

**Reprint  
as at 1 January 2008**



**Contractual Mistakes Act 1977**

Public Act    1977 No 54  
Date of assent    21 November 1977  
Commencement    21 November 1977

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**Note**

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

**This Act is administered by the Ministry of Justice.**

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**An Act to reform the law relating to the effect of mistakes on contracts**

**1 Short Title**

This Act may be cited as the Contractual Mistakes Act 1977.

**2 Interpretation**

- (1) In this Act, unless the context otherwise requires,—  
**court** means, in relation to any matter, the court, tribunal, or arbitral tribunal by or before which the matter falls to be determined  
**mistake** means a mistake, whether of law or of fact.
- (2) For the purposes of this Act, and without limiting the meaning of the term mistake of law, but subject to section 6(2)(a), a mistake in the interpretation of a document is a mistake of law.
- (3) There is a contract for the purposes of this Act where a contract would have come into existence but for circumstances of the kind described in section 6(1)(a).

Section 2(1) **court**: substituted, on 19 December 2002, by section 3 of the Contractual Mistakes Amendment Act 2002 (2002 No 78).

**3 Act to bind the Crown**

This Act shall bind the Crown.

**4 Purpose of Act**

- (1) The purpose of this Act is to mitigate the arbitrary effects of mistakes on contracts by conferring on courts appropriate powers to grant relief in the circumstances mentioned in section 6.
- (2) These powers are in addition to and not in substitution for existing powers to grant relief in respect of matters other than mistakes and are not to be exercised in such a way as to prejudice the general security of contractual relationships.

Section 4(1): amended, on 19 December 2002, by section 4 of the Contractual Mistakes Amendment Act 2002 (2002 No 78).

## **5 Act to be a Code**

- (1) Except as otherwise expressly provided in this Act, this Act shall have effect in place of the rules of the common law and of equity governing the circumstances in which relief may be granted, on the grounds of mistake, to a party to a contract or to a person claiming through or under any such party.
- (2) Nothing in this Act shall affect—
  - (a) the doctrine of non est factum:
  - (b) the law relating to the rectification of contracts:
  - (c) the law relating to undue influence, fraud, breach of fiduciary duty, or misrepresentation, whether fraudulent or innocent:
  - (d) the provisions of the Illegal Contracts Act 1970 or of sections 94A and 94B of the Judicature Act 1908:
  - (e) the Frustrated Contracts Act 1944.
- (3) Nothing in this Act shall deprive a court of the power to exercise its discretion to withhold a decree of specific performance in any case.

Section 5(3): amended, on 19 December 2002, by section 5(a) of the Contractual Mistakes Amendment Act 2002 (2002 No 78).

Section 5(3): amended, on 19 December 2002, by section 5(b) of the Contractual Mistakes Amendment Act 2002 (2002 No 78).

## **6 Relief may be granted where mistake by one party is known to opposing party or is common or mutual**

- (1) A court may in the course of any proceedings or on application made for the purpose grant relief under section 7 to any party to a contract—
  - (a) if in entering into that contract—
    - (i) that party was influenced in his decision to enter into the contract by a mistake that was material to him, and the existence of the mistake was known to the other party or 1 or more of the other parties to the contract (not being a party or parties having substantially the same interest under the contract as the party seeking relief); or
    - (ii) all the parties to the contract were influenced in their respective decisions to enter into the contract by the same mistake; or

- (iii) that party and at least 1 other party (not being a party having substantially the same interest under the contract as the party seeking relief) were each influenced in their respective decisions to enter into the contract by a different mistake about the same matter of fact or of law; and
  - (b) the mistake or mistakes, as the case may be, resulted at the time of the contract—
    - (i) in a substantially unequal exchange of values; or
    - (ii) in the conferment of a benefit, or in the imposition or inclusion of an obligation, which was, in all the circumstances, a benefit or obligation substantially disproportionate to the consideration therefor; and
  - (c) where the contract expressly or by implication makes provision for the risk of mistakes, the party seeking relief or the party through or under whom relief is sought, as the case may require, is not obliged by a term of the contract to assume the risk that his belief about the matter in question might be mistaken.
- (2) For the purposes of an application for relief under section 7 in respect of any contract,—
- (a) a mistake, in relation to that contract, does not include a mistake in its interpretation:
  - (b) the decision of a party to that contract to enter into it is not made under the influence of a mistake if, before he enters into it and at a time when he can elect not to enter into it, he becomes aware of the mistake but elects to enter into the contract notwithstanding the mistake.

