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CONTRACTS IN IOWA REVISITED—MISTAKE

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"There must be a mistake!" This cry has been repeated many times in connection with contract matters under many circumstances. One recent example of such a cry is that contained in *Bales v. State Automobile Insurance Association,*[1] a 1957 Iowa case. In that case a "farm liability" insurance policy was issued to named insureds, containing a clause providing for payment of what the insured "may be legally obligated to pay as damages". The named insureds, and a neighbor, who was injured while working on a named insured's farm, apparently without fault of the named insured, brought suit to reform the policy to eliminate the legal obligation clause and to recover on the policy as reformed, claiming mutual mistake, neglect, oversight and inadvertence.[2] The court affirmed the trial court's refusal to decree reformation, relying on insufficiency of evidence as to mistake.

Without attempting to concern ourselves with definitions of mistake we may classify some typical functional patterns in which the plea of mistake may be uttered.[3] First, the party may state, when confronted with a piece of paper, that "Yes, we agreed to something but this isn't it." Second, the party may say, "Yes, I agreed, but if I'd known then what I know now I wouldn't have". Third, the party may assert, when confronted

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[1] —— Iowa ——, 81 N. W. 2d 474 (1957).

[2] Note that the injured party should be permitted in this law suit only if as a third party beneficiary of a contract he should be permitted to urge claims for mistake otherwise available to the promisee. See the discussion as to the reluctance of the Iowa court on this proposition in Hudson, *Contracts in Iowa Revisited—Third Party Beneficiaries and Assignments,* 6 DRAKE L. REV. 3, 17 (1956), and *Reeves v. Better Taste Popcorn Co.,* 246 Iowa 508, 66 N. W. 2d 893 (1954), note 5 *infra,* declining to pass on the question; RESTATEMENT § 506.

[3] Mental error may be a result not only of mistake, but also of fraud, duress and undue influence, but this article contains no extensive reference to the latter subjects. Extensive discussions of matters referred to in this article are contained in CORBIN, CONTRACTS (1950) and WILLISTON, CONTRACTS (Rev. ed. 1936) referred to subsequently simply as CORBIN and WILLISTON. RESTATEMENT OF CONTRACTS is referred to as RESTATEMENT. Pertinent sections under heading of Mistake are contained in RESTATEMENT §§ 20, 70, 71, 500-511; CORBIN §§ 103-107, 540, 541, 580, 597-621, 1292; WILLISTON §§ 90 A-E, 95, 95A, 1535-1600. See Ferson, *Fraud and Mistake in Contracts,* 25 U. OF CINCINNATI L. REV. 296 (1956).

with a piece of paper that he signed, and more particularly with certain clauses therein, "I didn't know that clause was there. I didn't agree to *that*!"

What has been the Iowa attitude toward these pleas? In view of the extensive collection of cases in the volume entitled IOWA ANNOTATIONS to the RESTATEMENT OF CONTRACTS, published in 1934, examination has been directed primarily to the cases decided since that volume.[4] Examination of the cases decided during this period, as well as the material in the volume referred to, does not give this writer an assurance of predictability. Various and sundry rules have been referred to in the opinions, but conflicting statements, alternative bases for decisions, and conflicting results in what seem to be similar situations contribute to this difficulty. In any event, in the belief that an analysis of what the court has done and said may be of some value and interest to someone, the following discussion is presented.

The most frequently reported case has been that of a party complaining in the fashion of the first cry mentioned above and asking in equity that the written document be reformed to conform to what he claims the agreement actually was.[5] Reformation

[4] This volume will be referred to subsequently as IOWA ANNOTATIONS. Earlier cases may be found under appropriate RESTATEMENT sections in that volume.

