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Personal Injury Release and the Mistake of Fact

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NOTES

PERSONAL INJURY RELEASE AND THE MISTAKE OF FACT

I. INTRODUCTION

It has been stated that it is the policy of the law to encourage parties to enter into out-of-court settlements and releases.[1] In view of the large number of personal injury claims that arise each year, to discourage release settlements would delay litigation with unnecessary contests and increase taxpayers' expense in supporting additional courts. Thus, releases are encouraged irrespective of the parties reaching a beneficial or detrimental agreement, provided they are made in the absence of fraud, misrepresentation, or mistake.[2]

Personal injury releases differ from commercial releases, yet they possess the same basic requirements of a contract.[3] The personal injury release is based on a promise and is usually supported by a consideration. This may be dispensed with when the releases are mutual, or for a substituted performance.[4] The Statute of Frauds is also dispensed with[5] since it was intended to protect the defendant by ruling out insidious claims, and since it is an affirmative defense, to require the release to be in writing would protect the plaintiff instead.[6]

Because personal injury releases relate to human interests instead of commercial transactions they have developed as a special body of contract law.[7] Since damages are not always readily determinable, the diagnosis and prognosis of an injury may be inaccurate as to existence, seriousness, or

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1. Casey v. Proctor, 28 Cal. Rptr. 307, 378 P.2d 579, 587 (1963); Wheeler v. White Rock Bottling Co. of Ore., 229 Ore. 360, 366 P.2d 527, 530 (1961).

2. RESTATEMENT, RESTITUTION § 11 (3) (1937).

3. Matthews v. Atchinson T. & S. F. Ry., 129 P.2d 435 (Cal. Ct. App. 1942); RESTATEMENT, CONTRACTS §§ 385 (1), 402 (b) (c) (1932); RESTATEMENT, TORTS § 900, comment b (1939).

4. Havighurst, **Problems Concerning Settlement Agreements,** 53 Nw. U.L. Rev. 283, 284 (1958).

5. See N.D. Cent. Code § 9-13-01 (1961) where releases are deemed valid when supported by a consideration.

6. Havighurst, **supra** note 4, at 284.

7. Clancy v. Pacenti, 15 Ill. App. 2d 171, 145 N.E.2d 802, 805 (1957).

consequences of an injury. This makes the personal injury release lack the stability and finality of contract possessed by the commercial release.[8]

II. THE GENERAL RELEASE

The personal injury release is usually taken from a "form book", written in general terms, with all-inclusive coverage relating to all injuries; past, present, and future.[9] The majority view, which is the modern trend, tends to disregard the all-inclusive wording of the release[10] as well as the Parol Evidence Rule.[11] Instead, the courts look to see what the parties actually intended the release to cover. As stated in *Ruggles v. Selby*:[12]

> . . .most jurisdictions in this country — have refused to permit any form of words, no matter how general or all-encompassing, to foreclose the chancellor from scrutinizing the release and the attendant circumstances to be sure that it was fairly made and accurately reflected the intention of the parties.

Therefore, the true intent of the parties will be brought out to determine if unknown or unsuspected injuries had been anticipated.[13]

It is usually held that no relief will be granted to the releasor when the mistake pertains to the future rather than to the past or the present. Because hindsight is better than foresight, an individual should not be allowed to flaunt his contract on the basis that his recovery did not occur as he had expected.[14] The Nebraska court stated:

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8. Ricketts v. Pennsylvania R.R., 153 F.2d 757, 764 (2d Cir. 1946) (Concurring opinion); 9 WIGMORE, EVIDENCE § 2416 (3d ed. 1940). **Contra,** Wheeler v. White Rock Bottling Co. of Ore., 222 Ore. 360, 366 P.2d 527, 530 (1961).

9. **E.g.,** Casey v. Proctor, 28 Cal. Rptr. 307, 378 P.2d 579, 581 (1963); Ruggles v. Selby, 25 Ill. App. 2d 1, 165 N.E.2d 733, 741 (1960) ". . . a release is as all-inclusive in its terms as legal ingenunity can make it. . ."; Denton, v. Utley, 350 Mich. 332, 86 N.W.2d 537, 538, 540 (1957); See generally, L. Jones, LEGAL FORMS §§ 26.1-26.49 (10th ed. 1962); MODERN LEGAL FORMS §§ 7501-7630 (1957).

