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CASE COMMENTS

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CONTRACTS—RELEASES—UNILATERAL MISTAKE AS GROUND FOR RESCISSION

During the early years of this century, the many facets of the doctrine of unilateral mistake in contract law were clearly defined. Dialetic controversies marked out the competing theories sufficiently to make further elaborations seem a threshing of old straw[1] wrote Patterson, an early writer whose study of unilateral mistake was sufficiently dialectical to command a respectable position among the competing theories. Today, there is complete accord for the general proposition that unilateral mistake is not sufficient reason to rescind a contract.[2] The foremost reason for supporting a contract is the interest in the security of the transaction as a socio-legal end in itself.[3]

The scope of this comment is to view a modern approach to the rule of unilateral mistake in the area of personal injury releases. It is in this area that the strict rule against recision has been applied with irregularity. The result has been that there is no uniformity of decision in the American cases.[4] Judges and legal theorists have attempted to explain each case by categorizing the *type* of mistake.[5] This approach has led the courts into irreconcilable positions.

In *Casey v. Proctor*,[6] the California Supreme Court made what may be a pathfinder decision in the field of unilateral mistake in personal injury cases: the court focused not upon the type of mistake but upon the nature of the transaction. Fundamentally, personal injury cases are an exception to the rule of non-negligent unilateral mistakes in contract law.

In *Casey*, the plaintiff had sued for personal injuries arising out of an automobile accident. The defendant conceded his negligence but interposed a claims release as a matter in bar. The trial court instructed the jury that as a matter of law the release was a bar to plaintiff's recovery. The plaintiff appealed, con-

1. Patterson, *Equitable Relief for Unilateral Mistake*, 28 Colum L. REV. 859 (1928).
2. 4 POUND, JURISPRUDENCE 459 (1959): "This is the rule in the ordinary case of rectifying mistakes . . . for the reason that . . . it is necessary to prove not only that there has been a mistake but also what was intended to be done in order that the instrument may be set aside according to what was intended."
3. *Ibid.*; Cases are collected in Annot. 71 A.L.R.2d 82.
4. 71 A.L.R.2d 82.
5. See Havighurst, *Problems Concerning Settlement Agreements*, 53 Nw. U.L.REV. 283 (1958).
6. Casey v. Proctor, 28 Cal. Rep. 307, 378 P.2d 579 (1963).

tending that the release should be rescinded for mistake. The facts of the mistake are typical! Four days after the accident, the plaintiff filed an accident report with the defendant's insurance company which stated that he had no injuries. The insurance company forwarded a claims release to the plaintiff, via his insurance company. The consideration for the release was payment by the defendant's insurer of the plaintiff's $490.00 property damage. Twenty-three days after the accident, the plaintiff signed the release which was, in part, a discharge of any claims from "any and all known and unknown bodily injuries." Later the plaintiff discovered a back injury which would entail medical expenses of about $3,000.00. The plaintiff denied that he intended to release the defendant from personal injuries. The California Supreme Court reversed the lower court's decision and held that a jury question had been raised as to whether the releasor actually intended to discharge the claim for personal injury; the wording of the release was ignored. The court set forth the elements which determine fact questions of intention as: the amount of the consideration; the negotiations leading to settlement; the risk of the existence of unknown injuries; the reasonableness of the releasor's belief that he had no injuries; and the defendant's liability.

This decision reflects the modern trend[7] that a release for personal injuries may be rescinded if the subjective intent of the releasor is shown to have been something less than what the release purports to be on its face. Although the court calls this a majority rule, the decisions in this area of the law are so closely meshed with each particular fact situation that the majority rule aspect must be accepted only with reservation.[8]

Suits involving releases for personal injuries are generally classed in two groups: a release of known injuries, the extent and future developments of which are unknown; and releases of unknown injuries which may either be existing or will develop in the future. Case holdings with respect to the former group have produced a myriad of decisions drawing fine-line distinctions of what constitutes an existing fact[9] (this is the *type of*

7. See Denton v. Utley, 350 Mich. 332, 86 N.W.2d 537 (1957); 9 WIGMORE, EVIDENCE § 2416 at 55 (1940). Cases are collected in Annot. 71 A.L.R.2d 82.