[5] During this period reformation was sought in the following cases: Massachusetts Bonding & Ins. Co. v. Lundy, 160 F. 2d 680 (8th Cir. 1947) (insurance agency agreement reformed in declaratory judgment action; trial court reversed); Freestone v. Prudential Ins. Co. of America, 139 F. Supp. 665 (N.D. Iowa 1956) (insurer in life policy may be granted, as defense to action on policy, reformation to correct clerical error as to amount, in spite of incontestable clause); Metropolitan Casualty Ins. Co. of New York v. Friedley, 79 F. Supp. 978 (N.D. Iowa 1948) (automobile liability policy reformed in declaratory judgment action to substitute minor, who bought car, for mother whose name was inserted because of representation of agent); Bales v. State Automobile Ins. Assn. —— Iowa ——, 81 N.W.2d 474 (1957) (reformation denied under circumstances outlined in first paragraph of text); Wallace v. Spray, —— Iowa ——, 78 N. W. 2d 406 (1956) (reformation granted on agreement for sale of grocery business so as to add in favor of vendor a clause for interest on contract payments; trial court reversed); Cataldo v. Compiano, 247 Iowa 999; 76 N. W. 2d 214, (1956) (reformation of deed to real property to conform to alleged "offer to buy" denied for evidentiary insufficiency; trial court reversed); Steere v. Green, 247 Iowa 1085, 77 N.W. 2d 924 (1956) (reformation of lease to remove option to extend denied because of insufficiency of evidence); Miller v. Martin, 246 Iowa 910, 70 N. W. 2d 141 (1955) (warranty deed reformed to be a mortgage; trial court reversed); Reeves v. Better Taste Popcorn Co., 246 Iowa 508, 66 N. W. 2d 853 (1954) (landlord sought reformation of contract between tenant and buyer for sale of popcorn so as to provide for payment to landlord for portion of popcorn; buyer claimed landlord, not being party to agreement, was not entitled to reformation; trial court granted reformation, Supreme Court approved payments to landlord from buyer, finding it was not necessary to pass on reformation; see discussion of this case in Hudson, *Contracts In Iowa Revisited—Third Party Beneficiary and Assignments*, 6 DRAKE L. REV. 3, 7 (1956)), Roder v. DeVries, 246 Iowa 841, 69 N. W. 2d 425 (1955) (reformation granted to vendor, in suit by vendee to rescind a real estate contract, so as to add clauses excepting certain railroad and highway right of way and clarifying taxes to be paid by vendor); Rodger v. Cummings, 244

will be granted if the writing does not correspond, because of

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Iowa 116, 56 N. W. 2d 12 (1952) (reformation denied, because of insufficiency of evidence, of deed so as to add reservation of life estate to plaintiff who had received conveyance from mother and conveyed half interest to brother); Sands v. Iowa Mutual Ins. Co., 244 Iowa 16, 55 N.W. 2d 572 (1952) (recovery on fire insurance policy permitted only for amount of $5500 where renewal listed amount of $5500 but premium for $7000, where there was no evidence insured knew of amount of added insurance agent issued until after loss; insurer asked for reformation but court thought not necessary to reform); Quinn v. Mutual Benefit Health and Accident Assn. of Omaha, 244 Iowa 6, 55 N. W. 2d 546 (1952) reformation, and judgment in accordance therewith, granted as to health and accident policy, to remove clause from policy excluding "female trouble"); Westercamp v. Smith, 239 Iowa 705, 31 N. W. 2d 347 (1948) (reformation of land contract to add necessary forfeiture clause denied because of insufficiency of evidence); McMinimee v. McMinimee, 238 Iowa 1286, 30 N. W. 2d 106 (1947) (reformation denied to widow of written confirmation of prior oral antenuptial contract because of insufficiency of evidence); In re Estate of Murdoch, 238 Iowa 898, 29 N.W. 2d 177 (1947) (in case involving argument of "joint tenancy" in bank account, one party in answer pleaded for reformation of bank deposit agreement because decedent signed through mistake; court pointed out that there was no prayer for reformation, that trial court did not mention it, that there was no mention in brief and argument and that there was no evidence to support the claim of mistake); Schmidt v. Schurke, 238 Iowa 121, 25 N.W. 2nd 876 (1947) (reformation of deed requested by grantee, in action against him, to change terms of certain payments provided for in deed; court decided parol evidence admissible to justify reformation but principal argument in favor of decision for grantee seems to be laches by grantor and representative); Lankhorst v. Union Fire Ins. Co., 236 Iowa 838, 20 N.W. 2d 14 (1945) (reformation, and judgment in accordance therewith, granted on insurance policy of unoccupied moving picture theaters to change six month unoccupancy clause to one year); Olsen v. Olsen, 236 Iowa 313 18 N. W. 2d 602 (1945) (reformation granted, through action to quiet title, of deed by wife to husband, plaintiff, so as to include some property previously conveyed to wife by husband when ill on oral promise of wife to reconvey when he became well; later deed did not include this property); Trustees of The Synod of The Reformed Presbyterian Church of North America v. Horel, 235 Iowa 281, 16 N. W. 2d 209 (1944) (reformation denied of testamentary document so as to effectuate alleged intention of decedent to make gift); Booth v. Central States Mutual Ins. Assn., 235 Iowa 5, 15 N. W. 2d 893 (1944) (reformation granted in default judgment of fire insurance coverage on truck so as to correctly describe truck; insufficient reason to set aside default); Mortenson v. Hawkeye Casualty Co., 234 Iowa 430, 12 N. W. 2d 823 (1944) (reformation granted in action in equity to enforce collection upon policy of casualty insurance covering cars sent by insured in charge of people who paid a small fee so as to remove clause in policy as issued which excluded carrying persons for a charge; no mention is made in the opinion of it but evidence would seem to have supported action on an oral contract of insurance); Amato v. Shebek, 233 Iowa 1088, 11 N. W. 2d 387 (1943) (in action by lessor to cancel a written lease, court affirmed action of agent of lessor in adding to written lease drawn by attorney description of house on property adjacent to store property described in written lease, on theory of mutual mistake in executing lease and also on subsequent authority granted by lessor to change lease); Jorgensen v. Allied Mutual Casualty Co., 232 Iowa 156, 5 N. W. 2d 167 (1942) (reformation and judgment on policy as reformed granted as to policy of fire insurance on trucks to change from three months policy to year policy where insured never saw policy until after loss, but policy was in hands of local agent); Allemang v. White, 230 Iowa 526, 298 N.W. 658 (1949) (reformation denied, because of insufficiency of evidence, of contract for sale of real estate so as to add agreement to quiet title in manner to satisfy