10. Dansby v. Buck, 92 Ariz. 1, 373 P.2d 1 (1962); Denton v. Utley, **supra** note 9; Simpson v. Omaha & C. B. St. Ry., 107 Neb. 779, 186 N.W. 1001 (1922).

11. Aronovitch v. Levy, 238 Minn. 237, 56 N.W.2d 570, 576 (1953).

12. 25 Ill. App. 2d 1, 165 N.E.2d 733, 739-740 (1960).

13. Dansby v. Buck, 92 Ariz. 1, 373 P.2d 1, 5 (1962); Reed v. Harvey, 253 Iowa 10, 110 N.W.2d 442 (1961); Larson v. Stowe, 228 Minn. 216, 36 N.W.2d 601, 603 (1949); 5 WILLISTON, CONTRACTS § 1551 (rev. ed. 1937).

14. De Witt v. Miami Transit Co., 95 So. 2d 898 (Fla. 1957); Oakley v.

> What we believe to be the true rule is that the mistake must relate to either a present or past fact or facts that are material to the contract of settlement, and not to an opinion as to future conditions as the result of present known facts. A mistake as to the future developments of a known injury is a matter of opinion, and is not one of fact, and is not such a mistake as will avoid a release; but, where the mistake is as to the extent of the injury due to unknown conditions or relates to injuries that were wholly unknown, then the release may be avoided . . .[15]

Although modern courts have taken a liberal view in rescinding personal injury releases they still impose a barrier on the releasor by requiring that he prove his case with clear and convincing evidence. This in turn reduces his chances of breaking the release.[16]

Releases are rescinded on the basis of fraud,[17] duress,[18] and mistake.[19] Of these three, mistake of fact is the most unpredictable and may be sub-divided into three categories: misrepresentation, unilateral mistake of fact, and mutual mistake of fact.

A mistake has been defined as "some unintentional act, omission, or error arising from ignorance, surprise, imposition, or misplaced confidence",[20] or as another author has stated, "It consists of doing something which, it afterwards turns out, is wrong".[21]

III. UNILATERAL MISTAKE

Unilateral mistake of fact occurs when the parties fail to reach a "meeting of the minds" as to the effect of the

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Duerbeck Co., 366 S.W.2d 430, 432 (Mo. 1963); Wheeler v. White Rock Bottling Co. of Ore., 229 Ore. 360, 366 P.2d 527 (1961); Corbett v. Bonney, 202 Va. 933, 121 S.E.2d 474 (1961); **But see,** Denton v. Utley, 350 Mich. 332, 86 N.W.2d 537, 540 (1957).

15. Simpson v. Omaha & C. B. St. Ry., 107 Neb. 779, 186 N.W. 1001, 1003 (1922); See also Goodman v. Missouri Pac. R.R., 312 S.W.2d 42 (Mo. 1958) where present fact was distinguished from future factual mistake; 3 CORBIN, CONTRACTS § 598 (1960).

16. Fraser v. Glass, 311 Ill. App. 336, 35 N.E.2d 953, 956 (1941); Patzke v. Chesapeake & O. R.R., 368 Mich. 190, 118 N.W.2d 286 (1962); Pope v. Bailey-Marsh Co., 29 N.D. 355, 151 N.W. 18 (1914), **criticized,** Gilmore v. Western Elec. Co., 42 N.D. 206, 172 N.W. 111, 113 (1919).

