Journal of Law & Social Studies (JLSS)
Volume 6, Issue 2, pp 192-196
www.advancelrf.org

Contractual Mistake: A Critical Analysis of Pakistani Jurisprudence on Mistakes in Contract Law

Amr Ibn Munir
(Corresponding Author)
LLB Student at the Department of Law, International Islamic University, Islamabad
Email: amribnmunir2000@gmail.com

Abstract
This work critically evaluates the principles surrounding mistake under Pakistani contract law. It discusses the principles of mistake of fact, mistake of law and mutual mistake. It also discusses whether the latter is incorporated under Pakistani contract law. Mistake is a non-willful act or omission which is made in error due to surprise, ignorance or misplaced confidence. Mistake comes in two varieties, which is either a mistake of fact or law. However, under Anglo-American judicial philosophy, there exists a third type of mistake namely referred to as mutual mistake. This refers to when a mistake that is made by both parties is the same in each other's mind. This does not exist as a separate principle in Pakistan however and is instead incorporated under the principle of mistake of fact. A mistake can cause a contract to become null and void, provided that the said mistake was committed mutually by both parties and that it was an essential or vital fact to the contract.

Key Words: Contract, Agreement, Mistake, Mistake of Fact, Mistake of Law, Mutual Mistake.

1.1 Introduction

Contracts make up almost all of our commercial and civil relations. Its enforcement or non-enforcement could have many causes. Similarly, its invalidity may also have many causes. One such cause is that a mistake has been made in the contract. Now, if there is a mistake in the contract, then that would mean that the contract originally envisioned mutually by both parties did not actually come into force. And in such cases, it must be invalidated so as to make sure that none of the parties suffer due to such mistake. In Pakistan, this is incorporated within Sections 20-22 of the Contract Act, 1872 (hereinafter referred to as the "Act"). The main focus of this paper shall be the principles that surrounds the principle of mistake under the law of contract in the Pakistani legal system.

This work thus deliberates upon the meaning and scope of mistake; what is meant by mistakes of fact and law respectively and the differences between both; what is meant by mutual mistake and whether it is incorporated Pakistani contract law; this paper critically evaluates the interpretation and application of the principles surrounding mistake by the Pakistani Superior Court; it also ventures briefly into Anglo-American judicial philosophy surrounding mistake as well.

1.2. Research Methodology

This article adopts the doctrinal approach as it discusses the applicable statutory law, namely Sections 20-22 of the Act that embodies the principles of mistake and its interpretation and application by the Pakistani Superior Courts. This article also adopts an analytic approach as it engages in an analysis of all the relevant case laws about the proposition and provides a critique of the same in terms of their interpretation and application. Hence, this article discusses the principles of mistake under Pakistani law and its jurisprudence as expounded upon by the Pakistani Superior Courts.

2.1. Literature Review

Mistake is one of the vitiating elements of a contract. It has been defined as a non-willful act or omission or an error (West, 2005, p. 90). It also been defined as a non-willful act, omission or error that arises from misplaced confidence, imposition, surprise or ignorance. (Black, 1910, p. 785). Thus,

it is a non-willful act or omission which is made mistakenly due to either surprise, ignorance or misplaced confidence.

2.2 Types of Mistakes

There are two varieties of mistakes under Pakistani contract law. They are mistake in law and a mistake in fact respectively. The former refers to the occurrence of a misconception by a person who has full factual knowledge of a particular matter but reaches an incorrect conclusion as to its legal effect (West, 2005, p. 91). The latter refers to an incorrect conclusion, not on the basis of neglecting a legal duty but rather an unconscious ignorance of a circumstance or a past or present material event (West, 1910, p. 90).

Hence, in quite simple terms, a mistake of law is a mistake made in regards to the applicable provisions of law in a particular circumstance or a person who reaches an incorrect conclusion of the legal effects or consequences that arise out of the circumstances that have occurred. A mistake of fact is the oppositive. In this case, the mistake has occurred due to a flawed understanding of the facts and circumstances rather than a flawed understanding of the applicable statutory provisions and their legal effects. Thus, a person makes a mistake of fact when he reaches an incorrect conclusion of the facts and circumstances of the case. In fact, one of the definitions of mistake provide that "that result of ignorance of law or fact which has misled a person to commit that which, if he had not been in error, he would not have done" (Black, 1910, p. 785). Thus, the mistake that a person makes in a contract is either a mistake of law or fact which leads him to commit an act or omission which he would have committed in the first place. It should also be noted that mistake is also stipulated by Section 18(3) of the Act which provides for one of the parties inducing the other one to engage in a contract due to making a mistake in regards to an essential or material fact in a contract.

