preparation, and to give rise to prices fixed, no relief granted.

Contract with 200 tons of potatoes, with provision upon land of vendor; potatoes are destroyed by disease; relief granted to vendor.

Fraud. Story says, "Definition of fraud cannot be given, for courts of equity have never laid down general rules what shall constitute fraud, many general rules beyond which they will not go, on the ground of fraud, but other means of avoiding the court may be found."

In many cases fraud, the courts of law gave an adequate remedy.

1. Action for damages.
2. Defense of fraud in action for damages.
3. In some cases, courts of law declared the contract void. (Hornbrook's Case) and third parties can acquire no rights under it. In a merely moratory contract, third parties can acquire rights under it.

Tooke v. McKinnon

Lewis v. Clay
But in Equity, you may—
1. Use an defence to an action.
2. Obtain rescission or contract

Fraud at common law is taken up in made with
knowledge or failure!

"Fraud in Equity"

 Misrep. of material fact, made with intention
hat other party shall act upon it; he does act upon it,
and it causes him loss immediate or not remote.

Here non-disclosure is only fraud when there is
a duty to disclose.
In equity, remedy is by rescission of contract on ground of fraud.

a. a defense in an action for damage or specific performance.

Grand as common law is false 

of fact, express or implied, made with knowledge of it 

falsely, recklessly, carelessly whether it be true or false, with the intention that injured party shall act upon it and does act upon it these costs, immediate and not remote.

What fact will entitle you to a rescission of contract for fraud in equity?

a. Misrepresentation of a material fact, made with intention that the party so dealt with shall act upon it; he does act upon it, and it causes him loss immediate and not remote.

Fraud in equity may also be a mere wrong disclosure of fact (silence) where there is an obligation to disclose.

i.e. Vendor must disclose encumbrances, or the fact that he has no title to the whole or part; as if vendor Graenfelder is informed by purchaser of her object in buying, please contains comment.
Inman v. Green. Shortly before an interview between plaintiff’s
attorney F., the defendant, and his solicitors, Barrage f a compromise
of an action, F. received a telegram informing him of the receipt of
certain proceedings in the action favourable to the defendant, and did
not disclose his information before the terms of compromise were
agreed. The defendant claimed that he agreement was no
longer binding on ground that material fact had been suppressed.
Held: That there being no obligation on F. to disclose all he
knew, defendant was bound by terms of settlement.

Material as regards a material fact, which the one
party is not bound to disclose to the other, is not a ground for
rescission, or a defence to specific performance.

Scott v. Lloyd. Vendor upon handing over coal. Purchaser
knew that he was ship coal when purchased, & S.A.; and
colliery company from whom vendor received coal was not aware
that shipped S.A. same to certain persons. Purchaser
did not disclose his intention, and vendor pleaded this
was non-disclosure of material fact.

Held: No duty to disclose, and no such ‘fundamental
concealment’ as would entitle vendor, when in law a v. equity,
to be relieved from performance of the contract, and his plea was
bad.
which will defeat that object, mere silence in
Equity is a ground for rescission.

But when a purchaser knows him an valuable
minerals in land & B, purchaser will found &
Xerox had knowledge of B.

Turner v Green 1895 2 Ch

Montgomery v Blyth 23 R. L. T.

M r Lott Fell v Lloyd 4 C.L.R. 576.7

Innocent misrepresentation is grounds for setting
aside an executory contract, but not an executed
contract, e.g. relation between company and
allottee of shares is not one of sale, but of contract.

Land will not grant rescission if an executory con-
tract, a chatel or a chose in action, on grounds
of an innocent misrepresentation.

Selkirk v Hill C t y 1905 1 Ch 326

Same rule applies to land

Brown v Campbell 5 A C

unless there is an error in substance sufficient to
annul the whole contract.

To rescind executory contract, planning must
prove fraud or strict error.
Seddon vs. Joel Coyp. If the act, in any way whatever, means a concealment, which is material to the purchase, a Court of Equity will not compel him to complete the purchase, but when the conveyance has been executed, supposing that a Court of Equity will set aside the conveyance only on the ground of actual fraud.

Innocent Misrepresentation is ground for setting aside an executory contract. But if contract rescinded, must prove actual fraud.

False statements as to specific intention is a false statement of fact.
More forgetfulness of a fact, and a neg. That it does not exist is a ground for rescission.

Brown v. Campbell 936

"More forgetfulness of a fact, and he says positively that it did or did not happen, is no excuse; because if he had asked the simple truth he would have said "I do not recollect whether it is or is not."

So a mere expression of intention - i.e., that he intends to do or not do something, and he does not carry out that intention, is no ground for rescuing of contract.

Brown v. Tif. says "The fact that intention not carried out is no ground for relief; but a false statement as to ourship of intention is a false statement of fact." Bogart v. Fijmanne 29 ch. 0.


I have purchased the land. As regards Loke Yew's land, which is included in said grant, I will have 2 take my own arrangement." R. said; the above statement was intended but it was, statement as to present intendment, as well as undertakings of the future.
May the fraud falsely represent yourself as having an opinion of the party places confidence in or acts upon your opinion.

A representation of fact may be implied from very slight circumstances.

There must be intention that other party shall act on the representation.
The formal transfer was obtained by elaborate fraud.

Expression of opinion is not in journal a rep. In fact, but may be. If one party places confidence in another, and acts upon his opinion, believing it to honestly expressed. If I extend in anyship, she. All a prehears rep. Kot in his opinion. I was a foundry, when I had no end opinion.

_Heath v. Net 12 B.

Plaintiff, single woman, called on by D. Who rep. that he broke, had died, leaving her £300, when D knew I went £300. So the lady sold it then; her executed contract not again.

Rep. of fact may be implicit.

_Hersfall's case (the published cannon).

And, a smile, even a word may do.

Lecture 93. May have "to post fack's" face when you don't correct a misrepresentation. Honestly made.

In Equity as it Law there must be an intent that other party shall act on the rep. This intent is essential - a mere mention, made with object of remedies.
But this doesn't protect defendant when he claims, on the rep. was reasonably and naturally to be expected.

**Law** (Language of Law) Third party may sue damages for fraud.

But in *equity* - one for rescission, or may as good defence?

"Inadequacy of consideration" may be evidence of fraud.

If so great as to shock the conscience, court will set aside.
does not amount to fraud even if acted on. But this does not preclude defendant from suing, since such action would naturally follow had plaintiff intended to act upon the representation.

In fact, the only party who may be made liable for a misrepresentation is when party B is injuriously misled by misrep. of other party.

In law, an outsider can get damages for fraud—e.g., language v. tang. The court may grant a decree where B seeks B's contract.

In fact, the remedy is rescission, or plead the misrep. as a defense. No rule favors 3rd-party beneficiary action.

In fact, as in law, the misrep. is object; in making misrep., it is irrelevant. Making of misrep. while whether object was to reap advantage or not—may show intention to defraud another party & not merely

Inadequacy of price or other consideration. This is not a ground for rescission. Court allows people to make their own bargains; the inadequacy of consideration may be evidence of fraud.

Dist. These two cases

in. Inadequacy may be so great as to show

the consumer and prove demonstrable some press
Otherwise not conclusive evidence, and may be rebutted.

Today, mere inadequacy not sufficient to void dealings with missionaries, excluding this.

 unconscionable Bargain.

If Moneylending contract - how dealings

between; undue advantage taken

of necessity of borrower, etc.

?
imposition on undue influence. In his case, it will not annul the contract.

Inadequacy alone not conclusive, but other cues = prima facie case; fund, which may be rebutted.

Harrison v. De la Rue

Illustrate: old beggar - aged 92 - conveyed with professional advice properly well £100 for board and lodging for life. Limit only 6 weeks after conveyance. Held: inadequacy not sufficient to justify rescission.