17. Raynale v. Yellow Cab Co., 115 Cal. App. 90, 300 Pac. 991 (1931).

18. Erck v. Bachand, 69 S.D. 330, 10 N.W.2d 518 (1943).

19. Matthews v. Atchison T. & S. F. Ry., 129 P.2d 435 (Cal. Ct. App. 1942).

20. BLACK, LAW DICTIONARY at 1152 (4th ed. 1951).

21. Patterson, **Equitable Relief For Unilateral Mistake,** 28 Col. L. Rev. 859, 860 (1928).

contract as held by one of the parties, and not by the other.[22] Most courts refuse recovery in the case of a unilateral mistake of fact,[23] however, the Michigan court reasoned that the distinction between unilateral and mutual mistake of fact should be eliminated. They held that recovery should not be allowed or disallowed on the basis of unilateral or mutual mistake of fact, but rather on all the circumstances leading to the release. [24]

In *Casey v. Proctor*,[25] where the releasor negotiated and signed a release for all damages, and later sought to rescind the release on the discovery of serious personal injury, the court said:

> . . . the failure of the plaintiff to recognize that the release included a discharge of liability for personal injuries has been held to be attributable to his own neglect. . . .

Thus, his failure to read, or to understand the release constitutes negligence and will not allow rescission.[26]

In another unilateral case, that of *Ricketts v. Pennsylvania R. R.*,[27] the court allowed a release to be broken for a non-negligent unilateral mistake of fact.[28] The releasor, having been misinformed as to the content of the release by his attorney, thought the release pertained only to back wages and tips. This misinformation, along with the accident-induced trauma, resulted in his failure to read the release. The concurring opinion in *Ricketts*, advocates that the distinction between unilateral and mutual mistake of fact be eliminated, because it complicates and confuses the issues. The opinion also holds that the personal injury release should be treated like "seamen releases" under the Federal Maritime Act,[29] where the burden of proving the validity of the release is on the releasee. Citing the United States Supreme

22. BLACK, LAW DICTIONARY at 1701 (4th ed. 1951).

23. Thomas v. Hollowell, 20 Ill. App. 2d 288, 155 N.E.2d 827 (1959); Gumberts v. Greenberg, 124 Ind. App. 138, 115 N.E.2d 504 (1953).

24. Denton v. Utley, 350 Mich. 332, 86 N.W.2d 537, 540 (1957). **Contra,** Doyle v. Teasdale, 263 Wis. 328, 57 N.W.2d 381 (1953); See Schoenfeld v. Buker, 262 Minn. 122, 114 N.W.2d 560 (1962).

25. 28 Cal. Rptr. 307, 378 P.2d 579, 583 (1963) (Court held for Plaintiff on other grounds).

26. **Id.** at 584.

27. 153 F.2d 757 (2d Cir. 1946) (Concurring opinion).

Court in *Garrett v. Moore McCormack*,[30] the concurring opinion also states:

> The Supreme Court . . . has broadly hinted that the courts should treat non-maritime employees, with respect to personal injury claims, just as they treat seamen.[31]

IV. MISREPRESENTATION OF FACT

A misrepresentation of fact is similar to a unilateral mistake of fact, except that the latter is usually the mistake of the releasor. The misrepresentation of fact is classically the result of information furnished to the releasor by the releasee or his agent, such as an insurance claim agent or a physician. Because the releasor relied upon this information in signing the release, he was subsequently damaged.[32] Courts have been liberal in voiding releases founded on such circumstances,[33] but again require that the misrepresentation must be material and not extrinsic or collateral to the issues.[34] The failure of the releasee or his agent to communicate information to the releasor, who has subsequently relied thereon, also has been a basis for rescission of the release.[35]

Under the preceding circumstances courts have been reluctant to refer to the misrepresentations as fraud. Since the misrepresentations were innocent in nature they are referred to as a constructive fraud.[36]

The key questions when examining releases involving possible misrepresentations of fact are: who made the misrepresentation; who did he represent; and was there