8. See 5 WILLISTON, CONTRACTS § 1579 (1937 Sup. 1963).

9. *Cf.* Havighurst, *supra* note 5, at 303. Havighurst distinguishes three lines of authority. One, which he calls the conservative view, recognizes rescission only when the mistake is to the existence of an injury which was separate and distinct from that known to the parties when the release was executed. Another view tries to distinguish between "the nature and extent of a known injury and beliefs with respect to its future course and permanent effects. Thus even if no

mistake approach). The latter group, of which the instant case is representative, is primarily rooted in a controversy of contract law on non-negligent unilateral mistakes.[10] In this controversy, the courts take one of two approaches:[11] the subjective intent theory which recognizes the circumstances of the transaction or meeting of the minds; and the objectivity theory—absent fraud or duress, the instrument will not be set aside except for mutual mistake.

The present case adopted the subjective intent theory and distinguished its factual basis from those situations in which the stricter objectivity theory is more applicable. It found no fraud, duress or overreaching, but it emphasized that there were no negotiations between the parties. The court also found inapplicable that rule which permits rescission of the contract when the mistake is as to the content of the contract. The court did say, however, that the plaintiff may have been derelict in his legal duty to read the release. The fact that the consideration was only for property damage was not sufficient to mitigate that duty or to set the release aside.[12]

Basically these controversies stem from disputed definitions of mistake and a myopic approach to the security of the transaction interests in personal injury cases.

Mistake may be defined in terms relative to consequences or in terms relative to antecedent mental conditions or by a fusion of these two concepts. How these definitions affect the results of mistakes in other than personal injury cases[13] is beyond the scope of this comment; it is sufficient to say that the fusion of the definition of mistake in terms of the type of mistake, vis-a-vis the legal consequences, is not a moot problem. However, in the instant case definition is immaterial because the decision turns on the nature of the transaction rather than the type of mistake.[14] This approach is recognizable, at least by implication, in the works of some of the jurisprudential objectivists. Patterson was opposed to the antecedent mental condition definition as a development of Savigny's "union of wills" or meeting of the minds theory.

separate injury is later discovered, a mutual mistake in its diagnosis, as distinguished from its prognosis" will afford grounds for rescission. A mistake as to the condition of the injured party is sufficient under the liberal third view.

10. See generally, Ricketts v. Pa. Ry., 153 F.2d 757, 760 (2d Cir. 1946) (Concurring Opinion).

11. *Ibid.*; Denton v. Utley *supra* note 7.

12. Accord, Lowery v. Callahan, 210 S.C. 300, 42 S.E.2d 457 (1947).

13. See Patterson, *supra* note 1.

14. See also, Ricketts v. Pa. Ry., *supra,* note 10.

Patterson sought some objective standard whereby the "hopeless confusion of the psychological and ethical problems" raised by Savigny could be determined. However, he recognized that personal injury claims should be treated as being different in nature when rescission from mistake is at issue. "The harshest application of this legal doctrine [denying rescission]," he wrote, "are found in the cases of release of personal injury claims." [15] Corbin likewise would permit rescission of personal injury claims, but his theory was limited to the *type* of mistake approach.[16] Williston, the leading protagonist of the objectivity theory, recognized the movement to set personal injury cases apart, but criticized these cases for the judicial motive.[17]

"In general, the modern trend is to lay down no one or more rules of thumb but to develop a special doctrine in each court for that class of cases, literally relieving the party who has signed the release."[18] It should, however, be pointed out that the extraordinary nature of personal injury releases has been con-

15. Patterson, *supra* note 1, at 893: "Here there is frequently the grossest inequality between the negotiating individuals. . . . The release is prepared in technical language by a skillful lawyer, and is made broad enough to cover every future situation which his fertile imagination can conceive. . . . The courts have been quite willing to find fraud, innocent misrepresentation, or mutual mistake in the cases. Where the facts cannot be fitted into one of these categories, relief is commonly denied, even though it be accepted as a fact that the injured party did not understand the language of the writing."

16. See 6 CORBIN, CONTRACTS § 1292 at 181-183 (1962): "If a claim is made for damages for an injury, a compromise settlement is ordinarily not made voidable for mistake because the injury was greater and lasted longer than was expected at the time of settlement, if the parties knew or had reason to know that the extent of the injury was uncertain and that was the very reason for the compromise. But if the settlement was made in contemplation of one kind of injury, minor in character such as a flesh bruise, when in fact but unknown to the parties, there was a very different injury such as a broken back, the settlement or release may be avoided for mistake. The difference in the one case is a difference in degree; in the next case it is a difference in kind."

Compare Dansby v. Buck, 373 P.2d 1 (1962), with Corbin. In that case the plaintiff was permitted rescission of release where a bruised knee turned out to be more severely injured. However, the court based the decision on a mutual mistake theory. This writer is of the opinion that this court created a fiction in order to achieve the same result as the instant case. These two cases, decided only seven months apart, should be read together to better understand how courts recognize the uniqueness of personal injury releases. The fact situations are exactly the same. Dansby v. Buck has been commented on elsewhere: 15 ALA.L.REV. 238, (1962); 48 IOWAL.REV. 1033 (1963); 65 W.VA. L.REV. 177, (1963).