Men made many of prize at Com. Law was a ground for setting aside dealings with receivers, remittances, and expectant heirs for the sale of their receivers. Today, mere inadequacy not sufficient, but other cues, may be sufficient.

English Reversionists Act 1897

Unconsolable Beggars. Tp. where vendors are poor ignorant men, no professional advice and evidence of unfair dealing will justify rescission.

Money-lending contacts.

Equity will grant relief, not on the mere grounds of economic unfairness. Have the dealings been fair, and has undue advantage been taken by the moneylender of weakness or necessity of Borrower?
N.B. Money lenders' Act grants remedy on mere ground of excessive interest.

The law requires a full and free consent, 5.
both parties.

Q. Lunatics + Idiots.
Sometimes ehen old age has been taken advantag of, sometimes great dishes or infancy.

Assuming knowledge of full capacity, such won't be granted unless you can prove such unfair advantage.

But now—

Moneymaker's Red governs. Remedy on more ground of common interest.

Second group of frauds: Those which arise from condition of injured party. In this class are taken all cases of misconstruction advantage on surprise or especially when age, weakness, etc., rendering persons from properly protecting their own interests.

Law requires full and free consent, broad practice. Thereof person is so deficient that lunacy or as not to be able to give a free consent, he can't make a contract.

Distinguish: 1. Idiot, one who has no understanding from his birth.
2. Lunatic—One who has lost it.

Generally a contract with a lunatic is void, not void, but when a lunatic gives a power of attorney not understanding what he is doing, contract made by attorney is void!
Powers by attorney given by lunatic void.

Contract under seal by lunatic void.

Deed executed by lunatic so found, is always bad! even tho' executed in a lucid moment!

Molton v Camroux

While a person, apparently of sound mind and not known to otherwise, enters into a contract which is fair and honest, and which is executed and completed, and the property, the subject matter of the contract, cannot be restored so as to put the parties in statute quo, such contract cannot afterwards be set aside either by the alleged lunatic or those who represent him.

General rule re Lunatic's Contract — To be void,

1. He was Lunatic, & defendant knew it
2. Contract was unfair
McLaughlin v Syamy Ducrey Telegraph
Molyneux v Natal Land Co.

The penalty

Money given by lunatic was held void, the

The attorney did not know his principal was a lunatic.

Also held by full court — any contract under seal

made by a lunatic is void

"Lunatic" — one incapable of understanding what he

is doing

Holroyd. I adopted his definition and said "a contr.

entered into with a lunatic by person who does

not know him to be a suspect lunatic a

lunatic can't be avoided on ground merely of

misapprehension or consideration; but some fraud

must have been practiced or something unconsent

was done

i.e. must prove

i. He was a lunatic and defendant knew it

or ii. He was lunatic, and contract was unfair

Whole subject discussed in

Moneton v Carinoux 2 7c.
But a well may stand, providedhealthy had suft since to understand the nature of the transactor.

re Walker. Where person found lunatic by negligence, so long as negligence continues in free & cannot, even during a brief interval, cause a valid deed dealing with the dasonry of her property.

The court will read the deed as entirely null & void.

But a lunatic's will good! Why the suffering. This is explained.

Lunatic's contract, being voidable, may subsequently be affirmed or ratified by him.
Delusions.

Banks v. Goodfellow

In Re: Solomon Matthews 20 V.R. 2

Solomon Matthews supported mother - made will and left all to mother - will in favour of brother's children - a few weeks afterwards in Lunatic asylum. A'Beckett J. said: "Though as mad as a hatter he will most stand as the last suffices to understand the nature of the transaction."

So lunacy quo ex is not sufficient to upset a will or contract.

A will made by lunatic in lucid moment, though found of lunatic by sequestration, is good.

Re Hovis v. Nix 1893 P.

In case a deed - a person found lunatic by sequestration cannot execute even in a lucid interval.

Re Walker 1905 L.C.

A contract if a lunatic being veridical and not void may be subsequently affirmed or ratified by him; and lunacy may specific performance, but it is doubtful whether equity would require specific performance against a lunatic.

Goods Act § 70. Contract in necessitas by...
Lunatie's Contract for Necessary funding.

money can be spent on wife & family, as well as self

Drunkenness:
1. Complete - present for acting under laws
2. Partial - ground in dignity if taken advantage of
3. Slight - no ground.

Generally, if deceptive understanding must show that some unfair advantage taken of it.
a lunatic finding. Reasonable price.

Beaven 1912 ch. 96

B. who had an income and was lunatic expended income for himself & family; also necessary repairs to the house. Good. But overdraft at Bank - Bank not allowed any interest.

"So money can be spent on wife & family as well as on lunacy."

**Drunkenness**

(i) Complete. At law a person in.

(ii) Partial. If fundamentally induced

(iii) English Intoxication. Con't.

Equity refuses to interfere. I.e. will refuse

beginning contact a round t. Won't assist either party

Generally when drunkenness is pleaded as
defence defendant must show that he had not
full understanding or knowledge of what he was
done.

Lightfoot v. 54 Count Rep.

Persons with deficient understanding. Weakness mind

is not a ground for not asuming a contract. It is
MARRIED WOMAN cannot create a personal charge against herself - only a proprietary charge - binding her property.

So that "Retention on alienation" important.
an unfair advantage is taken, presumption I had

Contract by Married Women, where Resumption Anticipated.

After M.W.P. Act, M.W. can't make contract unless
she had phy. at time of contract, and had phy. only was
bound. This amended. — A M.W. can make a
contract whether she had property or not at time of
making the contract.

Then today, we since M.W. can't contract no
rights in personam against L. merely based on property,

she creates a "proprietary charge".

This is important when a woman is
resnated from anticipatory (income) or alimony (capable).

A married woman's contract simply creates a
proprietary charge; hence, since she cannot
charge property re which she is restrained from
anticipatory, it logically follows that in no
circumstances can that property be attacked by
her creditors.
Mr. W. cannot create proprietary charge on property
reclaimed from attachment.

But income accrued due is of course not protected.

Hood v. Bann

While a married woman is entitled to property for her use and not without power of anticipation, the restraint on anticipation does not apply to income accrued due; and a judgment creditor may enforce the judgment against income which has accrued due as of before the date of the judgment.

Barrett v. Howard: A married woman, who was possessed of separate property with restraint on anticipation, entered into a contract and was subsequently divorced. If a decree had been obtained against her, it was sought to defeat it by means of a garnishee order attaching income which had accrued due from her property ending to the wife.

Reed held that this income was protected by the restraint and could not be attached.
Lecture 74

Married woman has only limited power to contract - cannot create nb. in personam against herself; can only create a proprietary charge binding on any separate property of the own cannot create prop. charge on prop. only. Husband upon anticipatory during his life that property is not bound by his contract, nor is it after his death while in hands of exec. or admin.

M.W.P. Act

N.B.

Further, if she be divorced, that property is not liable for contracts made during marriage, nor is it if the husband dies, nor is it in case of judicial separation, nor on execution order.

Nood v. Barro 1896 B.C.

Bolton v. Isaac 42 L.T. bruised elbows:

Evans v. Price. whilst funds remained of sueons fell in: held could not do this.

Spragg v. Lu 1908 1 K

Blanken will arrears payment of her debts - held his made property rechained available for payment of debts.


Browne v. Dunlop 1904 1 K.B.
M. W. is subject to insolvency law as if female sole; but her 'reclaimed' property not affected. Yes if husband dies during her insolvency, and while his property in the hands of assignee, it becomes available for distribution.

Foster v. Shackell. Therefore under the section property of a married woman, which she is declared from anticipating, does not, on her insolvency, form part of her estate diversely among her creditors.