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28. WILLISTON, CONTRACTS § 95A (rev. ed. 1937).
29. 46 U.S.C. § 688 (1915, amend 1920); For cases hereunder, see annot. 46 U.S.C.A. § 688 n. 114-116 (1958), and n. 114 (Supp. 1963).
30. 317 U.S. 239, 248 (1942).
31. Ricketts v. Pennsylvania R.R., 153 F.2d 757, 760 (2d Cir. 1946).
32. Graham v. Atchison T. & S. F. Ry., 176 F.2d 819 (9th Cir. 1949); Great No. R.R. v. Fowler, 136 Fed. 118, 121 (9th Cir. 1905); see Jordan v. Brady Transfer & Storage Co., 226 Iowa 137, 284 N.W. 73 (1939); Denton v. Utley, 350 Mich. 332, 86 N.W.2d 537 (1957) (Dictum).
33. Atchison T. & S. F. Ry. v. Peterson, 34 Ariz. 292, 271 Pac. 406, 410 (1928); Bass v. Seaboard Air Line R.R., 20 Ga. 458, 53 S.E.2d 895 (1949).
34. Early v. Martin, 331 Ill. App. 55, 72 N.E.2d 562 (1947); Jordan v. Brady Transfer & Storage Co., 226 Iowa 137, 284 N.W. 73 (1939).
35. Denton v. Utley, 350 Mich. 332, 86 N.W.2d 540 (1957).
36. Atchison T. & S. F. Ry. v. Peterson, 34 Ariz. 292, 271 Pac. 406 (1928); Jacobson v. Chicago M. & St. P. R.R., 132 Minn. 181, 156 N.W. 251 (1916); Doyle v. Teasdale, 263 Wis. 328, 57 N.W.2d 381, 388 (1953); Havighurst, **The Effect Upon the Settlement of Mutual Mistakes as to Injuries,** 12 Def. L.J. 1, 8 (1963).

reliance on the misrepresentation. Courts are reluctant to rescind a release where the misrepresentation does not amount to a positive statement of fact or valued medical opinion, but instead is merely speculative.[37] If the misrepresentation to the releasor was made by his own agent or physician, rather than the releasee's agent or physician, the majority of the courts are hesitant to allow the release to be broken.[38] Some courts allow recovery where the misrepresentation was made by the releasor's physician and relied thereon by both parties.[39]

The releasor must also show he had a right to rely on the innocent misrepresentation and his reliance thereon was detrimental to him.[40]

V. MUTUAL MISTAKE OF FACT

Modern courts have been liberal in rescinding personal injury releases when the releases pertain to a genuine mutual mistake of fact.[41] It has been held that to grant a rescission for a mutual mistake of fact the mistake of the parties must pertain to past or present material facts and should not relate to facts pertaining to future events that amount to speculative opinion, prophesy, or "puffing".[42]

Mutual mistake of fact applies to the nature and extent of the injuries, irrespective of the wording of the release, assuming the parties did not intend the release to cover all known and unknown injuries.[43] Courts usually regard the

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37. Corbett v. Bonney, 202 Va. 933, 121 S.E.2d 476 (1961); See Reed v. Harvey, 253 Iowa 10, 110 N.W.2d 442 (1961).

38. De Witt v. Miami Transit Co., 95 So. 2d 898 (Fla. 1957); **Accord,** Doyle v. Teasdale, 263 Wis. 328, 57 N.W.2d 381, 388 (1953).

39. Doyle v. Teasdale, **supra** note 37, at 387; see also Jordan v. Brady Transfer & Storage Co., 226 Iowa 137, 284 N.W. 73, 82 (1939) where the court stated:

> Whether the doctor making the mistaken diagnosis was the doctor of the plaintiff, or the doctor of the defendant, is immaterial, if it was a good faith diagnosis, and was in good faith relied upon.

40. Kelley v. Salt Lake Transp. Co., 100 Utah 436, 116 P.2d 383, 385 (1941).

41. Casey v. Proctor, 28 Cal. Rptr. 307, 378 P.2d 579 (1963); Ruggles v. Selby, 25 Ill. App. 2d 1, 165 N.E.2d 733 (1960); Clancy v. Pacenti, 15 Ill. App. 2d 171, 145 N.E.2d 802 (1957); Denton v. Utley, 350 Mich. 332, 86 N.W.2d 537 (1957). **Contra,** Wheeler v. White Rock Bottling Co. of Ore., 229 Ore. 360, 366 P.2d 527 (1961).

42. Thomas v. Hollowell, 20 Ill. App. 2d 288, 155 N.E.2d 827 (1959); Schoenfeld v. Buker, 262 Minn. 122, 114 N.W.2d 560 (1962); **Accord,** Central of Ga. Ry. v. Ramsey, 151 So. 2d 725 (Ga. 1963).