2.3 Effect of Mistake as to Fact

Section 20 of the Act stipulates that where both persons to a contract are mistaken about a vital fact to the contract, then the same is nullified. Thus, as briefly discussed hereinabove, a contract that is hit by mistake in turn causes it to become completely null and void. However, this provision has two conditions as well. The first is that both parties must be in a contract must be under a mistake in the contract. That is to say, the mistake must come from both contracting parties, otherwise the contract will become void. This is further supplemented by Section 22 of the Act which stipulates that a contract does not become voidable just because one of the parties is mistaken about a vital fact. This is very similar to the concept of free mutual consent in a contract, where in order for free mutual consent to be established, both of them must agree on the same subject-matter in the same context (Ibn Munir, 2023). Similarly, both parties must be mistaken about the same essential fact. Otherwise, should the mistake of fact be different on both sides, then the contract shall not become null and void. Hence, as briefly mentioned hereinabove, this is what we call mutual mistake. Thus, in order for a contract to become void due to a mistake in fact, it must come from both parties. This is the first condition. The second condition is that the mistake of fact must be on a fact that is essential or vital to the contract itself. That is to say, the fact that the parties are mistaken about is something that is very significant to the contract itself.

In a case where there was a dispute on the agreement of sale of property which had become part of the development scheme of the Lahore Improvement Trust, the parties pleaded that as there was a mutual mistake by both parties, the agreement to sell has thus become void. The Court while contemplating Section 20 of the Act observed that where there was a mistake of fact by both parties, the agreement becomes void. However, the Court also observed that in the instant case, there was no way to find out whether both parties had the same mistake of fact in mind at the time of the contract mistaken (*Rai Bahadur Jhoda Mal Khuthiala v. The Associated Hotels of India, Ltd.*, 1950, p. 48). Sharif J. in his concurring note observes that the parties are bound by their own acts unless the action was induced or influenced in anyway by circumstances which the law describes as fraudulent or mistaken (*Rai Bahadur Jhoda Mal Khuthiala v. The Associated Hotels of India, Ltd.*, 1950, p. 63).

In another case where the Privy Council, which was brought on appeal from the arbitrator's award who had decided that there was no mutual mistake. The Council observed that Section 56 only applies on enforceable agreements. The Council also observed that mistake vitiates free consent which in turn causes a contract to become void. (*Sheikh Brothers Limited v. Arnold Julius Ochsner*, 1957, 95, p. 101).

The Lahore High Court held in one case that "when the agreement is that parties will get what they are entitled to under the law, the agreement is not hit by section 21 just because in the calculation of the legal rights some mistake is made." (*Lal Din v. Mst. Sardar Bibi*, 1959, para 5). The Supreme Court and the Sindh High Court have also ruled that that a contract and also the abandonment of a right under a contract which is hit by Section 20 will nullify the contract (*Sibtain Fazli v. Star Film Distributors*, 1964, p. 347; *Syed Ghousuddin Ahmed v. Chairman, Karachi Port Trust*, 1967, para 4).

In order for a contract to become completely void due to mistake, it is essential that both parties should be mistaken about the same thing. A contract will not become void should one of the parties make a mistake or where both parties make a mistake, but the mistake on both parties' minds are different as per Sections 20 and 22 of the Act (*Muhammad Bibi v. Abdul Ghani*, 1973, p. 454).

A similar observation was also made in another case (*Muhammad Ameer Oasmi v. Ch. Muhammad Azhar*, 1990, para 11). In another case where there was a clerical mistake in the sale deed in regards to the area and identification of the land in a land dispute. The Court held that this did not amount to a void contract under Section 20 of the Act as the clerical mistake of the land's area and identification in the sale deed was not the essential fact that both parties in the contract were mistaken about. (*Punjab Province v. Atta Muhammad*, 1988, para 4). In a subsequent case, the Lahore High Court held that a contract in which one party made a mistake of fact cannot become null and void. (*Aufaq Department v. Javed Shuja*, 1995, para 15). In another case where there was a dispute of property, the Lahore High Court held that the contract was null and void as both parties were mistaken as to a matter of fact which was essential in the contract (*Karam Bibi v. Khan Bahadur*, 2001, para 6). A similar observation was also by same court in a subsequent case (*Muhammad Ibrahim v. Malik Akhtar Ali*, 2001, para 6). In another case where there was a dispute over the conveyance of a land with a third party, the Sindh High Court observed that

"*the mistake has been developed or detected after creation of third party rights. Section 20 of the Contract Act may 'not apply to the said facts in view of the third party right having been created and under section 41 of the Transfer of Property Act.*" (*Dr. Syed Tariq Sohail v. Defence Housing Authority*, 2001, p. 1209).