Form of judgment against married woman -

Inquiry directed re separate estate chapter. Such estate declared changed.
Precedent under Justice's Act
Bonner's case 1893 2 Q B 85
Brandon's case 1898 1 Ch

Law as to Divorcee. Married woman insolvent, separate estate rechaned with assigns.
"Married woman shall, in her separate property, be subject to divorcee laws as her own personal effects. Nothing may be taken from her separate estate upon antenuptial.

High Court held this meant "only, save by personal effects, but does not affect rechaned upon antenuptial, but of costant duty during her insolven cy and while her phy. stilt in hands of assigns, it will be able to be available for payment of debts.

Forth v. Shackell 12 A. L. R. 3 C. L. R
re Wheeler's Suit 1899 2 Ch

This can be no right against married woman personally in a contract; form 9 right is for an inquiry as to whether separate estate charge all with the sum charged, and declare that said separate estate of any is chargeable therein.

Peckins v. muri 5 ch
Neither estoppel nor actual fraud can destroy a restraint on ante-nuptial.

522. Judge may, if he thinks fit, when it appears to be for her benefit by judgment or order with her consent, bind her interest in such restrant property.

524. In any proceeding by a married woman, may order payment of costs of other party out of restrant property.

Cooper v. Welsh 1899 Q.B.

Stopp'd cannot destroy a husband on intestate death. No contract can't bind property when she can't bind it expressly. No can actual fraud.

Lady Bannerman v. 1898 1st.

Certain changes in laws now.


Infants' Contracts. There are six distinct classes.

1. Contract for necessaries — Infant not liable on the contract, but liable if payment a fair price. (Goods sell)

2. Contract to continue thenceforward — e.g., lease a partnership.

3. Contract not of — e.g., purchase goods.

4. Contracts for benefit of infant — e.g., apprenticeship.

5. Contracts injuring infant.
INFANTS’ CONTRACTS.


3. "Purchase of goods, account stated, money lent" — Void!
   Ratification of such non-continuous contracts now abolished.
   Other contracts of this class not expurable against infant.

   (Robert v Gray)

Speaking generally, infant incapable of contracting —

Harman v. Lithbidey per Isaac J.

1. Law as between mere unclad.

2. As to contract as obligation, ex-infant deemed bound unless repudiated inside reasonable time. This law is unchanged today.

3. As to purchase goods, accounts stated, money earned — absolutely void. Law as to the contract of this class is — contract is void and unenforceable by infant, but is not enforceable against the infant. Old law was that infant could ratify at 21; now he cannot so ratify.

Supreme Ct Ad 163x.

4. Contracts for house, infant — an enforceable by or against infant — Roberts v. Gray

5. Contracts for a thing not enforceable

Infants' Relief Act does not apply to:

Necessaries

Contracts for house, infant, or this Injury

Contracts of continuous obligation
Can't sue for Infants' P.W. for necessaries!

In Solly's book - an infant cannot bind himself by acceptance of a bill of exchange, even though he be given for the price necessaries supplied therein during infancy.

Per Cooke L.J. - this was no hardship upon a person who supplies necessaries to an infant, for he is entitled to the infant upon the original contract.

Reverse Infants' Relief Act

1. Ratification abhorsit.
3. Contract for loan advanced in infancy
   imposed none in hands of 3rd party have power, whom may recover. But infant may surrender
   burden from the first party.

N.B. An ex-infant can repudiate any contract made during infancy - even one for his benefit.
appells 3 three classes 1 class 3, and makes him absolutely void. (a) goods (b) account stated (c) money lent.

But no action on restitution for any cases in that class.

Drawe on the true contracts alone (goods, &c., &c.

repayment) money lent) void only as against the infant, but irrepeals as against other parties?

Look carefully at all reeds!

90 Semykog 1891 128. Chequed r. P. N.

given for necessaries in weed - must one for the reasonable price of the necessaries.

$65. When infant has borrowed money and on coming of age agrees to pay a quins bill a note, such agreed bill a note absolutely void against all save a bona fide buyer for value without notice, who may recover against infant; but no that casserupt may recover against moneylender.

Now for is infant hath 21st birthday representing himself to be 21 (day before birthday).?

This does not make him hath on the contract; it is no offence at law; but infant not privileged to deal men; must refund any money or
Minorities of full age do not create legal liability on the contract, but create an "equitable liability" on minors to refund money or property so obtained.

Money lender may stand in merchant's shoes and recover reasonable price for necessaries.

Mark v. Gale.
property obtains

ex parte Jones 18 ch. D. vs. June 187

Marit. was his 18th age & no ground for relief in law.

In equity, there is a right. If a man who is apparently of full age reaps that he is of full age, a person under decree, he creates equitable liability on infant. From this the fraud. This is not a debt, but a liability in equity. From a sum of money.

Leven v Bramptoon 25 T. L. 205

In acheron contract against ex-infant, the defenses of infancy, marit. of full age is no estoppel. At the most, it creates an equitable liability only.

answer and can repudiate any contract made during infancy - even one made for his benefit.

Martin v Gale 46 ch. D. Money lender and money borrower, with party which he purchased necessaries. Here, the money lender could not sue in money lent, but he could claim bail and in the same action & recover a reasonable price for the necessaries.

Blay County 5 ch. 313

Blay county lent money borrower, with which he purchased land. Blay county, etc. not
Nottingham Building Society v. Thurston.

An infant may be a member of a building society, and may pay all necessary acquittances; but he cannot execute a valid mortgage before advances made to him by the society.

When money is advanced to an infant for the purpose of purchasing land, the infant cannot, after attaining 21, affirm the purchase and as the same being repudiated be advanced; and, in the event of his affirment of purchase, the court of equity in which the money advanced has gone to the purchase of the land, the lender can stand in the place of the vendor and enforce the vendor's lien.
Void contract made with infant

General principles —

1. Infant can’t recover back money he has paid if he has consumed goods or taken a benefit under the contract (Valentini v. Canali)

2. If no benefit received (e.g., no dividends from shares) infant may repudiate and recover back money paid.
   (Hamilton v. Vaughn.)
Lecture 75  

**Effect of a void contract made with an infant.**

Infant cannot recover money paid under a void contract for goods he has consumed or contract for sale of goods (Valentini v Canada) i.e. if he has actually enjoyed the benefit of the contract, he cannot be recovered again.

But in Hamilton v Vaughan - Held when a purchaser of shares who had received no dividends and attended no meetings was repaid to the share 6 weeks before came of age, could recover money paid.

Corba:

In a case, accepted and enjoyed it for 3 weeks and then repaid it. Held premiums paid could not be recovered. Same rule where infant entered into a partnership and enjoyed its fruits. Hebrew for some time and then repaid it. Held, the premium paid could not be recovered. But when infant entered into partnership to commence at a future date it repaid it.
Constructive Hands.

1957 Ford contract —

Rehamil J. Wade
contract before that time, premium could be recovered.

bona fide funds.

These usually differ from achi funds

In that there is no 'real' or 'tangible'

An innocent heirship may be the ground of rescinding

A颤erary contract or used as defense to an action for specific performance or damages.

Marriage Broke a contract - any money paid may

be recovered. (Hermann v. Charterhouse.)

Again, a contract by which consent of parent or

guardian is obtained for consideration - void.

NILLS - contract made by A with B that

B would induce C to make his will in favor of A.

Contract is void.

Restrain trade. A great change.

1894 Waddington Case - fine led no limitation.

as to space.

Rule is that area must be no wider than is

necessary for protection of purchaser.

Sale of goodwill also -

Herbert Morris v. Saxelby 1916 A.C.

Principles totally different from sale of a

business - e.g. Mickman, Suppon Buckley V. Num
1916 A.C.