43. Casey v. Proctor, 28 Cal. Rptr. 307, 378 P.2d 579 (1963); Thomas v. Hollowell, **supra** note 42; Larson v. Stowe, 228 Minn. 216, 36 N.W.2d 601 (1949); See Bollinger v. Randall, 184 Pa. Super. 644, 135 A.2d 802 (1957).

mutual mistake of fact as a basis of rescission, for they surmise that no individual would enter into a full and complete release of all claims unless he knew of all injuries and had been specifically compensated.[44]

In the case of *Clancy v. Pacenti*,[45] the releasor and releasee entered into the release on the basis of medical information furnished by both the releasor's and the releasee's physicians. The physicians at that time found that the releasor had suffered no injury. Later, when the releasor suffered severe back pain attributable to the original incident, the release was broken for mutual mistake of fact. The parties were unaware of the nature and extent of the injuries when the release was signed, and a mutual mistake of fact prevailed as to the existence of the injury. The court's reasoning was:

> . . . mistakes are easily made and the consequences are more serious than in any other of the affairs of man. A slight abrasion may mean nothing or it may lead to a malignancy.[46]

In *Dansby v. Buck*,[47] the releasor suffered a minor knee injury, which was later discovered to be a serious fracture. The release was voided for mutual mistake of fact because the mistake was to the nature and seriousness of the injury.[48]

In analyzing a mutual mistake of fact in the personal injury release, it is important to ascertain just what the parties had intended the release to cover, as well as what factual information was available to the parties.[49] What

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44. Great No. R.R. v. Reid, 245 Fed. 86, 89 (9th Cir. 1917); Aronovitch v. Levy, 238 Minn. 237, 56 N.W.2d 570 (1953); Larson v. Stowe, **supra** note 43.

45. 15 Ill. App. 2d 171, 145 N.E.2d 802 (1957).

46. **Id.** at 805; **Accord,** Denton v. Utley, 350 Mich. 332, 86 N.W.2d 537 (1957). **Contra,** Wheeler v. White Rock Bottling Co. of Ore., 209 Ore. 360, 366 P.2d 527 (1961).

47. 92 Ariz 1, 373 P.2d 1 (1962).

48. **Id.,** Clancy v. Pacenti, 15 Ill. App. 2d 171, 145 N.E.2d 802 (1957); Hall v. Storm Constr. Co., 368 Mich. 253, 118 N.W.2d 281 (1962).

49. Larson v. Stowe, 228 Minn. 216, 36 N.W.2d 601, 603 (1949), where the court reasoned:

> The existance of injuries of such a character that reasonable parties could not have entered into the agreement except through error is an element that weighs heavily against the finality of all-inclusive language.

But see Page v. Means, 192 F. Supp. 475, (N.D. W. Va. 1961); See also cases cited note 41 **supra.**

the parties intended when they entered into the release is usually a question of fact for the jury.[50]

VI. COLLATERAL CIRCUMSTANCES

Considered with the previously stated requirements of breaking releases for mistakes of fact is the question of liability of the parties as to the original injury. Many times releases are signed in favor of releasors to relieve the burden of "nuisance suits". Courts in scrutinizing a release try to determine who would be liable in the absence of a release and if any oppression would result if the release is permitted to stand.[51]

In addition to examining releases for mistakes, most courts consider certain collateral circumstances[52] which include: the nature of the injury;[53] the intelligence and bargaining power of the parties;[54] the adequacy of the consideration;[55] presence of counsel;[56] and the time lapse between the date of injury and the date of the release.[57] These elements are considered when examining the release to determine if it was obtained by "over-reaching", resulting in an improvident settlement. Juries have frequently found release settlements improvident, for after the release has been broken the jury awards have been much higher than the release settlements.[58]

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50. Dansby v. Buck, 92 Ariz. 1, 373 P.2d 1 (1962); Aronovitch v. Levy, 238 Minn. 237, 56 N.W.2d 570 (1953).

51. Dansby v. Buck, **supra** note 50, at 5; Hudson v. Thies, 35 Ill. App. 2d 189, 182 N.E.2d 760 (1962); Schoenfeld v. Buker, 262 Minn. 122, 114 N.W.2d 560 (1962).