Compare Williams, *Language and the Law*, 61 L.Q.REV. (1945) (cited in Ricketts v. Pa. Ry., *supra* note 10, at 765 n. 28) "A wag once inquired whether the difference between a difference of kind and a difference of degree is itself a difference of kind or a difference of degree. The answer . . . is that it is a difference of degree. A difference of kind is merely a violent difference of degree."

17. 5 WILLISTON, CONTRACTS § 1551 (1937 Supp. 1963).

18. WIGMORE, *supra* note 7.

sistently rejected by some jurisdictions,[19] and that others have paid tribute to the general rule by finding mutual mistake when it was not evident.[20]

The major concern of the subjectivists is that the opportunity for error in calculating the effect of injuries upon human tissue and bones is too great to sanction an inflexible rule of law which binds a releasor to a literal translation of a release instrument.[21] The instant case points out, though, that "a release is not *ipso facto* avoided because of newly discovered injuries." The essence of the rule as applied in *Casey* is that the words of the instrument are not conclusive; the actual intent controls.[22]

The chief criticism of this case and others of the same class is that it destroys the security of the transaction. The opinion of the court recognized the underlying policy of the courts to encourage settlement agreements but it went on to emphasize that there are competing policies. From one point of view, the courts extend protection to the stability of the transactions; but if later discovered injuries may set aside a release, a release can not be final until the statute of limitations has run. From another point of view the courts are faced with an injured party who has no recourse for compensation. The court also considered the fact that the releasee, usually an insurance company, receives a windfall in avoiding liability for a risk it has been paid to assume.[23]

The security of the transaction is an interest which exists to safeguard contract law; but when the interest defines the remedy, limits the remedy, or abolishes the remedy so completely as to become the substantive law in itself, then there is no remedy (which is precisely the ultimate position of the objectivists in regard to unilateral mistakes). The modern trend forces us to consider what is achieved when a party's rights are determined on the basis of the "magical words—security of the transaction."

> "Security of transaction" would settle nothing. It would as facts become clear, suggest one line of policy which has

19. See Lawton v. Charleston & W. Ry, 91 S.C. 332, 74 S.E. 750 (1912); Jumper v. Queen Mab Lumber Co., 115 S.C. 452, 106 S.E. 473 (1921). South Carolina will look into the mental condition of the releasor but generally will not go beyond the words of the instrument itself. See Green v. Sparks, 232 S.C. 414, 102 S.E.2d 435 (1958); Gomillion v. Forsythe, 218 S.C. 211, 62 S.E.2d 297 (1950); Lowery v. Callahan, 210 S.C. 300, 42 S.E.2d 457 (1947).

20. See Dansby v. Buck, 373 P.2d 1 (1962).

21. See Clancy v. Pacenti, 15 Ill.App.2d 171, 145 N.E.2d 802 (1957); *contra* Wheeler v. White Rock Bottling Co., 229 Ore. 360, 366 P.2d 527 (1961).

22. *Contra,* Kennedy v. Bateman, 217 Ga. 458, 123 S.E.2d 656 (1961).

23. See Ricketts v. Pa. Ry., supra note 9, at 766.

> come in many phases of the law to be regarded as important; but it would leave the importance of that line of policy in any case to be illuminated by the facts relevant to the situation in that instant case. No elimination of the subjective value-judgment then; but an illumination by objective data of the basis and bearings of a subjective value-judgment. Insofar, a comparison of facts with facts and not words with words.[24]

Whether *Casey v. Procter* is viewed as the majority rule or not, it indicates far more than a mere trend in relaxing the objectivity test in the area of personal injury releases. It challenges the use of the mutual mistake theory as applied in personal injury releases.

> The rationale of the rule does not satisfactorily explain the case holdings. . . . While the releasee is ignorant of the existence of injuries, he is also indifferent to their existence. He seeks a discharge of liability in any event, and it cannot be said that he would not have entered into the release had he actually known of them.[25]

The case stresses the theory that personal injury release cases are different from other contracts. Moreover, that the 19th century security of the transaction theory, as an end in itself, is giving way to another socio-legal end—the significance of the mistake to the releasor.

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24. Llewellyn, *A Realistic Jurisprudence—The Next Step*, 30 COLUM.L.REV. 431, 446 (1930). See also 3 POUND, JURISPRUDENCE, 283-284 (1959).
25. Casey v. Proctor, *supra* note 6, at 587.