This observation is laudable as it correctly applies the principle of third-party rights in a contract and also developed the scope of the law of mistake. The Lahore High Court observed in another case that where the contracting parties are mutually mistaken about a vital fact to the contract, then the contract will be nullified (*Agricultural Development Bank of Pakistan v. Malik Iftikhar Ahmed*, 2002, para 7). The High Court of Jammu and Kashmir observed "that an erroneous opinion as to the value of the thing which forms the subject-matter of the agreement is not to be deemed a mistake as to a matter of fact." (*Ashfaq Ahmed v. Ch. Maqbool Raza*, 2008, p. 1349). The Sindh High Court observed in another case that "a party cannot be said to be mistaken about the existence of an instrument if its existence requires the signature of the said party" (*GOCGC Ltd. v. CMP Ltd.*, 2011, p. 331). The Court also held that a voidable contract does not occur due to the mistake of a fact by a single party as opposed to both parties committing it mutually (*GOCGC Ltd. v. CMP Ltd*, 2011, p. 332). Both the observations of the Court are laudable. The Supreme Court also held that the contract between the local government, the Balochistan Development Authority and the foreign institution was null and void as one of the parties made a mistake of an essential fact to the contract. (*Abdul Haque Baloch v. Balochistan*, 2013, para 69). This observation is incorrect as there needs to be a mutual mistake in the

mistake of an essential fact in order for the contract to become null and void due to mistake. One party making a mistake cannot lead to the contract becoming null and void.

In another case where there was an allegation of mistake in a land dispute, the Supreme Court while deliberating upon the scope of mistake observed that the reason a mistake on a significant fact of the contract renders the same void is to make sure there is no interference by the Superior Courts in contracts where mistakes of a very minute or small nature were committed (*Muhammad Farooq v. Javed Khan*, 2022, para 10).

This observation is laudable as not only did the Court accurately describe mistake as stipulated under Section 20 of the Act, the Court also accurately ruled that there should be minimal interference from a court of law in matters where there are small mistakes and the same can only be justified in large mistakes. The Court also relied on Anglo-jurisprudence and Indian jurisprudence on the doctrine of mistake and further ruled that once mistake on a vital fact stands established, the legal ramification is that the contract becomes void (*Muhammad Farooq v. Javed Khan*, 2022, para 13). The Court also observed that both parties to the contract must make the same mistake, that is to say, the mistake must be of a bilateral nature, not of a unilateral one (*Muhammad Farooq v. Javed Khan*, 2022, para 12).

These observations of the courts are indeed laudable and also in accordance with the jurisprudence of the Pakistani courts. Thus, from the discussion above, we can come to the conclusion that a contract hit by mistake becomes completely void, provided that it is mutual and it is made on an essential or vital fact to the contract. The only exception to this rule are cases in which the parties are to get something that there entitled to. However, the courts do not feel fit to interfere in contracts that have incurred small mistakes as opposed to big mistakes. Hence, the courts shall interfere in the latter.

2.4 Effect of Mistake in Law

Section 21 of the Act provides that

"*a contract is not voidable because it was caused by a mistake as to any law in force in [Pakistan]; but a mistake as to a law not in force in [Pakistan] has the same effect as a mistake of fact.*"

Hence, mistake which is made on the basis of a particular statute's provision or its potential legal ramifications thereto on in particular matter shall cause the contract to become voidable but where the statutory provision concerned is that of a foreign country's such as the USA or UK, then the same shall be considered a mistake of fact and will thus cause it to be invalidated (*Pakistan Industrial Credit and Investment Corporation Ltd. v. Messrs Khairpur Sugar Mills Limited*, 2012, para 35). It will thus cause Sections 20 and 22 to apply in such cases (*Muhammad Ameer Oasmi v. Ch. Muhammad Azhar*, 1990, para 11).