52. Denton v. Utley, 350 Mich. 332, 86 N.W.2d 537, 543 (1957); Caudill v. Chatham Mfg. Co., 258 N.C. 99, 128 S.E.2d 128, 132-133 (1962); Havighurst, **supra** note 36, at 17.

53. Dansby v. Buck, 92 Ariz. 1, 373 P.2d 1. (1962); Clancy v. Pacenti, 15 Ill. App. 2d 171, 145 N.E.2d 802, 804 (1957).

54. Reed v. Harvey, 253 Iowa 10, 110 N.W.2d 442, 446 (1961); Denton v. Utley, 350 Mich. 332, 86 N.W.2d 537, 543 (1957).

55. Casey v. Proctor, 28 Cal. Rptr. 307, 378 P.2d 579, 583 (1963); Sullivan v. Elgin J. & E. Ry., 331 Ill. App. 613, 73 N.E.2d 632 (1947); Fraser v. Glass, 311 Ill. App. 336, 35 N.E.2d 953, 956 (1941).

56. Ricketts v. Pennsylvania R.R., 153 F.2d 757 (2d Cir. 1946); Schoenfeld v. Buker, 262 Minn. 122, 114 N.W.2d 560, 566 (1962).

57. Jordan v. Guerra, 144 P.2d 349, 353 (Cal. 1943); Hall v. Strom Constr. Co., 368 Mich. 253, 118 N.W.2d 281 (1962).

58. Ricketts v. Pennsylvania R.R., 153 F.2d 757 (2d Cir. 1946) (Release-$750, Jury award-$7,500); Ruggles v. Selby, 25 Ill. App. 2d 1, 165 N.E.2d 733 (1960) (Release-$900, Jury award-$38,000); Clancy v. Pacenti, 15 Ill. App. 2d 171, 145 N.E.2d 802 (1957) (Release-$150, Jury award-$22,500); Goodman v. Missouri Pac. R.R., 312 S.W.2d 42 (Mo. 1958) (Release-$455, Jury award-$13,000).

VII. NORTH DAKOTA STATUTES

North Dakota, in regulating releases, has provided by statute that releases may be broken for fraud, duress, and mistake.[59] The Code also provides that a general release does not apply to claims not known or suspected by the releasor at the time of settlement, which, if had been known would have materially affected his settlement.[60]

The North Dakota legislature has also provided that personal injury releases obtained within thirty days of the injury will be held voidable by the releasor if he should elect to do so within six months from the date of the injury.[61]

The North Dakota statute does not prevent the parties from entering into a release agreement, but does allow the injured person, or his representative, to hold the release voidable within the prescribed time limit. It is apparent that the statute is an attempt of the legislature to curb "ambulance chasing tactics" used by some unscrupulous attorneys and over-zealous claim agents. In the leading case of *Peterson v. Panovitz*,[62] the North Dakota Supreme Court stated:

> If contracts are so made they remain in force until rescinded. If fair and honest, such contracts probably will not be avoided; if avoided by the injured party, the rights of the parties thereto will be controlled by applicable legal principles.

VIII. JUDICAL ATTITUDES

Is is contended by the minority jurisdictions that rescission of personal injury releases for other than fraud and duress would open the "floodgates" to litigation.[63] They envisage the abandonment of the objective theory of contract, for no release would be final until the statute of limitations had run its course.[64]

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59. N.D. Cent Code § 9-09-02 (1961); See Clark v. Northern Pac. R.R., 36 N.D. 503, 162 N.W. 406 (1917) and Fedorenko v. Rudman, 71 N.W.2d 332 (N.D. 1955) for interpretation thereof.

60. N.D. Cent. Code § 9-13-02 (1961).

61. N.D. Cent. Code §§ 9-08-08, 09 (1961); See Peterson v. Panovitz, 62 N.D. 328, 243 N.W. 798 (1932) for interpretation thereof.

62. 62 N.D. 328, 243 N.W. 798, 801-802 (1932).

63. Reinhardt v. Wilbur, 30 N.J. Super. 502, 105 A.2d 415, 416-417 (1954); Wheeler v. White Rock Bottling Co. of Ore., 229 Ore. 360, 366 P.2d 527, 530 (1961).

