

10/24/13

- Exercise 5, prob 1

- How POMA changes the analysis

- Ct reasoned that the state passed Act to prevent women from being treated as though they were married

- Ct reached opposite conclusion than CA ct → no recovery possible here

- Ct treated the issue as one of deference to the legislature

- But what of the restitution claim?

- Still possible based on services such as cooking, cleaning, child care, paying for husband during school

- Make sure to go through all elements of restitution: 1) benefit conferred 2) expected to be paid for? (hard to argue) 3) unofficially 4) knowingly received

- Problem 2

- K for exotic dancing unenforceable?

- Maybe d ct's decision

- No helmet advocacy group violates public policy?

Advocating against the law does not violate public policy

- First amendment rights trump the contractual rights

- Wood v. Boynton

- She thinks it's Topaz, it's actually a diamond

- She wants to rescind the K

- Issue: was there a mistake?

Holding: Both mistaken

② - Doctrine of mistake applies when the parties are mistaken as to the "very nature of the consideration"

- Such mistakes are deemed "material"

- Doctrine does not apply where the mistake only affects the value or quality of the consideration

- Telman: this analysis does not work because different conclusions will always occur

- Sherwood v. Walker

- Contracted for cow that was barren  
cow was actually pregnant

- Issue: Mistake?

Holding: No K b/c ~~the~~ the cow was the opposite of what was wanted

- Distinction of the differences ~~and~~ goes beyond value of the object

- Leona Wee County v. Messerly

- Previous owners installed an improper sewage

~~Was~~ Was there a mistake? Yes they thought they could use property for renting

- Mutual mistake between both parties

- A & M Land development

- Doctrine does not apply where the mistake only affects the value or quality of the consideration

- Such mistakes are deemed "collateral"

- Earlier Cases

- Wood v. Boynton

- Sherwood v. Walker

- 2 step process for mistake § 152 & 153

1) Was the mistake as to a "basic assumption"? Yes can't rent

2) Does it have a "material effect on the agreed exchange"?  
Yes they wanted to rent it

3) Who should bear the risk of the mistake?

The purchasers b/c they accepted in present condition

- So even though mistake is true → Pickles can't recover

- Why "as is" clause?

§ 154(a) let the parties allocate the risk

§ 154(c) court decides the risk

§ 154(b) if you are aware that you have limited knowledge but treat it as sufficient you have assumed the risk. → So Pickles assumed the risk

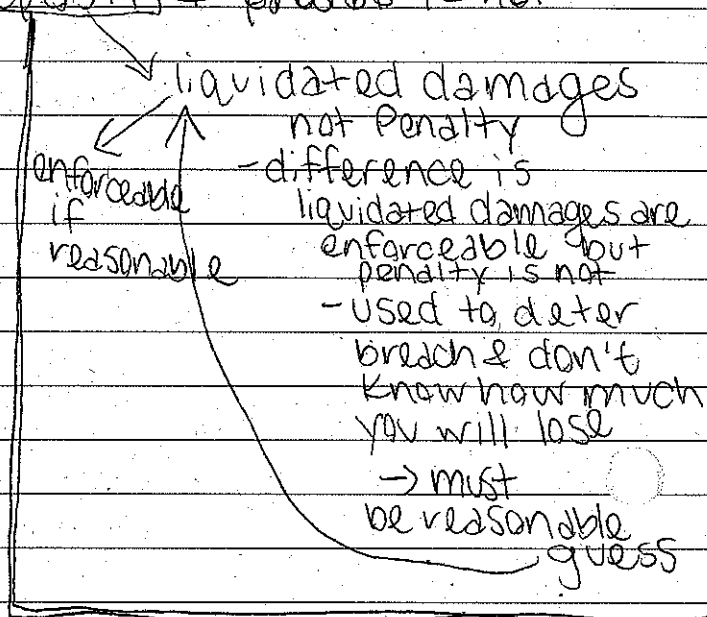
- If we don't use "as is" clause the case would probably come out the other way where seller is ~~responsible~~ best equipped ~~to~~ to determine problem & they are responsible

→ Remedy for mistake: avoidance of K

→ Remedy for "scrivener's error": reformation  
(mistake in writing K)

like write K for 5000 instead of 500

- Wil-Fred's v. Metro Sanitary Dist.
- This case is about a unilateral mistake
- This bid was not relied upon b/c there were other bids
- but this is a firm offer based on (100,000 deposit) & ~~promis~~ K not to withdraw



- Wilfreds mistake arguments
- The mistake was material
- it was caused by misleading specification
- Notice was prompt
- enforcement would be unconscionable in these circumstances