Sample Classroom Exercise: GCE Law (H524): Law of Contract: G145

Explanation – An activity which encourages students to analyse a recent and important case, to look at phrases within the original judgment and to look at AO2 reasoning behind the decision. Although this activity would support able students it should be accessible to students across the ability range as they are directed to key passages rather than just being given the whole judgment to analyse.

Great Peace Shipping Limited v Tsavliris (International) Limited COA 2002

Facts

The facts of the case are fairly straightforward. In September 1999, the *Cape Providence* was sailing from Brazil to China when she suffered serious structural damage in the South Indian Ocean. Tsavliris Salvage offered their services (which were accepted) and arranged for a tug to assist. However, it was going to take about five or six days for the tug to reach the ship and there were concerns over the safety of the vessel and her crew in the meantime.

Tsavliris' brokers contacted Ocean Routes (an organisation that provides reports about vessels at sea) who said that the nearest ship was the *Great Peace* and gave her position. Unfortunately, that position was wrong. Unaware of this, the broker negotiated terms with Great Peace Shipping to charter the vessel on a daily hire basis to escort the *Cape Providence* until the arrival of the tug. The contract was for a minimum of five days at US$16,500 per day.

Shortly afterwards, it became known that the vessels were in fact 410 miles away from each other. Had the information from Ocean Routes been correct, they would have been only 35 miles apart. Tsavliris told the brokers that they were looking to cancel the charter, but not until they found out if there was a nearer available vessel. As it turned out, there was, the *Nordfarer*. Tsavliris contracted with the owner directly and instructed the brokers to cancel the *Great Peace* agreement.

Great Peace Shipping's claim was for $82,500, representing five days' loss of hire at a daily rate of $16,500.

The case, therefore, concerned a ‘common’ mistake of fact as to the position of the *Great Peace*. The issue was whether that mistake rendered the contract (1) void in law for fundamental mistake or (2) voidable in equity for mistake, entitling Tsavliris to rescind the contract.

Background - Mistake and common law

In certain, very limited circumstances, a mistake can render a contract void at common law. The leading authority on this is *Bell v Lever Brothers Limited* . In that case, an employer, Lever Brothers, entered into agreements with the two defendants to terminate their employment for substantial amounts of compensation. In fact, the defendants had committed serious breaches of their contracts of employment that would have justified their summary dismissal. But the defendants were not aware of this. The agreements were, therefore, entered into under a common mistake as to the respective rights of the parties.

The House of Lords held that the agreements were not void for mistake. The starting point is to decide whether there has been an agreement between the parties and on what terms. ***Those terms are paramount and should be observed***. Only in certain, very limited circumstances will the parties' agreement be rendered void by a mutual mistake. Examples include mistakes as to the quality of the subject matter. This raises difficult questions. What distinguishes a mistake as to quality from normal run-of-the-mill misrepresentations and breaches of warranty and their remedies? The mistake must mean that the subject matter of the contract is "*essentially and radically*" different from what the parties believed it to be, anything less than that and the parties will be held to their bargain, however bad.

Where, for example, a purchaser and seller believe a picture to be an old master when it is not, the essential quality of the picture is not affected (it is still a picture), and, in the absence of a representation or warranty by the seller, the buyer has no remedy. This is, of course, the ***caveat emptor*** rule ("let the buyer beware").

In *Bell*, ***an agreement to terminate a contract that had already been broken, and an agreement to terminate a contract which had not been broken, were not essentially different***. The result was the same. It was immaterial that the party could have got the same result in another way or that, if he had known the true facts, he would not have entered into the bargain.

Mistake and equity

Then along came Denning LJ in the Court of Appeal. In *Solle v Butcher*, he held that a contract that did not satisfy the very stringent *Bell* test, could, nevertheless, be voidable and the court could set it aside on terms "*if the parties were under a common misapprehension either as to facts or to their relative and respective rights, provided that the misapprehension was fundamental and that the party seeking to set it aside was not himself at fault*".

The question therefore is, what sort of mistake is "*fundamental*" and so gives rise to the equitable doctrine, and how does this differ from the sort of mistake that would **at common law** make the subject matter of the contract "*essentially and radically different*" from what parties believed it to be?

Judgment at First Instance

This was the question that troubled Toulson J at the first instance hearing of *Great Peace Shipping*. If deciding what is, or is not, fundamental in equity depends on whether the mistake induced a party to enter the contract, or on the seriousness of its effect on the parties, that would enable the court to interfere when the parties had simply made a bad bargain (destroying the *caveat emptor* rule in the process), which is not the court's role. If the issue depends on what the court considers important on the facts of a particular case and in the interests of general justice, this "***puts palm tree justice in place of party autonomy***".

The key question was whether the 'Great Peace' was so far away from the 'Cape Providence' at the time of the contract as to defeat the contractual purpose – or in other words to turn it into something essentially different from that for which the parties bargained. This was a question of fact and degree, but in the judge's view the answer was no. ***He found the reaction of the defendants on learning the true position of the vessels a telling point***. They did not want to cancel the agreement until they knew if they could find a nearer vessel. Evidently, the judge said, the defendants did not regard the contract as devoid of purpose, or they would have cancelled at once. Accordingly, he held them to their bargain and gave judgment for Great Peace.

Court of Appeal Judgment

The Court of Appeal shared the judge's concerns. *Solle v Butcher* had left the precise parameters of the equitable jurisdiction unclear. By deciding that there was a category of equitable mistake where the contract was not void at common law, Denning LJ had dramatically extended any jurisdiction exercised up to that point in a way that was ***impossible to reconcile with the House of Lords' decision in Bell v Lever Brothers***.

A common factor in *Solle* and the cases that followed it was that the contract turned out to be a particularly bad bargain for one of the parties. But it is not for the court to interfere just because the parties have made a bad bargain. There are already established rules to deal with cases of fraud, misrepresentation and undue influence. In cases of common mistake, the House of Lords had drawn a very strict line as to when relief was available. This left no room for any further relief in equity.

So, after detailed consideration, the Court of Appeal concluded that there was no judicial basis for allowing equity to grant rescission in cases of common mistake where the common law did not make the contract void.

That left the question whether the mistake as to the position of the *Great Peace* meant that the services it could provide were something essentially different from that which the parties had agreed? Like the judge at first instance, the court of appeal thought not. The fact that the vessels were further apart than had been believed did not mean that those services were essentially different. They too placed particular reliance on the fact that, when Tsavliris found out about the true position of the *Great Peace*, they did not immediately cancel the agreement until an alternative was found. Judgment for Great Peace was therefore confirmed.

Briefly explain what the following extracts mean…

1. Those terms are paramount and should be observed

2. Caveat emptor

3. An agreement to terminate a contract that had already been broken, and an agreement to terminate a contract which had not been broken, were not essentially different

4. “Puts palm tree justice in place of party autonomy"

5. He found the reaction of the defendants on learning the true position of the vessels a telling point

6. Impossible to reconcile with the House of Lords' decision in Bell v Lever Brothers

7. So, after detailed consideration, the Court of Appeal concluded that there was no judicial basis for allowing equity to grant rescission in cases of common mistake where the common law did not make the contract void.