64. Wheeler v. White Rock Bottling Co. of Ore., **supra** note 63, at 530.

> If the rule were otherwise, no release could be safely accepted in personal injury matters. The end result would be that all such claims would be forced into litigation. Such a conclusion would be directly contrary to the policy of the law favoring amicable settlement of disputes and the avoidance of litigation.[65]

Minority jursdictions further contend that since the parties are free to enter into their own agreements, the terms of the release should stand unless a patent ambiguity exists. They reason that the question of an improvident settlement should not be of paramount importance since the parties should accept the risk involved in a complete release and be bound accordingly.[66]

The majority of the courts, on the other hand, hold that releases should be broken for mistakes of fact because of the all-important human considerations involved in bodily injuries. As long as the particular injury was not contemplated or compensated for, it would be a gross injustice to hold the parties to the original agreement.[67]

It is contended that the objective theory of contract should give way when it is obvious that an injustice has resulted. The *Ricketts* case stated:

> Fortunately, most judges are too common-sensible to allow, for long, a passion for aesthetic elegance, or for the appearance of an abstract consistency, to bring about obviously unjust results.[68]

It is also contended that the release should fail for obvious injustices when the releasee is an insurance underwriter. They have been fully compensated to accept the risk to the

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65. De Witt v. Miami Transit Co., 95 So. 2d 898, 901 (Fla. 1957).

66. In De Witt v. Miami Transit Co., **Supra** note 65, at 901 the court stated:

> We confess that the situation . . . inspires our sympathies. However, we have no power to adjudicate . . . on emotional bases.

See Thomas v. Hollowell, 20 Ill. App. 2d 288, 155 N.E.2d 827 (1959); Bollinger v. Randall, 184 Pa. Super. 644, 135 A.2d 802 (1957).

67. Clancy v. Pacenti, 15 Ill. App. 2d 171, 145 N.E.2d 802, 805 (1957); Denton v. Utley, 350 Mich. 332, 86 N.W.2d 537, 541-543 (1957).

68. 153 F.2d 757, 764 (2d Cir. 1946).

69. Casey v. Proctor, 28 Cal. Rptr. 307, 378 P.2d 579, 587-588 (1963); Denton v. Utley, 350 Mich. 332, 86 N.W.2d 537, 541 (1957).

limits of the policy, therefore strict enforcement of releases would result in an unjust enrichment to the insurers by permitting evasion of liability they assumed under the policy.

The most over-riding policy consideration for breaking personal injury releases for mistakes of fact is the aspect of the social burden. Too many times the results of harsh, unfair, and improvident releases reveal themselves on the relief rolls of society, either as a support payment or as rehabilitation services.[70] Consequently, the courts have adopted an "unwritten policy" whereby the ultimate liability is preferably allowed to fall on private capital rather than public funds.

IX. CONCLUSION

It is elementary that mistakes of fact may arise in near infinite combinations when dealing with injuries and degenerations of the human anatomy. Because of the growing consideration of this human element it is easier to break a release for a mistake of fact today than it has been in the past, especially in the federal courts. Courts today are seeking out ways to circumvent normally valid releases when they discern that the intention of the parties has not been accurately reflected in the agreement. As stated in the *Denton* case: "We exist solely to do justice and it shall be done".[71]

If personal injury releases are to maintain a high degree of stability and finality it appears that it is the burden of the releasee to make certain that all necessary facts have been completely exposed to the parties, and that the actual intention of the parties is as all-inclusive as the wording of the release itself. Thus, where the release has been fairly and honestly obtained, the releasee should be afforded a high degree of protection. However, it seems apparent that the

70. Ruggles v. Selby, 25 Ill. App. 2d 733, 741 (1960) The court stated:

> . . . compelling need for immediate cash provides an economic compulsion that may lead to hasty and improvident settlements . . . by reason of the special interest of the public in preventing injured persons from unnecessarily becoming burdens upon society in consequence of their improvident settlement . . .

71. Denton v. Utley, 350 Mich. 332, 86 N.W.2d 537, 541 (1957).

liberal rescission of the personal injury release, where justifiable circumstances prevail, is the only acceptable manner of handling releases involving mistakes of fact.

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