Moor's v Saxelby, 75. The question is, can such a voluntary
sachem be imposed by law? 6turn 6 secrets. In time,
7 is for seven years of a man's working life. In space, it
is over the entire limited kingdom. In subject matter, it is
directly and indirectly and it is wholly, for that time and in
that space, antithesis of the way of life to which the servant's
past special training has led up.

 unreasonable; man can need for planning's part.
make preparation; and bad.

"Trade secrets" - contact broken man from new
trade secrets (not patented) good.

But trade secrets not = business ability!"
engage a tailor - quite common & put in a clause that
he shall not start on his own within a certain distance.

Here, limitation is only valid so far as steps
from us employ influence customers and en-
couragement & aliviate him.

Moynor v Saxby - Contract withEngmen - a
clause that he should not carry on a business within
a certain distance. Court held this monstrous, and said
"He is not influence your customers, and it is a
monstrous restraint on him to keep him from working
against public policy.

Question - " Has he in his capacity gained a
knowledge with customers which will aliviate
them?" If not, Le may set up next door.

Trade secrets. - e.g. secret preparations not only of
patents or trade marks. Contract to restrain
him from using such trade secrets in food.

Employee cannot prevent employ from carrying
his business skill to in competition with him,
although all the skill has been gained in employee's
business. But special secre is quite another
matter.

(cfr 403 m 1916 18 c. Indict)
If a restriction on sale of business is to endure, the contract may be bad.

But if places mentioned specifically, contemplated may strike out certain of them—"remainder".

But an agreement which does not mention specific places, but only a general area, is within good, or bad absolutely.

This is "remainder of place."

May also have "remainder of business."
Salk's Burrenco: Vendor is not to carry on business in Wollongong. This is the contract. Vendor now alleges this agreement is void, because to say 'Vendor is not to carry on business with Burrenco,' and this agreement is void.

In such case, court will strike out Burrenco! Thus the doctrine of severance.

But suppose contract was not to carry on business within Commonwealth, and this shows that vendor was carrying on only in N.S.W. and was not likely to carry on in other states, and the agreement too wide. Cannot sue.

Hence, if fixing up the agreement for purchase, name the six states separately, and the court will strike out those which it is not necessary to refer to.

Roberts should draw up agreement which may be amended if necessary.

May issue Burrenco as well as places of. Man earns on furnishing business and he is also interested in draining business some distance away. Sells furnishing business and undertakes that he will not carry on furnishing or draining biz. within a certain distance.
Incidence of Ball's and Company.

Two, e.g. 5.

FIDUCIARY RELATIONS.

Gift a sale with adequate consideration:

Parent and Child: — own or parent's behalf.

1. Child as a legal agent
2. Child had neglect advice.
This is void as to charges.

Doctrine of rescissory of good use in practice.

In case of company, if X takes shares in name of Y and pays into liquidation the real purchaser and not merely the nominal one may be made liable for calls.

Again, as in share disputes, if carelessly transferred, shares are refilled. If vendor makes any money or conceals any material fact likely to influence directors and they are fairly induced to give the transfer, the vendor may be made liable for calls if they can't be got from harrassers.

Breach of fiduciary or quasi-fiduciary relation:

When made to parents or persons in loco parentis, the ensues are necessarily examined. And if 3rd parties take for value they, do not hold.

If X shortly after attaining full age makes one property to parent without consider, or for inadequate consider. Owns it on parent below

a. Blake as an agent
b. Blake had independent advice.
Guardian & Ward —

Almost good faith & adequate advice.

Agreement after such relationship cease is a hard relief.

Roberts and Child.

1. Sisted fully informed
2. Competent independent advice
3. Prove a fair one
Guardian & Ward.

Guardian v. Trust and no dealings allowed even shortly after the relation has ceased unless the guardian can show the utmost good faith as well as independent advice.

So whereas there is a confidential relation anew, of master and patron, relief may be given. But if after relationship has ceased dono negligence, no relief given.

So also, sales on carelessly examined in all cases.

Sollicita v. Smith

Up to now: prima facie presumption if undue influence, burden on sollicita to prove the contrary.

No objection to sale a purchase as between Smith and sollicita if sollicita can show.

(i) Smith fully informed

(ii) Smith had competent expert advice

(iii) Made a fair one.

Wright v. Carter

Estover v. alford
 Solicitor may make agreement in writing for his
  remuneration; this can't be supplemented orally.

 Reilly v M. T. O. Coy

 trip, even shortly after relationship ceased, must
  conform to the three conditions.

 Principal and agent

 No secret communications.

 "Aberrans fidei"
Solicitor shall not by himself or with any person, make any claim to a client in respect of any transaction with client as such, beyond his proper remuneration.

Supreme Court Act 1890

Solicitor may make agreement in writing with client for solicitor's remuneration, either by gross sum, or commission, or salary, or otherwise. Agreement cannot be supplemented verbally by additional terms.

Kelly v M Tramway Co.

No gifts are to be accepted, even though as a condition of solicitor's employment, same or conditions apply. Agent may not secretly buy bills of sale property which he is engaged to sell a client for his principal. (Fed. Secret Communications Act makes it offence - applies to dual matters.)

In all dealings with principals, conduct is abnormal (i.e., agent must make fullest disclosure of all facts, and no advantage or implication is to be derived, a contract can be set aside).
Common sailors well looked after. Their contracts jealously screened.

Loan in hope of future return twice as much not to

Post Chit by remission or expectant heirs — must be perfectly fair — otherwise sb. sb. amount returned + interest.

An owner standing by at a wrongful sale of his own property is entitled from questioning the validity of the sale.
Common sailors. Contracts re wage, or pay, money are fraudulently secured and relief readily given. Sailors are unprotected - well looked after. If loan on unconscionable terms paid to young man, parent if he was minor at time of loan, asked in hope of future connection. There contracts stand - money paid + reasonable interest.

Post-ochi: Bonds paid by insurance or independent line - undertaking they lay down in good faith. Advance smaller immediately. Then post-ochi an is aside unless by any perfectly fair amount returned + reasonable interest.

If person wanting property stands by and encourages sale by change hands, it does not fraud it, and 3rd party is lucky induced to purchase, owner is entitled from questionning the validity of the sale. In cases where the owner stands by while another is unknowingly the owner's land on the belief that it is his own - Welinct v Barker 15 Ch. D. Plummer v Maya Wellington Q.B.C. Grand of relief is found, and elements necessary.
When change improves my land, he may seek relief on grounds of "lapsed".

1. Plaintiff made mistake as to his legal right.
2. Plaintiff has expended money or done work.
3. Defendant knew of his legal right, and that it was inconsistent with plaintiff's rights.
4. Defendant knew of plaintiff's mistake.
5. Defendant encouraged plaintiff either directly or by abstaining from asserting his legal right.

In cases where man may be "stopped", by standing by:

He who seeks equity must do equity.
1. Mistake by plaintiff as to his legal right.
2. Has expended money or done some work on defendant's land on faith of his mistaken belief.
3. Defendant must have known of his legal right, and that it was incumbent with him to
   disclose same.
4. Defendant must have known of the plaintiff's mistake as to his right.
5. Defendant must have encouraged plaintiff in the expenditure of work either directly or by
   abjuring from asserting his legal right.

Also, equity may give relief where there is no standing for, if it necessary for owner to assist
another, equity. He who seeks equity must do equity.

Of person becomes aware that his bank has paid
on forged bills or cheques drawn in his name, and
stands by and does not inform the bank of the
事实延时 and possession of bank is thereby
allured for the worse, he is estopped from denying
guaranty of the bills or cheques.
Anchors.

Employment of 'keeper' illegal.

Vendor may 'reserve the right to make one bid'—apart from this he may not bid.

Powers.

Must be exercised 'hora fide'—no bargaining!

