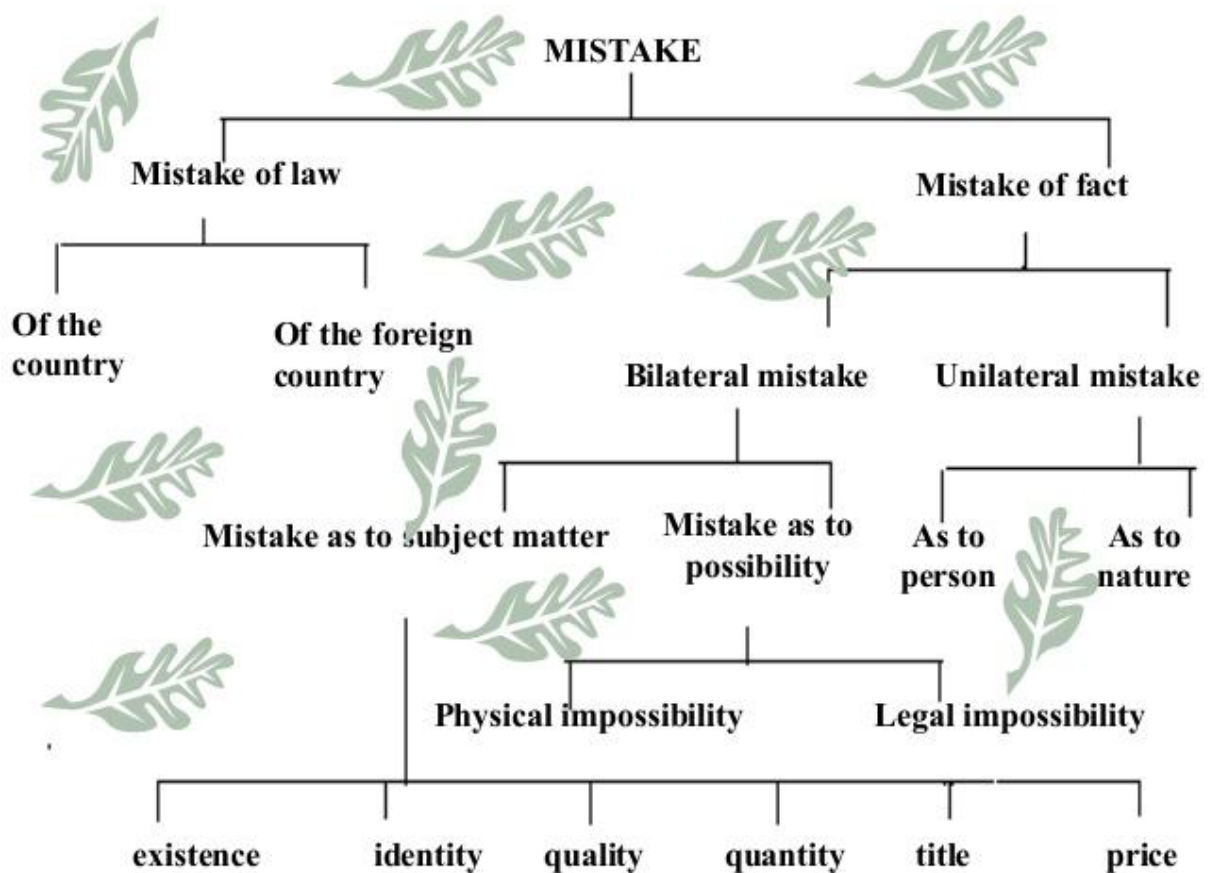


Types of Mistake:

Mistake may be of two types:

1. Mistake of law
2. Mistake of fact



1. Mistake of Law

This mistake may relate to the mistake of the Indian laws, or it can be a mistake of foreign laws. If the mistake is regarding Indian laws, the rule is that the ignorance of the law is not a good enough excuse. This means either party cannot simply claim it was unaware of the law.

The Contract Act says that no party shall be allowed to claim any relief on the grounds of ignorance of Indian law. This will also include a wrong interpretation of any legal provisions.

However, ignorance of a foreign law is not given a similar treatment. Ignorance of the foreign law is given some leeway, the parties are not expected to know foreign legal provisions and their meaning. So a mistake of foreign law is in fact treated as a mistake of fact under the Indian Contract Act.

2. Mistake of Fact

Then there is the other type of mistake, a mistake of fact. This is when both the parties misunderstand each other leaving them at a crossroads. Such a mistake can be because of an error in understanding, or ignorance or omission etc. But a mistake is never intentional, it is an innocent overlooking. These mistakes can either be unilateral or bilateral.

A) Bilateral Mistake:

According to Section 20 "where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement shall be void".

Various cases that fall under bilateral mistake are as follows:

a) Mistake as to the subject matter:

Mistake as to the subject matter may be - regarding existence of the subject matter, quality of the subject matter, quantity and price of the subject matter.

b) Mistake as to the possibility of performance:

If the parties believe that the agreement is capable of being performed when in fact it is not the case, then the consent is nullified. The agreement is void on the ground of impossibility.

B) Unilateral Mistake: If the mistake is only unilateral, i.e. one party to the contract is under a mistake of fact, the contract is not voidable. Unilateral mistakes do not affect the validity of the contract unless they concern some fundamental fact and the other party is aware of the mistake.

a) Mistake as to the nature of the transaction:

A contract shall be void if a party to the contract without any fault of his own makes a mistake about the very nature of the contract. It may be because of blindness, illiteracy, or servility of the person signing the contract or due to the trick or fraudulent misrepresentation as to the nature of the document.

b) Mistake as to identity of the contracting parties:

The person or with whom the contract is to be made must be identified correctly by the other party. It is a fundamental mistake on the part of the other party not to recognize the correct person. The principle of the contract holds good only when the identity of the contracting party is given importance.

Elements of Mistake

1. Mistake must be bilateral. Unilateral mistake is no mistake.
2. The mistake must be in relation to some fact.
3. The fact concerned must be essential to the agreement.
4. As regards mistake of law, if there is mistake of about Indian Law then it is not considered as a mistake of fact to an Indian. But a mistake of law of foreign country is a mistake of fact.

Effects of Mistake:

1. If there is a mistake, the agreement is void. But as the mistake is subsequently discovered it is called discovered to be void.
2. When an agreement is discovered to be void then any party who has received any benefit from the other party shall restore it to him or make compensation for it.