fraud or mutual mistake, to what the agreement of the parties

a loan company); Lovejoy v. Euclid Ave. Methodist Episcopal Church, 229 Iowa 803, 294 N.W. 911 (1940) (in an action on notes signed by defendants, officials of church, reformation denied because of insufficiency of evidence of mutual mistake, so as to add to signature words "as Trustee"; trial court reversed); In re Estate of Brooks, 229 Iowa 485, 294 N. W. 735 (1940) (deed to property mortgage on other property reformed, so as to substitute name of husband, decedent, for wife, because of alleged coercion and undue influence); Union Properties, Inc. v. Grant, 229 Iowa 303, 294 N. W. 312 (1940) (In action to recover on a promissory note from grantee in deed with clause assuming note, court found defendant had met burden ("not light") of showing clause was mistakenly inserted); Haynie v. May, 228 Iowa 302, 291 N. W. 404 (1940) (reformation granted of deed to provide right of way over grantor's land to highway so as to add clause to remove accretions to ten foot strip; no consideration found); Knott v. The Lincoln National Life Ins. Co., 228 Iowa 143, 290 N. W. 91 (1940) (insurer denied, because of insufficiency of evidence of mutual mistake, reformation of life policy so as to substitute a shorter extended insurance table in policy issued in exchange of policies); Wall v. Mutual Life Ins. Co of N. Y., 228 Iowa 119, 289 N. W. 901 (1940) (reformation denied, because of insufficiency of evidence, of life insurance policy, so as to change date on policy for its effect on "grace period" where policy not effective until some time after date stated because of clauses about policy being ineffective until delivery and payment of premium; insurer prevailed; trial court reversed); Rainsbarger v. Mutual Benefit Health & Accident Assn., 227 Iowa 1076, 289 N.W. 908 (1940) (reformation denied of accident insurance policy to change effective date to date prior to injury and prior to date provided in application and policy because of lack of proof of authority of agent to do so); Beerman v. Beerman, 225 Iowa 48, 279 N.W. 449, 118 A.L.R. 997 (1938) (mortgagee of land, seeking in partition action to reform mortgage to change description from Range 25 to Range 26 because of mutual mistake, prevented from asserting such claim because of statute of limitations (Iowa Code 1954 §§ 614.1 (5), 614.4); burden of proving and pleading nondiscovery of mistake so as to toll statute is on party relying upon mistake); Winkler v. Tiefenthaler, 225 Iowa 180, 279 N. W. 436 (1938) (reformation granted, in foreclosure action after sale, of mortgage so as to change description of land; action effective against subsequent mortgagees because not innocent; petition filed within five years of discovery of mistake of mortgage drafted in attorney's office); Koch v. Abramson, 223 Iowa 1356, 275 N. W. 58 (1937) (reformation granted to employer as defense to action for wages so as to change terms of letter sent by timekeeper, mistakenly setting forth terms of employment contract; tried in equity on stipulation); Sisters of Mercy v. Lightner, 223 Iowa 1049, 274 N. W. 86 (1937) (reformation denied of written contract, under which defendant was to build grotto for plaintiff, so as to change general restriction on disposing of property to restriction on disposing during defendant's life, because of court's opinion there would still be an invalid restraint on alienation); Conrad v. Farmers Mutual Hail Insurance Assn., 223 Iowa 828, 273 N. W. 913 (1937) (reformation granted of settlement agreement as to hail loss where second hail loss four days after settlement, so as to remove words of cancellation of policy); Timmer v. New York Life Ins. Co., 222 Iowa 1193, 270 N. W. 421, 111 A. L. R. 1412 (1936) (reformation for beneficiary of life insurance policy denied so as to change date of policy because of insufficiency of evidence as to any different agreement in spite of argument of fraud in that even though date is specified in application, policy was not really in effect until later date); Olin Cemetery Association v. Citizens Savings Bank, 222 Iowa 1053, 270 N. W. 455 (1936) (reformation granted in part and denied in part for insufficiency of evidence as to terms of bond given by bank to secure funds of plaintiff); Foote v. Soukup, 221 Iowa 1218, 266 N. W. 904 (1936) (deed to son-in-law reformed so as to add reservation of life estate in grantors; trial court reversed on "weight of evidence"; see note 8, et seq. *infra* and accompanying text on quantity of proof); Haldeman v.