Done of power may relieve it to be known for coordination, but not of power coupled with a duty!
Anchors. When parties agree not to bid against one another in anchors, and one buys, vendor can have agreement set aside.

Employment of "buffets" illegal; makes a sale avoidable.

Goods Act deals with anchors, §62.

Sale without reserve - anchorman accepts highest bid. Mint specimen falls, bidder may retract his bid. "Blurr" may be created by vendor "vagaries" the right to make one bid, or his own account. Apart from his express condition vendor may not bid, or employ anybody to bid on his behalf.

Power must be exercised bona fide for the end desired; otherwise it is a void conveyance.

If wife falls with parent's approval among his children, and by agreement with one, appointment had. So, if understanding that child shall accept part of fund to father's credit it is.

But done by power may release a declarin.

The power for a consideration personal benefit, but not if power coupled with duty.

Re Somes 1876 16
Done of power may by deed disclaim the power, or contract not because it.

Remedy for fraud - Rescission - but not against bona fide purchaser without notice.

But must be all true for application of statute quo.
Connymorency Act 55. Done may by deed
release, or contract not because the same
after and declaration is incapable of recovery and
power.

Radeliff v. Brown 1892 1 Ch. Father last born
takes possession of his children, and on attaining
tage property was left to the children who attained 21 in equal
shares. One son unmarried died without issue after attaining
21. Father took out admin. and his children
died. Release of appointees and test decreed son's
share. Held valid.

Relief in case of fraud, e.g. misrepresentation, may
be obtained against party guilty, voluntarily, or
a purchase made with notice; but not against purchaser
without notice.

In cases like Foster v. Mackinnon, when hansom carriages
were sold, relief may be got against anybody!

But generally equity will not give relief against person
in default, unless can be rested to attain quo. This
a rather extraordinary doctrine. Can always bring
action for damage at Law.

If action. Traces misconduct or conveyance,
contact a conveyance may be rescinded or reimbursement
Hand by person not party to a contract may be a ground for claim of compensation by the party injured.

Low v. Bonomo

This even tho' the false rep. was honest—i.e., equity will compel her 2nd party to make good his rep.

In case where

Actor's client and her at law, a wher

Party is "estopped"
A purchase made, but purchase entailed Barry improvements; and vendor also entitled to compensation.

for any agreement, if property which is land; if plaintiff, plaintiff also charged with compensation made.

Hand by person not party to contract.

Low v. Bonvire per Kay J. 1871 3 Ex. 106.

Compensation given when person induced another to contract with another on funds I put into fact made

there by third party, who knows that he intends to act upon it; who through negligence, stupidity,

misaka rule, it not true, and has made it honestly.

bounty, dignity will nevertheless compel even third party break good his rep. in two classes.

1. Where action is done under lie at law.

2. In cases of estoppel - i.e. in cases where

and a defense will lie effective of plaintiff against

is estopped from denying truth of his representation.

Burroughs v. Lock

Forster assumed third party, about bank with e.g. that he was no encumbrance on the fund, when in

fact, he was an encumbrance, honestly forgotten.

Compelled to pay third party full amount, without

redemption the encumbrance.
3rd person having to compensate or be parties to a contract.

company issued shares ex-dividends, stating that the shares were fully paid up. The notes. Co. stopped, as against purchase without notice.
Notes v Landowner, re reply to enquiry by way to purchase farm property, said that he was unable, and to-leased his farm. He was compelled to stay near farm buildings. Notes v Chester, said that he induced man they thought land for building purposes or for sale, and that he, the vendor, was foreclosed from- arrears by the tenant's case. Vendor then arranged for new lease, omitting this restriction. Was prohibited from arrears by C.V.

Birkwhaase v Cutty, for shares issued, and on face was stated that shares were fully paid up, which was not so. C.V. was stopped from denying that they were fully paid up, as against purchaser without notice.

Chinn v Cronkhite, Court drew a line. Borrower said that he was unindicted because for 3 years, and lender applied to recuse him from letting him. He is not charged to grant his case when he had already granted it, and lender had not actually acquired any value. Court ruled lessor may apply to sunk unsecured with under the partners' agreement.

Bas now not good law. of Dennis v Berk 1242.
"Surprise."

If, by consent of the parties, man is taken unawares, and helpless into a knee, this is ground for relief in equity:

The relief given on the ground of fraud attending the surprise — other-wise usually of weakening mind

If using surprise as a defense to element of fraud need be proved.

"Estoppel"

Man's statement with intent to have it relied upon, and which is acted upon, is binding upon him.
"Hand, breach, duty, warranty, estoppel, and all negations, no ground remains from which an action can be supported."

**Lecture 77**

**Surprise** Fact that person has acted without due deliberation, under a misapprehension of his rights or the effect of the transaction, is no ground for relief. But if by conduct of the party he has been taken unawares, and has acted without due deliberation and under sudden and confused impressions, this is surprise, yet which 'spurkly' will relieve.

But the relief is given on ground of want of knowledge he supposes. Inferior other ones — weakness, mind, poverty, inadequate counsel. But for surprise as a defense, element of fraud need not be present.

Robinson v. Abbott

"He was flushed into the Ransachin" for Helyard."

**Doctrines, Stoppel.** Has been recognized

[Note: Continues with more handwritten text, possibly discussing legal principles or cases related to surprise and doctrine.]
"Acquiescence."

Must have full knowledge of the fact and its legal effect.

Doctrine of Laches: has no effect if position has not been altered by delay.
As such, though it was not fundamentally made.

Law v. Bonnien. p. 111

Thus, defendant must escape from denying both of

something he has said.

Acquiescence is an election to assent by consequence of

something which you might have prevented or

undone. Before a man can elect to a right, he

must know that he possesses it. — Law full

knowledge of facts, and of legal effect.

Holroyd 4. 1359 Robinson v. Austin. This is not

suff. that he has become cognisant of facts that were

have disclosed to him more learned him than known

that he possesses the right. — He must know that

the possesses it.

"Delay defeats Equities!" This is not so if

the position of the parties is not altered vitally

(Doctrine of Laches).

Statute Limitations — begins, applies to

finding real estate. In accrual, not real to

Equity.

Thus, pro tanto always an person alleging

grand. Fraud is never presumed.
"Specific Performance."

1. No remedy at law.
2. Legal remedy inadequate.

Rally

Henrique Ferreira
Specific performance granted.

1. Where there is no remedy at law.

2. Where the remedy is inadequate - e.g. a landowner makes contract to purchase a piece of adjoining land which is probably of special value to him. Damage an inadequate - he wants the land. Question: whether S.P. will be granted? Not does not depend on whether such matter is land of goods, but upon whether the remedy at law is inadequate. Though usually the legal remedy is inadequate in the case of realty, and adequate with every personally.

S.P. not granted in a contract taking public stocks or shares which are readily procurable in the open market. But when shares in some companies which are limited, it is not readily procurable, a personal chattel, which cannot readily be replaced, S.R. will lie. So generally, where, for any reason, damage will not place plaintiff in equally advantaged position.

Such as contract for sale of chattel which is unique, and where hired is own and above the market value the premium.

Personal, e.g., of rare chattels, tobacco with great beauty, e.g., artifacts, etc.
Equity will not grant specific performance.

1. Immoral contracts
   But S.P. of separation mks which contemplates immediate action.

2. Voluntary agreements

3. Contracts impracticable or impossible from their nature by court (in fits). Lunn v. Wagner.

4. Where there is no "mutuality.
   e.g. No S.P. by infant.
Some cases in which equity will not grant S.F.

1. Immoral Contracts

But S.P. will be granted if separation occurs, even if they amount to a compromise in divorce proceedings. But the deed must contemplate immediate separation—must be irreparable at once.

If there is agreement to execute the separation deed, court will direct separation deed to be prepared.

