Mistakes at law may affect the validity of the formation of a contract.

The effect of a mistake on the validity of a contract depends on the type and nature of the mistake made. The general rule is that where a mistake has been made by the parties, at common law the contract may be deemed void, as if the contract had never existed. Equity takes a more flexible approach in that contracts containing certain mistakes may be treated as voidable, where either party can terminate the contract. However, a fundamental mistake, often referred to as an 'operative' mistake, may render a contract void.

1. Common Mistakes

Where a common mistake occurs, the parties appear to be in agreement, but have entered into the contract under the same misapprehension. Where such a mistake is fundamental to the contract, it may be *'void ab initio'* (void from the very beginning). In the case of *Bell v Lever Bros* (1932), it was held that for a common mistake to be operative the mistake '*must go to the root of the contract'*.

(i) Mistake as to the existence of the subject matter

Where the subject matter of the contract does not exist or ceases to exist, it may be void at common law. In the case of *Couturier v Hastie* (1856), a buyer bought a cargo of corn which both parties believed to be at sea. The cargo had to be disposed of and the court held that the contract was void as the subject matter ceased to exist.

(ii) Mistake as to title

Where there is an agreement to transfer property from one person to another, but the buyer already owns the property and neither party is aware of this, the contract will be void at common law.

(iii) Mistake as to quality

A mistake as to the quality of the subject matter will not render a contract void at common law. In *Leaf v International Galleries* (1950), both parties mistakenly believed that a painting was by Constable. The court held that the contract was still valid.

(iv) Mistake as to the possibility of performing the contract

Where the obligations under the contract are impossible to perform, the contract will be deemed void. In *Sheik Bros Ltd v Ochsner* (1957), the land was not capable of the growing the crops contracted for, so the contract was held to be void.

(v) Mistake in equity

Where a contract is void on the grounds of common mistake, the court will either refuse specific performance in equity or it can grant rescission and impose terms if necessary.

If it is a mistake as to quality, even though the contract may be valid at common law, it may still be deemed voidable in equity. In the case of *Solle v Butcher* (1950), the Court of Appeal set the contract aside in equity, even though it was valid at common law and imposed terms to do justice.

2. Mutual Mistakes

Where a mutual mistake occurs, there is a misunderstanding between the parties as to each other's intentions and they are said to be at cross-purposes. A mutual mistake negates consent and therefore no agreement is said to have been formed at all.

3. Unilateral Mistakes

A unilateral mistake is where only one party is mistaken and the other party knows about it and takes advantage of the error. A unilateral mistake also negates consent and the existence of an agreement.

(i) Unilateral mistake as to the terms of the contract

For a unilateral mistake to be operative, it must relate to the terms of the contract. This type of mistake occurs where one party is aware of the mistake and takes advantage of the other party's error. Such a mistake will render the contract void.

(ii) Unilateral mistake in equity

Where a contract is void on the grounds of unilateral mistake, the court will refuse specific performance in equity and if necessary, rescind the contract.

4. Mistake as to identity

Where a mistake as to the identity of the other party to the contract is made, the contract will be deemed void if the identity of that person is central to the contract. However, where the parties negotiate in person, there is a presumption that there is an intention to do business with the person in their presence, in which case it is unlikely that a contract will be void, as is demonstrated by the case of *Phillips v Brooks* (1919). A rogue purchased some items from the claimant's jewellers shop claiming to be Sir George Bullogh. He paid by cheque and persuaded the jewellers to allow him to take a ring. He gave the address of Sir George Bullogh and the jewellers checked the name matched the address in a directory. The rogue then pawned the ring at the defendant pawn brokers in the name of Mr. Firth and received £350. He then disappeared without a trace. The claimant brought an action based on unilateral mistake as to identity.

Held: The contract was not void for mistake. Where the parties transact face to face the law presumes they intend to deal with the person in front of them not the person they claim to be. The jewellers were unable to demonstrate that they would only have sold the ring to Sir George Bullogh.

Mental capacity

Imperial Loan Co Ltd v Stone still represented the true position under common law. In other words, for the agreement to be set aside on the basis of the mental disability, it must be shown that this disability was apparent to the other party at the time of the contract.

Lord Bingham summed up the position as follows:

'…the validity of a contract entered into by a lunatic [sic] who is *ostensibly* sane is to be judged by the same standards as a contract made by a person of sound mind, and is not voidable by the lunatic or his representatives by reason of 'unfairness' unless such unfairness amounts to equitable fraud which would have enabled the complaining party to avoid the contract even if he had been sane.'

Contracts with minors

> The Sale of Goods Act (1979) defines liability of minors when buying necessaries. Necessaries are the basic goods needed for living, The Sale of Goods Acts states, 'goods suitable to the condition in life of the minor'. Therefore, minors are liable under a contract for buying necessaries. Necessaries extend beyond the essentials for living, they can also be items which are needed for a young person and for their lifestyle. The minor is not liable for goods or services that have not been delivered to them. Valuable utility items may be considered necessaries but items of luxury are not considered as necessaries. Therefore, a minor would still be liable to pay for such utility items. An example of this was in the case of Chapple v Cooper (1844), where a service was considered necessaries. However, in the case of Nash v Inman (1908), it was decided that waistcoats supplied to a student could have been considered as necessaries, but in this case they were not necessaries because the student's father had already provided the student with many waistcoats. When something is considered necessaries and the minor liable to pay a reasonable price, this would depend on the income of the minor and whether the goods and services are actually necessaries and are needed by the minor. It would also depend on the supply, even if the minor needed something and can afford it, the good or service would not be considered necessaries if the minor already has a supply of it.
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> Contracts that are considered for the benefit of the minor are that of service, education, training, apprenticeship and employment. However, the courts will reject a contract if it is considered not in the benefit of a minor. For example,

in the case of De Francesco v Barnum (1889), a minor aged 14 years old, had an agreement to train as a dancer on stage, however, the contract had conditions which were considered not beneficial to the minor and therefore, the minor was not bound by the contact.

A case where a contract had been enforced is the case of Doyle v White City Stadium (1935), this is where there was an agreement to train a boxer. There was no money paid, but the contract was enforceable because it was considered that the contract was beneficial because of the training. In another case where the contract was enforceable was in Clements v London & NW Rail Co (1894) where certain benefits were removed from the contract, but the contract was considered to be beneficial.