was, and parol evidence is admissible to prove what the agreement was.[6] A separate action for reformation preceding a suit on the

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Addison, 221 Iowa 218, 265 N. W. 358 (1936) (even assuming trial court correct in reforming note to show officer of unincorporated association signed in representative capacity, he is still personally liable); Milligan, Inc. v. Lott, 220 Iowa 1043, 263 N. W. 262 (1935) (reformation granted as defense to action for commission for sale of real estate so as to add phrase excluding payment where property sold to present tenant; trial court reversed); Snell v. Kresge Co., 220 Iowa 837, 263 N. W. 493 (1935) (reformation denied of implied contract as to payment for heat supplied to building); Green v. Phoenix Insurance Co., 218 Iowa 1131, 253 N. W. 36 (1934) (reformation granted, and policy as reformed enforced, of fire insurance policy so as to remove clause against change of title to property even after previous appeal in 215 Iowa 1220, 247 N. W. 660 (1933) failed for insured on waiver theory and even though complaint was amended for reformation after Statute of Limitations expired); Palmas v. Tankersley, 218 Iowa 416, 255 N. W. 514 (1934) (in suit for reformation of note so as to change name of payee and for judgment thereon, court held this was an in personam action for which proper venue was residence of defendants rather than in county where made payable; see IOWA CODE §§ 616.7, 616.17 (1954)); Runciman v. Bailey, 217 Iowa 1034, 250 N. W. 630 (1933) (reformation denied, because of insufficiency of evidence, of contract by holder of sheriff's certificate to sell to mortgagor so as to add clause for taking back a mortgage; trial court reversed); Sargent v. American Ins. Co., 217 Iowa 225, 251 N. W. 71 (1933) (reformation denied of insurance policy to add coverage for explosion because no pleading clause was omitted because of fraud, accident or mistake; trial court reversed; see subsequent opinion granting reformation in 218 Iowa 430, 253 N. W. 613 (1934)); Scott v. Menin, 216 Iowa 1211, 250 N. W. 457 (1933) (reformation denied of bill of sale to personal property so as to convert to chattel mortgage because of insufficiency of evidence; must be more than preponderance); In re Estate of Divelbess, 216 Iowa 1296, 249 N. W. 260 (1933) (reformation denied of note so as to supply missing signature of payees allegedly promised); Stillman v. Slifer Savings Bank, 216 Iowa 957, 249 N. W. 230 (1933) (reformation denied because of insufficiency of evidence and negligence in failing to read lease so as to change terms as to duration; trial court reversed); Andrew v. Naglestad, 216 Iowa 248, 249 N. W. 131 (1933) (reformation granted of deed so as to remove clause as to personal assumption of debt); Fischer v. Bockenstedt, 215 Iowa 319, 245 N. W. 352 (1932) (reformation denied because of insufficiency of evidence and negligence in not reading contract for sale of personal property); Commercial State Bank v. Ireland, 215 Iowa 241, 245 N. W. 224 (1932) (reformation granted of mortgage to remove dragnet clause).

[6] See numerous cases in note 5, *supra*, granting relief; CORBIN § 614; WILLISTON § 1547; RESTATEMENT §§ 504, 491. Particular mention of the admissibility of parol evidence is made in Schmidt v. Schurke, 238 Iowa 121, 25 N. W. 2d 876 (1947); Andrew v. Naglestad, 216 Iowa 248, 249 N. W. 131 (1933); Olsen v. Olsen, 236 Iowa 313, 18 N. W. 2d 602 (1945); CORBIN § 580; WILLISTON § 1552. The strength of the parol evidence rule, however, is indicated in the case of *City of Des Moines v. City of West Des Moines*, 244 Iowa 310, 56 N. W. 2nd 904 (1953) where the court, on a motion for judgment on the pleadings, refused to grant relief for the plaintiff city so as to limit the terms of a contract for use by defendant city of plaintiff's sanitary sewer system to the boundaries of defendant city in existence at time of execution of contract, even though plaintiff pleaded that was the parties' intention, understanding and agreement, because the plaintiff did not plead fraud, duress or mistake, or any other reason for noninclusion of this agreement in the contract. Also, parol evidence was held not legally available unless there was a showing of fraud, duress or mistake: to show a different intent than the survivorship interests indicated in debentures in *In re Miller's Estate*, —— Iowa ——, 79 N. W. 2d 315 (1956) or in "joint bank accounts" in

agreement as reformed should not be necessary.[7]

Although relief may be granted for mistake of this type by reformation, or rescission where appropriate, the person seeking assistance may fail because of lack of evidentiary support. Something more than a mere preponderance is needed.[8] Occasionally in the Iowa cases the standard of proof has been stated in terms of "beyond a reasonable doubt".[9] The opinion in the