2. Voluntary agreements or agreements revocable by one of the parties.

3. Contracts unenforceable or inoperative from their nature for the courts. Examples—esp. contracts involving personal skill, knowledge, or inclination. (Sumner v. Wagner)

But court granted injunction (to prevent the conveyance elsewhere, so object was achieved).

Court will grant S.P. but not a business or goodwill.

But will not give express agreement to sell goodwill alone; if it is to maintain the court to direct.

4. Where there is no mutuality. S.P. is mutual. S.P. cannot be granted by a mutual favoring an infant.
5. No. S.P. of agreement, bond money.

6. Contract by donee of power to make a partible appot.

7. Contract which knowledge of both parties cannot be enforced by either until the occurrence of a given event.

In this case, either party may cry off at any time before the occurrence of the event.
Some cases cost exceptional. Take part performance under claim of hands when required writing does not exist. Part performance must be by
plaintiff: plaintiff may get his specific paper, but not defendant.

A Sale Land where vendor has not undertaken the whole interest which he has contracted to sell - e.g. contracted to sell 100 when only owns 30 acres -
purchase can get S.P.deposit.

5. Loan of money - e.g. will not grant S.P.9
agreement to lend money.

Grey v. Dalgety 1915 C.L.R. 21 C.L.R.
Verbal agreement that defendant will find person who will lend money on mortgage. Did not do so, and plaintiff took action for damage.

6. Contract by done 9 known breach a part.
an appointment. Plaintiff can't remedy or damage.

Equty will not grant S.P.

7. S.P. will not be granted 9 contract which to knowledge of both parties cannot be enforced by
the words occurred I grant conveyance of what
then sell. And which he is under oath bearing
himself as his own testimonial conveyance of from
If the fact not known whether parties from start, the party in ignorance may "crynoff" as seems to him's act.

Generally, [Redacted] performance of whole contract, or no duty at all.

But this not so if [Redacted] reasonably.
another person. He will purchase, as soon as he finds latent, may say "I will have nothing more to do with it."

But his power to void does not exist when facts are known to both parties from the first. - e.g. when vendor in first instance states purchase, a purchaser knows his vendor knows all. As when vendor agrees to sell two acres, and sells on promise. Then, unless vendor buys, purchaser can pay note or copy of; but not after purchase. 2 acres. Vendor may en force work done as purchaser's request.

Wilson v. Dunn 30 Ch. D. 77 78.

Speaking generally, it will grant S.P. of whole contract, or no delivery at all. But in some cases when contract includes several agreements which are severable, e.g. contract to have and build and cottage, court will grant S.P. if agreement to build a house, but not if agreement to build, to tenant party whose remedy is damage.

So, if some leases, agreement legal, and some illegal, and rules are clearly severable.

When a previously relation exists between parties (e.g. broken v. custom), S.P. may be refused.
Goods Act - "Specific Delinui" - Legal Remedy

Quere - Is Lord Barry's Act giving to the present grant damage (plus future damages) instead of injunctive relief free in Victoria?
agreement between him. Basically —
Injunction got ordering buyer and
bran for specific delivery.

Goods Act 1956 now provides a legal remedy known as Specific delivery — defendant given no option of retaining goods on payment of damage.

Lord Cairns’s Act gave County Equity power to grant damage instead of an injunction. That might be in case where plaintiff not entitled to damages at law. This had been adopted in Victoria, and in Tp. has been repealed in Judicature Act. Party with extraordinary power had to still remain in force.

So that here, Equity probably could not give damages as under Lord Cairns’s Act.

Staline of fraud. Court, Equity will enjoin and control within Staline of frauds —

(i) when Staline is not pleaded as defence.

(ii) "meaning fraud. E.g. correspondence, no form absolute, but collateral verbal agreement subject to a appearance. True, verbal agreement upheld.

Rockefeller v Bowles.
STATUTE of FRAUDS

Parol agreements will, however, be upheld—
1. When statute not pleaded as defense.
2. Fraud — Rochford v. Bowden.

"Part-performance" by the plaintiff.

Must be exclusively referable to contract set up.

Must render a fraud to take advantage of statute.

Must not be referable to any other contract.
So when promises become a delusion, a claim for redemption is, fundamentally, void. So when a contract only signed in consequence of collateral contract, plaintiff must submit to collateral contract, or have his action. S. P. dismissed.

So when right, fundamentally, pronounced unworthy comming into existence.

(iii) When there has been, by the plaintiff, and post performance as is excusively, recoverable to the agreement sought to act to us, and which was a fraud, is found in the defendant, take advantage of the statute (always last to be true condition of his case).

Contract under (ii) (iii) must know which contract has had jurisdiction, dispute had I been in any way.

Each constituting past performance must not only be recoverable (on behalf sought to act to us) had he recoverable to no other contract. I say never unkind of mine; claimed the partners, partnership, what have the unworthy, had received payment from defendant, and sought to do us a hard place, unworthy to mine, with ours 9 themselves, and payment 9 people. Defeat alleged his payments were wages! Condemned.
Guest v. Watson: "Unless he can show past performance of how variations from the written agreement which are alleged by him to form part of the true agreement, a plaintiff cannot obtain specific performance of a written agreement for the exchange of lands and specific sorts of the agreement as such, which would amount to the granting of specific rights of a written agreement with a broad variation and would be contrary to the Statute of Frauds."

Doctrines of past-perf. apply not only bland but bad cases where equity will enthrone specific perf.

Sec. Quaere Britannia. Recent confine of Nat. X

E.G. Agreement to grant estate - McLennan v. Cooke.
aschoin in ground had working 9 minis &amp; components, while continuing with a refractory & the contract specs to be up, were also refractory & a mere employment contact.

Lawry v. Russell 39 ch. 0, 598

Pt plos. here, based on fact, must be by self, and not necessarily mutual

Robinson's law 1 ch. 137

Re v. Cruickshard 17 V.L.R. 258

Guest v. Watson 17 V.L.R.

Possessor sells for and against owner & purchaser: buy on terms both bound by 1st. (Pay) if I make contract through a man on my land, and sell it to the other, and I think he knows accordingly, I can enjoin the contract, but purchaser cannot.

Question sometimes raised - does doctrine I pott plex apply to contracts other than those relating land? Kay. I say yes; capples ball case in which Dotta's equity was vindicated even for specific performance and in which it was a fraud on plaintiff well with a stable.

e.g. Held trespass & clear agent. In granting I an

encumbrance, had no notice it a land was but
**Partial Variation** of contracts under the Statute.

Specific plea of partial variation will be granted:

1. Where statute not pleaded as defense.

2. Incrass of fraud.


4. If defendant relies on partial variation, and plaintiff amends his claim & seeks relief with the partial variation, defendant may elect to perform with or without partial variation.

If the latter, plaintiff cannot sue S.P. without kavanah.

You can't adduce partial evidence bottom S.R. of partial variation.
Lecture 48

Parcel variation and contract under

Some cases in which equity will cure. See Pea. If the contract subsequently varied by fault:

1. Where fault not relied on as defense

2. In case of fraud, or in part, where parcel contains not reduced boundary per part or depth.

3. Where part of the parcel varies, such as is subsequently referred. The variation may be slight, and where such non-fault is a part on plaintiff.

4. Where plaintiff owes or with contract to defect relies on parcel variation, or planning him amended his claim or seeks plea with parcel variation. If the defendant may elect to perform the written agree with original parcel variation.

If he refuses, Toler, will inculcate 6 S.P. if written agree without parcel variation.

W.B. Planning can and adum parcel variation for damages and sp. plea of parcel variation.

Defendant may revert S.P. even if contract pursuant it in writing or proved
DEFENCES

An action for Specific Performance:

Status is not to be made an instrument of fraud.

In any case, defendant may always plead the usual defences.

Addressing past evidence misrepresented such defences.