## **7 Nature of relief**

- (1) Where by virtue of the provisions of section 6 the court has power to grant relief to a party to a contract, it may grant relief not only to that party but also to any person claiming through or under that party.
- (2) The extent to which the party seeking relief, or the party through or under whom relief is sought, as the case may require, caused the mistake shall be one of the considerations

to be taken into account by the court in deciding whether to grant relief under this section.

- (3) The court shall have a discretion to make such order as it thinks just and in particular, but not in limitation, it may do 1 or more of the following things:
  - (a) declare the contract to be valid and subsisting in whole or in part or for any particular purpose:
  - (b) cancel the contract:
  - (c) grant relief by way of variation of the contract:
  - (d) grant relief by way of restitution or compensation.
- (4) An application for relief under this section may be made by—
  - (a) any person to whom the court may grant that relief; or
  - (b) any other person where it is material for that person to know whether relief under this section will be granted.
- (5) The court may by any order made under this section vest any property that was the subject of the contract, or the whole or part of the consideration for the contract, in any party to the proceedings or may direct any such party to transfer or assign any such property to any other party to the proceedings.
- (6) Any order made under this section, or any provision of any such order, may be made upon and subject to such terms and conditions as the court thinks fit.

## **8 Rights of third persons not affected**

- (1) Nothing in any order made under this Act shall invalidate—
  - (a) any disposition of property by a party to a mistaken contract for valuable consideration; or
  - (b) any disposition of property made by or through a person who became entitled to the property under a disposition to which paragraph (a) applies—

if the person to whom the disposition was made was not a party to the mistaken contract and had not at the time of the disposition notice that the property was the subject of, or the whole or part of the consideration for, a mistaken contract and otherwise acts in good faith.
- (2) Nothing in any order made under this Act shall affect the operation of subpart 5 of Part 2 of the Property Law Act 2007.
- (3) In this section—

**disposition** means—

- (a) any conveyance, transfer, assignment, settlement, delivery, payment, or other alienation of property, whether at law or in equity:
- (b) the creation of a trust:
- (c) the grant or creation of any lease, mortgage, charge, servitude, licence, power, or other right, estate, or interest in or over any property, whether at law or in equity:
- (d) the release, discharge, surrender, forfeiture, or abandonment, at law or in equity, of any debt, contract, or thing in action, or of any right, power, estate, or interest in or over any property; and for this purpose a debt, or any other right, estate, or interest, shall be deemed to have been released or surrendered when it has become irrecoverable or unenforceable by action through the lapse of time:
- (e) the exercise of a general power of appointment in favour of any person other than the donee of the power:
- (f) any transaction entered into by any person with intent thereby to diminish, directly or indirectly, the value of that person's own estate and to increase the value of the estate of any other person

**mistaken contract** means a contract entered into in the circumstances described in section 6(1)(a).

Section 8(2): amended, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

Section 8(3) **disposition**: substituted, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

## 9 Jurisdiction of District Courts

*[Repealed]*

Section 9: repealed, on 19 December 2002, by section 6 of the Contractual Mistakes Amendment Act 2002 (2002 No 78).

## 10 Jurisdiction of Disputes Tribunals

*[Repealed]*

Section 10: repealed, on 19 December 2002, by section 6 of the Contractual Mistakes Amendment Act 2002 (2002 No 78).

**11 Amendment to Arbitration Act 1908**

*[Repealed]*

Section 11: repealed, on 1 July 1997, by section 18 of the Arbitration Act 1996 (1996 No 99).

**11A Act does not apply to contracts governed by foreign law**

This Act does not apply to any contract, or any part of any contract, that is governed by a law other than New Zealand law.

Section 11A: inserted, on 19 December 2002, by section 7 of the Contractual Mistakes Amendment Act 2002 (2002 No 78).

**12 Application of Act**

This Act shall not apply to contracts entered into before the commencement of this Act.

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**Notes****1 *General***

This is a reprint of the Contractual Mistakes Act 1977. It incorporates all the amendments to the Act as at 1 January 2008, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, see <http://www.pco.parliament.govt.nz/reprints/>.

**2 *Status of reprints***

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

**3 *How reprints are prepared***

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and

provisions that are repealed or revoked are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

#### **4 Changes made under section 17C of the Acts and Regulations Publication Act 1989**

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
  - indentation
  - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
  - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
  - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

## **5** *List of amendments incorporated in this reprint (most recent first)*

Property Law Act 2007 (2007 No 91): section 364(1)

Insolvency Act 2006 (2006 No 55): section 445

Contractual Mistakes Amendment Act 2002 (2002 No 78)

Arbitration Act 1996 (1996 No 99): section 18

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