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Hill v. Havens, 242 Iowa 920, 48 N. W. 2d 870 (1951), *In re Estate* of Murdoch, 238 Iowa 898, 29 N. W. 2d 177 (1947), and *McManus v. Keokuk Savings Bank & Trust Co.*, 239 Iowa 1105, 33 N. W. 2d 410 (1948); to show intention that under a trust agreement and deed certain debts should be paid first in *Furleigh v. Dawson*, 245 Iowa 359, 62 N. W. 2d 174 (1954); to show alleged understanding a "demand" note was not to be then due and payable in *Stebens v. Wilkinson*, —— Iowa ——, 87 N. W. 2d 16 (1957); to show an alleged express oral warranty as to safe condition of a rented power mower where there was a written agreement excluding such liability, in *Weik v. Ace Rents, Inc.*, —— Iowa ——, 87 N. W. 2d 314 (1958). Query, in these cases, if an argument could not be made in favor of reformation on the theory that the writing did not accurately describe the agreements of the parties? The opinions do not suggest that any such argument of reformation was made. See also discussion, *infra*, about mistake of law, body and note 42, *et seq.*

Reformation granted, after Tax Court proceedings, in an Iowa state court purporting retroactively to reform a trust deed so as to change to three separate trust deeds, was held ineffective to change federal income tax consequences for the prior years involved in the Tax Court proceedings: M. T. Straight's Trust v. Commissioner of Internal Revenue, 245 F. 2d 327 (8th Cir. 1957).

[7]Metropolitan Casualty Co. v. Friedley, 79 F. Supp. 978 (N. D. Iowa 1948) (declaratory judgment); Olsen v. Olsen, 236 Iowa 313, 18 N. W. 2d 602 (1945) (reformation claim handled in action to quiet title); numerous cases in note 5, *supra*, which were actions to reform insurance policies and to recover on policy as reformed; RESTATEMENT § 507; CORBIN § 615; WILLISTON §§ 1598, 1955. See, however, discussion in IOWA ANNOTATIONS, § 507-II, that Iowa cases refuse to give effect to instrument as though reformed when sued upon in an action at law.

Reformation may not be necessary, even if a mistake has been made, if intent of parties is ascertainable from writing: Sands v. Iowa Mutual Ins. Co., 244 Iowa 16, 55 N. W. 2d 572 (1952) (note 5, *supra*); Fucaloro v. Standard Surety & Cas Co., 225 Iowa 437, 280 N. W. 605 (1938) (unnecessary to reform automobile liability policy to correct motor and serial numbers of car when it is otherwise sufficiently identified).

[8] CORBIN § 615; WILLISTON § 1597; RESTATEMENT § 511. It was pointed out in *Rodgers v. Cummings*, 244 Iowa 116, 56 N. W. 2d 12 (1952) that the quantum of proof applies both to the mistake and to what was really intended.

[9] Miller v. Martin, 246 Iowa 910, 70 N. W. 2d 141 (1955) ("The clear and convincing proof required in these cases means merely that the proof is so established that no reasonable uncertainty or doubt as to the truth thereof confronts the trier of fact"); Westercamp v. Smith, 239 Iowa 705, 31 N. W. 2d 347 (1948) ("clear, satisfactory and free from reasonable doubt"); Olin Cemetery Association v. Citizens Savings Bank, 222 Iowa 1053, 270 N. W. 455, 112 A.L.R. 1205 (1936) ("clear, satisfactory, and convincing and free from reasonable doubt"); Fischer v. Bockenstedt, 215 Iowa 319, 245 N.W. 352 (1932) (the opinion itself states only that the burden is a heavy one and cites cases, in some of which the phrase, reasonable doubt, is used; in the headnote to the official Iowa report, however, it states the burden in terms of "substantially beyond a reasonable doubt"); McMinimee v. McMinimee 238 Iowa 1286, 30 N.W. 2d 106 (1947) (without citation of cases referred to the various descriptions of "clear and satisfactory", "Clear, full, and decisive", "clear, convincing, and satisfactory", "clear, convincing, satis-

recent case of *Cataldo v. Compiano*[10] discussed the matter, and concluded, after reference to some prior Iowa cases phrasing it differently, that the proper phrasing of the standard is "clear, satisfactory, and convincing". It is almost impossible to discern if the extraordinarily heavy burden has actually resulted in a difference in the decision of the various cases. In any event, though, there have been many cases in which the court thought the evidence was insufficient, even to the extent of reversing a trial court. [11]

Negligence of the mistaken party, usually in not reading the document, has sometimes been stated as an objection to granting of a decree of reformation. However, there is no case decided during this period denying reformation on this basis alone. In the cases where negligence was stated to be a basis for denying relief, there was also stated to be insufficient evidence of the mistake.[12] In other cases, the rule as to negligence was acknowledged, but the court found the party was not negligent. For instance in *Quinn v. Mutual Benefit Health & Accident Association,*[13] where the court thought the evidence was strong that the plaintiff desired a health and accident policy which did not exclude "female troubles" and plaintiff did not read the policy or the application, the court granted reformation, and stated, without further explanation, that she was not negligent in not reading. Also, in *Wallace v. Spray,*[14] where the seller was granted reformation of a written agreement for lease with option to buy by adding a pro-

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factory and free from reasonable doubt", "more than mere preponderance", and "beyond a reasonable doubt").