Hand, mistake, surprise etc.

2.

An omitted term — planning a defendant as case may be, may elect.

E.g. planning may discard such omitted term clearly to his advantage.
of fraud &c. — for Statute is disallowing, and not
enacting Statute. It does not say that the written
agreed shall bind, and that unwritten agreed shall
not bind:

Any defense which will have prevented a contract the
written contract of no statute of Frauds is sufficient
notwithstanding the Statute.

Defendant

may plead by way of defense

May 5, 1900

But when an action for S.R.T. agreement for a
lease the defendant have proved that by mistake
a term providing for payment of premium had been
omitted, entire performance may be refused; and
plaintiff may amend and offer to perform the contract
with the omitted term.

In this case, the omitted term was clearly to
defendant's advantage; and where the omitted term
is plaintiff's advantage to may want to
and claim S.R.T within part of the agreement.

If there is a doubt as to effect of omitted term, right.
may elect to perform the agreement with or without the

omitted term. — or may plead suzzy.
N.B. Plaintiff cannot prove parcel variation by parcel; but parcel evidence admissions as a defence & cross assign by defendant!!!

3. Delay may prove by parcel a subsequent parcel agreement completely destroying the writing!!

4. Substantial misdescriptions of property by vendor—specific pleu will be refused
In this case, planning may amount to a legal issue.

Dowson v. 6000

Preliminary to the case with parcel variation.

Defeat by cross-action for S. P. 57 without agreement.

Both actions - cross-charge. Non-compliant. - Action because parcel agreement was not admitted on behalf of plaintiff. Oppose the parcel variation; the cross-action because parcel agreement was admitted on behalf of plaintiff in defending a cross-action.

3. Defendant may plead that subsequently the written agreement was put and that parcel agreement; his can be known by parcel.

Other defenses are:

4. Misdescription of property; if a description is unambiguous, specific property will be refused. e.g., copyhold sold as freehold; or a common deficiency in quantity of property; a vendor has no right to convey part of a property; e.g., but of any or lessening; commonalty greatly depreciating its value.

But only a sufficient misdescription is quantity or quantity of property, not vendor has no right to an incorrect portion, so that vendor can find
But if vendor can prove purchase substantially what he agreed to purchase, court will grant specific performance, and purchaser may claim compensation!

But a purchaser may obtain specific performance even though there is substantial misdescription!

Note: This is an exception to the ‘mutuality’ rule.

This may be a clause excluding compensation, and this will operate against the purchaser unless error so remains as to make property substantially deficient.

But even here, the purchaser could get specific performance without compensation!
purchase substantially what he agreed to purchase
of 78 acres (value $100) and no fraud. The
Court will enjoin specific relief with compensation at
hand of the vendor.
4. Leased land properly was by mistake described
as held for a renting of 90 years instead of 89 years.
Again, 14 acres sold as 'water meadows', and
only 12 answered his description.
If purchaser claims up fees, can it?
He is entitled to $P if there is a substantial mis-
description. It may well take what the
vendor can give subject to payment of $P.
Purchase entitled vendor to can set - Vendor
must give what he can. This is exception rules
that $P is neutral.
Sometimes condition inserted that no error
or misdescription shall annul bond or price. He
purchased any at $P compensation. Hence the vendor
asks $P rule is that condition, excluding
compensation applies, not merely through
errors, but also unnatural misdescription; but
does not apply when error is so serious as to
make property substantially unfit from what purchaser
intended buying. But c - we purchase land.
5. Lapse of time, delay, may be another defence

"Term of essence"

- Checking & Keith: Even in cases where time is not essential
  the essence of the contract, vendor's conduct may amount to
  equitable relief.
  "Similarly if there has been any unnecessary delay!"
Sought to property land to known to Jack?

Jacto v

1900 2Ch

But S.P. without compensation, wd. in last instance, he denied at instance 7 purchase.

But if purchase invalid on compensation, vendor may rescind contract under usual conditions, including

him, etc.

If any fraud or misrepresentation, it cannot impose S.P. with or without such a condition excluding compensation.

5. Law v. Lime

Andrews. clar.

In law, Lime was a unnecessary contract; but in Equity, I was necessary unless parties stipulated that it

should be rescinded. (This last one does not teach

for mainable contract. Sale of Goods Act.)

Supreme Court Act

Stipulations as to how a

otherwise, if the Indian Act is read, have been

declared necessary will receive same colour as wd.

have received in Equity if the Kallil.

Cheekley v. Peckis 1915 A.C.

Law: Equity law provides a remedy in his case before Indraekine Act?
6. "Plaintiff must have clean hands."

7. Inadequacy of consideration, of reliance, or a sign of fraud, may amount to plaintiff to
   Specific Performance.

8. "Incessant Hardship" as defined to Specific Performance.
   But this must have existed at time of contract,
   and not the result of a series of changes of events.

9. Where Specific performance would involve breach
   of prior contract, or breach of trust.
6. Other defenses - e.g., plaintiff must come into court with clean hands or put the bargaining before the court. No fraud in.

7. Inadequacy caused as defense B.P. sometimes pleaded - if inadequacy so great as to show the conscience.

But when inadequacy not so shocking in character, but coupled with other suspicions exists, may constitute prima facie evidence of fraud. Here inadequacy even when it amounts to breach, is not a ground for refusing specific performance.

8. Breach of contract also denies defense (to show

) Imponis great hardship on defendant. But question of hardship is to be judged as at the time the contract was entered into. If the contract was fair and just, subsequent changes which would produce great hardship is generally held immaterial, unless very serious. Change ordinary hardship would be slight.

9. When Spec. Tr. or v. seller breach of prior contract
Uncertainty of terms of contract, as held const. could not say whether contract performed or not.

The contract must have "reasonable certainty."

But part performance may have made what was previously uncertain certain."
10. That he terms are not certain and definite, so that
  brand could not say of whose was made. Had contract
  was performed or not.

  The certainty required is a reasonable certainty,
  having regard to the whole of contract and the ends in
  which it was entered into. Of contract between
  two railway companies, where one granted at 5
  running engines, carriages, &c., c. carrying safety
  on lines of other. Held—contract not uncertain;
  I mean reasonable use, having regard to the
  and the weight of guarantee company.

  Again, when brand was leased "to be having 34
  acres hilly," Held—contract uncertain; I mean
  reasonableness, had it been 34 acres hilly, or
  lease. In S.P. great certainty required than
  action for damages. In the ease case court has now
  to act—negative proof. Had dispute has not prepared
  for contract, but we acted for S.P. I must add this
  also what is the contract like left

  Part performance renders the court to struggle
  against uncertainty. Of the contract has been
  acted upon as to make the uncertain certain.
  S.P. may be granted.

  hand "etc." contract not necessary to maintain.
11. That which too bad or doubtful be forced on a purchaser?

(Yet only a purchase till bargained for, purchaser cannot expect anything else.)

If restrictive covenants not disclosed, purchaser may reject and return deposit.

Right v. Booth?
That title to had a defauling left fixed on a purchase. But conditions often preclude certain enquiries at will; and purchase can here only require such a title as conditions with the title and possession of holding title.

Scott v. Albany 1895 2d.

If restrictive covenants not disclosed, purchaser may reject and recover deposit.

E.g. Lot as sold, only covenants which each purchaser may enforce against the vendor, subsequent purchaser buys from one or by. purchaser a for simple fee from incumbrance; on discovery, enforcing restrictive covenants, he may reject he title.

Sometimes (as covenants) 3: one of condition: for compensation for any defect c. Here, if vendor relies on condition, since condition salae can construe strictly against vendor, omission vendor behoov has he defect comes within the condition.

Same prunie. apply. in case) condition. excluding compensation when defect is natural or substantial yet so far affecting title, null and void as break the title. matter substantially differ from that which the purchaser contracted to buy — unless cannot exist on contract.