This observation is correct. The Sindh High Court also distinguished between the Anglo-jurisprudence on mistake and the Pakistani jurisprudence on mistake, that in Anglo-jurisprudence, a mistake in law does not become void or voidable, the same goes in Pakistan except for cases involving Section 18(3) of the Act and ruled that this provision must be read alongside Section 21 of the Act and the mistake referred in the former cannot be a mistake of law, it is only a mistake of fact (*Pakistan Industrial Credit and Investment Corporation Ltd. v. Messrs Khairpur Sugar Mills Limited*, 2012, para 35).

Thus, from the discussion hereinabove, we can come to the conclusion that a mistake made on the basis of a statutory provision's potential application to a matter shall not cause a contract to become voidable, however, should the concerned statutory provision be that of a foreign state's, then it shall be treated as a mistake of fact and nullify the contract.

3.1 Conclusion

Thus, from the discussion hereinabove, we have understood that mistake is a non-willful act or omission which is made mistakenly due to surprise, ignorance or misplaced confidence. It comes in

two varieties, namely mistakes of fact and law respectively. However, there exists a third type known as mutual mistake under Anglo-American jurisprudence, which means a mistake which was in the mind of both parties as it was caused. In Pakistan, this principle is incorporated under the principle of mistake of fact. We can also conclude that a contract hit by mistake is considered to be completely void, provided it is mutual and it is on an essential or vital fact to the contract itself. The Superior Courts also do not feel fit to interfere in contracts that are hit by small mistakes as opposed to big contracts. The only exception to this is cases in which the parties are to get what they are entitled to. Lastly, a mistake which is based on the application of a Pakistani statutory provision in a particular matter shall not cause the contract to become voidable, except when said provision is that of a foreign state, in which case it shall be considered a mistake of fact and thus invalidates the contract.

References

Agricultural Development Bank of Pakistan v. Malik Iftikhar Ahmed, 2002 CLD 1280 [Lahore].
Ashfaq Ahmed v. Ch. Maqbool Raza, 2008 CLC 1340 [High Court (AJ&K)].
Aufaq Department v. Javed Shuja, 1995 CLC 1173 [Lahore].
Campbell Black, Henry, Black's Law Dictionary, (St. Paul, Minn. West Publishing Co., 2nd ed. 1910).
Dr. Syed Tariq Sohail v. Defence Housing Authority, 2001 YLR 1193 [Karachi].
Guandong Overseas Construction Group Company Ltd. v. Creek Marina Private Limited, 2011 CLD 648 [Karachi], PLD 2011 Karachi 304.
Ibn Munir, Amr, Formation of a Contract with Special Focus on Offer and Acceptance and their Interpretation and Application in Pakistan". https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4413537
Ibn Munir, Amr, Intention to Create Legal Obligations: The Doctrine of Consent under the Law of Contract in Pakistan". < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4532632>
Ibn Munir, Amr, The Doctrine of Misrepresentation under Anglo and Pakistani Jurisprudence: A Critical Exposition. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4546199
Karam Bibi v. Khan Bahadur, 2001 CLC 1112 [Lahore]).
Lal Din v. Mst. Sardar Bibi, PLD 1959 (W. P.) Lahore 616.
Maulana Abdul Haque Baloch v. Government of Balochistan, PLD 2013 Supreme Court 641.
Muhammad Ameer Oasmi v. Ch. Muhammad Azhar, 1990 CLC 1514 [Lahore].
Muhammad Bibi v. Abdul Ghani, PLD 1973 Karachi 444.
Muhammad Farooq v. Javed Khan, PLD 2022 SC 73.
Muhammad Ibrahim v. Malik Akhtar Ali, 2001 CLC 1323 [Lahore].
Pakistan Industrial Credit and Investment Corporation Ltd. v. Messrs Khairpur Sugar Mills Limited, 2012 CLD 1136 [Sindh], PLD 2012 Sindh 324.
Punjab Province v. Atta Muhammad, 1988 CLC 1272 [Lahore].
Rai Bahadur Jhoda Mal Khuthiala v. The Associated Hotels of India, Ltd., PLD 1950 Lahore 42.
Sheikh Brothers Limited v. Arnold Julius Ochsner, PLD 1957 Privy Council 95.
Sibtain Fazli v. Star Film Distributors, PLD 1964 Supreme Court 337.
Syed Ghousuddin Ahmed v. Chairman, Karachi Port Trust, PLD 1967 Karachi 275.
West's Encyclopedia of American Law, (Thomson Gale, 2nd ed., Vol. 7., 2005).