[10] 247 Iowa 999, 76 N. W. 2d 214 (1956). The statement in this case was held in *Lungren v. Lamoni Provision Co.,* —— Iowa ——, 82 N. W. 2d 755 (1957) not to apply to an action for damages for fraudulent misrepresentation.

[11] See the numerous cases referred to in note 5, *supra,* denying relief for the reason of insufficiency of evidence.

[12] Stillman v. Slifer Savings Bank, 216 Iowa 957, 249 N. W. 230 (1933) (lease); Fischer v. Bockenstedt, 215 Iowa 319, 245 N.W. 352 (1932) (contract for sale of personal property; the earlier Iowa cases cited in this opinion are also explainable on the basis that there was insufficient proof).

[13] 244 Iowa 6, 55 N. W. 2d 546 (1952).

[14] —— Iowa ——, 78 N. W. 2d 406 (1956). It is worthy of note that the parties apparently consulted a lawyer who drafted the document but litigation still resulted, contrary to the suggestion to "see your lawyer" in *Roder v. DeVries,* 246 Iowa 841, 843, 69 N.W. 2d 425, 427 (1955) where the opinion points to the drafting by one not a lawyer as a reason for litigation:

> "The contract might have been much more skillfully drawn. The parties, apparently by agreement, went to the office of an individual described as being in the abstract, insurance and real estate business in Sibley, and at their request he drew the contract. This attempt to economize in time, or money, or both, met with the fate which so often overtakes the efforts of those who disdain the services of lawyers trained in the preparation of important papers and giving skilled advice. The contract which was prepared here, as the trial court found, did not express the true agreement of the parties, and has led to prolonged and costly litigation."

vision for interest on the payments made, the court stated, in pertinent part:

> "Appellee pleads and the trial court held that appellant was estopped by his failure to read the agreement before he signed it. Such is the general rule. . . . However, such has its exceptions . . . In Snyder v. Ives, supra, 42 Iowa, at page 162, it is said: 'The law requires only reasonable diligence and requires this to the end that culpable negligence may not be encouraged'. We find no negligence, under this record, of such a nature to work an estoppel against appellant . . . [15] To hold that by the reference to six per cent interest being omitted from the agreement, it is not a part of the contract, notwithstanding the express understanding of the parties to the contrary, would render the power of reformation that is lodged in a court of equity impotent and unavailing. Equity will not countenance that which in effect would amount to a legal fraud."[16]

It is submitted that the court should completely abandon any reference to negligence as an independent basis for denying

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[15] The words from here on are an almost exact paraphrase of language in Commercial State Bank of Independence v. Ireland, 215 Iowa 241, 245, 245 N. W. 224, 225 (1932). In that case, involving attempt to remove dragnet clause from mortgage, the court merely stated that "the peculiar facts bring it outside of the general rule." The facts referred to apparently were those contained in conflicting statements by wife mortgagor as to whether she had opportunity to read, and in a statement by the husband mortgagor that he started to read but read no further when the representative for bank mortgagee told him it was in usual form and took it from him.

In several other cases relief was granted after a conclusion that the conduct of failing to read was not negligent. In *Conrad v. Farmers Mutual Hail Insurance Assn.*, 223 Iowa 828, 834, 273 N. W. 913, 917 (1937), involving an attempt to reform settlement agreement for hail loss so as to remove a clause as to cancellation of policy, the opinion, in support of granting reformation even though the insured did not read the settlement, makes the following interesting statement:

> "This all took place on a busy day of threshing at the Conrad farm. Conrad was attending to taking the threshed grain away from the machine when the adjusters arrived that morning. He was quick to inform them that he had no time to talk about settlement or arbitration. The writer of this opinion spent his entire youth on the farm, and even during the thirty-five years in which he has engaged in the practice of law, has seldom failed to take time out to at least look on at threshing time out on the home farm. He is therefore quite appreciative of the situation in which Mr. Conrad found himself in attempting to take the grain from the threshing machine, and at the same time adequately look after his interests in adjusting an insurance loss with three alert insurance adjusters who had nothing to do except to sit in the shade and get in a word edgewise with Mr. Conrad as he was able to momentarily relax his attention on the task before him."

Lankhorst v. Union Fire Ins. Co., 236 Iowa 838, 20 N.W. 2d 14 (1945) quotes from a prior opinion, with apparent approval, that failure to read an application for insurance, or the policy, is not negligence. Passing reference is made in *Olsen v. Olsen*, 236 Iowa 313, 18 N. W. 2d 602 (1945), granting reformation of deed so as to add other property, to the fact that the party seeking reformation of the deed could not read or write except to sign his name.