Forrest v. Holmene 42 C.8.
Guardianship and Custody.

A father has, by common law, a right to the custody of his infant child, and may take it even from the mother's hands, but had law now annulled by giving the Supreme Court a discretion to grant such custody to the mother, which will be exercised upon a consideration of whether or not it is for the benefit of the child.

The Supreme Court will not take from its mother a delicate child of three years of age, requiring her mother's attention, and give it to the father or habeas corpus, where it considers that his object is not to gain possession of the child, but by invoking the power of the court with regard to the child to force the mother to bring to and live with him.
Lecture 49
Guardianship and Curtesy

Origin took us obscures; perhaps king as parent patrias had inherent power, and delegated the exercise of this prerogative. The court of chancery: a matter of conscience.

Keep in mind:
1. Common law
2. Equity
3. Statute law

Common law: Father had and has a right by
custody of his infant children

Re Holmes 21 V. C.R. says a father has by

Common law, a right to custody of infant child, and
may take it even from mother's breast. But
rules of Equity and Statute Law, which still recogni
that right of father, have provided that for good reasons
a court may deprive father, if necessary, of legal rights.

But unless court proceedings, father's c.t. rights
remain unimpaired.

But if father can retrieve child without assistance
of court, no action for recovery will lie.
Father had a child over to maternal grandparents. Mother being dead, married again and had four children by second wife. Grandparents were dearest guardians, and child was happy with them. Held injurious influence of child to make any change of custody.

Monole Monole. On a question of who shall have custody of the child, the dominant matter is the welfare of the child.

A husband and wife had lived apart for a year, and the only child of the marriage, aged 7 years old, had always lived with his mother. There was no evidence to show that the mother was not a fit person to have the custody of the child. On that as corpus by father - held that it was for welfare of child that she remain with her mother.

Religion

Child takes father's,评审 fair, unless mother has had custody and child has acquired certain habits which it would dangerous to disrupt.

Modific. cf p. 453.
Goldsmith v. Sands 4 C.L.R. 142
Monle v. Monle 13 C.L.R. 267

High Court said: "When questions as to the welfare of a child come before the court, the dominant matter is the welfare of the child. "Welfare" here used in widest sense: moral, religious, and material."

Since then, we have adopted English "Enfranchisement of Infants" Act 1886, "Maintenance of Children" Act 1891, "Marriage Act" 1915, &c., &c., &c.

But law re welfare is still the same.

Lyon 1893 26 E. on which High Court relied, was decided after the Act came into force in England, so that H.C. decisions stand good.

Not only has father come law at birth: to a child, that child must be brought up in his religion, even tho' he be dead and has left no instructions on that regard. Father may give directions as to religion of his child, of course.

If child in custody of wife has been brought up in another religion, and matter comes before court, court will go into facts, and will order child to
By statute father by deed or will could appoint guardian— who had no trouble as against mother.

Since Wills Act, a father who is infant cannot appoint by will.

But since Marriage Act.

1. Under age of father without marriage, mother becomes guardian.
2. In any case, mother is joint guardian with her appointed.
3. If guardian appointed dies or refuses to act, court may appoint.
queen regnant of father, unless shewn that child has
already got certain religious convictions; and that it
was be dangerous to religious welfare of child and to
unseble these convictions.

At C.R. 1. equally father had not recognisably
statute Charles II by deed or will appointed a guardian
of child (back after his death.) Such guardian had
at tempestly even against mother.

By will, no will valid unless person making
21. Father, who is minor can still by deed appoint
guardian send on his death.

If two guardians, they act jointly, with
survivorship.

Father, by will or deed, can authorize guardian to
appoint successor on his death.

Act of Charles II altered now by Marriage Act
160. 6.

On death of father, without leaving app't guardian,
mother shall be guardian.

If father has appointed guardian, mother shall
be joint guardian with whom appointed.

If guardian app't dead or, court may appoint.
Mother may appoint guardians tract

1. After death of both parents, they will act jointly with any appointed by father.

2. After death of wife, jointly with father. But court will only confirm such appointment if father unfit.

Illegal parents: Children.

Religion: Old rule modified.
If father dies, leaving no instructions, and mother has custody, and child has no settled belief, mother may bring up in her religion!
Mothers may by deed or will appoint a guardian or guardians for their children by male issue. They may similarly appoint for their daughters in the same manner. Should such guardians be appointed before the marriage of the child, the mother should give notice of the appointment to the child's father before the latter's marriage.

Illegitimate Children

Infant bound to maintain infant, and is entitled to support until child attains 16. The act of birth makes mother guardian of illegitimate child.

162. Mother of illegitimate may appoint guardian or guardians as conveniently as legitimate.

Religion

Two proofs in act.

164. When father dies without having by deed or will left directions on religion, the mother, if she is the only guardian, and of infant too old...
re Agar - Ellis...

Father may lose custody in these cases

2. When by conduct he abdicates paternal authority.
3. When he seeks more children, they would not come, out of jurisdiction.
formed distinct religious opinions may train up child in known religion.

This modifies the old rule.

141. On application by parent for custody of child, if court of opinion, that parent should not have custody, then, if child has been brought up in said religion, from that in which parent has legal right & right to remain, court may order child to be brought up in said religion.

Some has full power superior power to the guardianship & custody of child - apart from statute. 

Agee v Ellis 24 Ch D 317. Principle, land down, only in following cases.

1. When he has paid more than his own cost
2. When he has retained his interest
3. When dangerous to minor child, being a ward

Re Card, only Victoria.

Also Moul v Moul (welfare of child is the dominant matter!)

Look at act again. Statute adds to rule re welfare, and lays down principle of 146. - If father applies to court on H.C.
Court will refuse Habeas Corpus if

1. Parent has abandoned or deserted the child
2. Parent unfit for custody
3. Parent has allowed child to be brought up by X
   and X's expense

But remember always - 
"Welfare of child"

On application of mother, Court may make
orders re custody, right of access, etc.
1. That parent has abandoned or deserted the child

2. That he has so conducted as that court should
   refuse to give him custody.
   Court may decline to make the order.

§ 78.

When it has (a) abandoned or deserted child,
(b) allowed child to be taken by another or has
person’s expenses as an excuse that parent was
unmindful of his or her parental duties; court shall
not give child to parent unless satisfied that child’s
welfare child has shown it so.

§ 69.

All important cases in

mother, court may make such orders as it deems fit
for child, and judge of access thereto. Having
regard to the welfare of the child, the conduct of the
parents, and the wishes as well as the wishes of the
father.

Rule 14 and 16: Boy or age of 14 or 16, deemed capable of giving consent, common in custody
of person with whom he is. Law of Nations
Corpus refers person illegally detained 1st against
Boy  Girl
Rule 37 14 16

Ward of Court:

0. Under guardian appointed by court
0. Re whose property suit pending.
This rule of 14 + 16 becomes important in connection with habeas corpus. Sentence of child will be complete annus.

But father may hold son up to 21, (and keeps in house if possible!) So habeas corpus or false imprisonment will not lie.

Father may delegate guardianship; as when tells schoolmaster, he may classes.

Ward of court is person who
1. Is under guardians appointed by court.
2. Ament whose property time is; and a child pending (child comes under control of court proceeding.)

Court will not allow ward to marry without its consent.

YE ENDE
From this point the book contained blank pages (not captured).
| 456    | Salmon  | 500  |
| 150    | Property| 300  |
| 295    | Bounty  | 300  |
| 200    | P. J. Law | 200 |
| 160    | Admin   | -    |
| 1411   | Procedure | 100 |
| 1405   | Contract| 300  |

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Specific Performances!

Robert Ellingris 1916

Rockley Road
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