[16] —— Iowa ——, 78 N. W. 2d 406, 410 (1956).

relief[17] and adopt the position, accepted by the Restatement of Contracts,[18] that negligence does not preclude relief. Admittedly the courts are troubled by the prospect of destroying the integrity of a written document and making a contract for the parties which they perhaps did not intend.[19] However, if the document does not represent the agreement of the parties, justice to all would not seem to require denial of relief just because of negligence or because of some assumed magical or rubric quality of the writing. Reference to negligence or degrees of negligence appears merely to introduce another imponderable of little value in avoiding making a contract for the parties. Requirement of the extreme standard of proof of mistake should be sufficient,[20] unless, perhaps, there is some definite change of position because of the writing.

Although there must be an agreement, or the parties must have the same intention, before the writing[21] may be reformed, this does not require that there has been a prior enforceable contract; reformation is thus not limited solely to the traditional scrivener's mistake.[22] This proposition was illustrated most vividly during this period in *Quinn v. Mutual Benefit Health & Acci-*

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17 No exhaustive analysis of cases included in the IOWA ANNOTATIONS has been attempted. However, from the discussion in § 508 of that volume, it would seem that the earlier cases referring to negligence are also explainable on an independent basis.

18 § 508.

19 A strong expression of this philosophy is contained in *Fischer v. Bockenstedt*, 215 Iowa 319, 323, 245 N. W. 352, 353 (1932) where it was stated:

> "The parties seeking the reformation must be free from negligence . . . . There has been no relaxation of the rule of these cases, and there should be none. Otherwise, the very purpose and advantage of a written contract would be defeated as we stated in Turner v. Ballou, 201 Iowa 468, 475, 205 N. W. 746 (1925): 'As a precedent, such reformation would be a dangerous one, and the breeder of unlimited litigation'."

20 See CORBIN, § 606; WILLISTON § 1596.

21 Reformation is limited to writings: Snell v. Kresge Co., 220 Iowa 837, 263 N. W. 493 (1935) (reformation was requested but denied on alleged implied contract for heat); In re Estate of Divelbess, 216 Iowa 1296, 249 N. W. 260 (1933) (court refused to grant reformation of note allegedly signed by two persons payable to "ourselves", but indorsed only by one, so as to supply missing signature, allegedly orally promised); see CORBIN § 614; WILLISTON §§ 1547, 1549, IOWA ANNOTATIONS § 504-E. In one case the court stated it was assuming there was power to reform evidentiary instruments: McMinimee v. McMinimee, 238 Iowa 1286, 30 N. W. 2d 106 (1947) (widow seeking to reform, if necessary, a subsequent confirmation of a prior oral antenuptial contract, an agreement within the Statute of Frauds; the court found insufficient evidence of mistake); see CORBIN § 335 *et seq.*; WILLISTON § 1552 *et seq.*; RESTATEMENT § 509. In *Olsen v. Olsen*, 236 Iowa 313, 18 N. W. 2d 602 (1945) the court granted reformation of a deed by wife, now deceased, to husband plaintiff, so as to include some property previously conveyed by husband when ill, to wife, who allegedly promised to reconvey when he became well. The court does not discuss the Statute of Frauds problem, which must necessarily be involved.

22 CORBIN § 614; WILLISTON § 1548; RESTATEMENT § 504, Comment b.

dent Assn.,[23] referred to above on the question of negligence in failing to read the policy, which, when received from the home office of the insurance company, had an exclusion clause in it which the agent had stated would not be in it. There was no contention that the agent had authority to issue a policy. The court reformed the policy and permitted recovery on the policy as reformed. The court in support of its conclusion merely stated that the agent was the "eyes of the company" and that: "She thought she was getting the protection she desired; Sullivan (the agent) thought so. Under the record she was entitled to it."[24] A similar case was cited in the *Quinn* case but distinguished. The case was *Rainsbarger v. Mutual Benefit Health & Accident Assn.*[25] in which the plaintiff asked for reformation of a policy, issued after injury to plaintiff, which contained a clause that the policy was not effective until acceptance by insured; the application, before injury, had referred to delivery to, and acceptance by, the insured while in good health. The reformation request was apparently based on a contention that the agent had stated the policy would be in effect on a date prior to injury, contrary to the application statement. In the *Rainsbarger* case the court rejected the argument of reformation, going off on a lack of authority of the agent to vary the application. The case is distinguished in the *Quinn* case by stating that it did not concern the kind of insurance wanted and that there the plaintiff was injured before the policy was issued. It is believed that the cases may not be so easily distinguished. Each involved an alleged understanding with an agent as to terms of writing; each involved a situation apparently of no authority to issue policies; each involved reliance upon the agent; each involved extent of insurance coverage; in the *Rainsbarger* case relief was denied; in the *Quinn* case it was granted. If there may be reformation even if there has been no prior enforceable agreement before the writing is drawn up, what difference should it make that the policy was actually issued after the injury? Several other insurance cases during this period were in accord with the philosophy of the *Quinn* case in granting reformation even though there was no showing that the agent was any more than a soliciting agent.[26]

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[23] 244 Iowa 6, 55 N. W. 2d 546 (1952).

[24] 244 Iowa 6, 15, 55 N. W. 2d 546, 551 (1952).

[25] 227 Iowa 1076, 289 N. W. 908 (1940).

[26] Lankhorst v. Union Fire Insurance Co., 236 Iowa 838, 20 N. W. 2d 14 (1945); Jorgensen v. Allied Mutual Casualty Co., 232 Iowa 156, 5 N. W. 2d 167 (1942); Green v. Phoenix Insurance Co., 218 Iowa 1131, 253 N. W. 36 (1934); for short statement of facts of these cases see note 5, *supra;* compare the *Green* case with *Garton v. Phoenix Ins. Co.*, 215 Iowa 1213, 247 N. W. 639 (1933) where reformation was apparently not requested and court affirmed action of trial court in refusing to admit evidence that soliciting agent agreed with insured to get policy covering moving of property to another location contrary to standard clause in policy and insured read neither application nor policy until after fire.

Mistake is asserted, not only as a basis for reformation of a written document, as discussed above, but also as a basis for avoidance of an agreement, with the party saying, "If I'd known then what I know now I wouldn't have agreed". It is stated that although relief may be granted if there is mutual mistake as to a material fact assumed by both as a basis for entering into the transaction, avoidance or rescission will not be granted for a mistake which is simply unilateral, at least in the absence of fraud or knowledge by the other party.[27] Such a position has been

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The same result of imposing liability upon the insurance company was reached by route of estoppel instead of by reformation in *Hully v. Aluminum Co. of America*, 143 F. Supp. 508 (S.D. Iowa 1956), affirmed in 245 F. 2d 1 (8th Cir. 1957) without discussion of reformation argument. Here, a contractor, obligated by contract to indemnify an owner for damage claims in connection with the work and to provide certain insurance coverage, applied for policies to cover this liability and was issued by an agent of the company one policy covering the owner and one policy covering the contractor which contained a clause excluding contractual indemnity, apparently at least partly because the agent thought mistakenly the liability of the contractor was covered completely by other clauses. The court, in granting relief against the insurance company, stated reformation was not available because there was no mutual intent or agreement of the parties to secure coverage for indemnity liability risk. That conclusion seems inconsistent with the stated facts. The intent apparently was to obtain complete coverage; the mistake was as to proper language to express that intent which should be just as much a basis for reformation as in the *Quinn* case, *supra* note 5. See CORBIN § 619 on mistake as to legal effect of words used in contract and the discussion, *infra*, note 42 *et seq.* and accompanying text, that, even if treated as mistake of law, there should be relief for this type of mistake. The court, however, held against the insurance company on the estoppel theory of a misrepresented fact. This seems to be really enforcing a promise of the agent that a certain type of policy will issue on the theory of "promissory estoppel", on detrimental reliance rather than on a theory of misrepresentation of fact. See Hudson, *Contracts in Iowa Revisited—The Bargain Element*, 5 DRAKE L. REV. 67, 76 (1956).

[27] RESTATEMENT §§ 502, 503; WILLISTON § 1557 *et seq.*; CORBIN §§ 597, 600, *et seq.* Relief will not be granted, of course, if there is insufficient evidence of the mistake as in *In re Humphrey's Estate*, 226 Iowa 1230, 286 N. W. 488 (1939) (argument of mistake as to extent of liabilities and proper credits when notes were signed), and in *Thomas v. Central States Electric Co.*, 217 Iowa 899, 251 N. W. 616 (1933) (suit to recover claimed excess payments for heat; court found no evidence to suggest mistake by defendant in manner of computing square feet of radiation). Relief has also been denied because of lack of showing of a different result without the mistake: First National Bank v. Clay, 231 Iowa 703, 2 N. W. 2d 85 (1942) (suit to set aside arbitration award as to the value of capital stock in corporation where plaintiff refused to vote for corporate charter on grounds of mistake as to number of shares outstanding).

There are several cases discussing the power of the Industrial Commissioner to reopen a case after an approved memorandum of agreement except for mutual mistake or fraud, using contract analogies to solve certain problems under that law: Sheker v. Sheker, 232 Iowa 429, 4 N.W. 2d 250 (1942); Dietz v. Pioneer Hi-Bred Corn Co., 231 Iowa 220, 1 N. W. 2d 235 (1941); Tebbs v. Denmark Light & Tel. Co., 230 Iowa 1173, 300 N. W. 328 (1943); Dietz v. Farmers Elevator Co., 229 Iowa 335, 294 N. W. 571 (1940); Fickbohm v. Ryal Miller Chevrolet Co., 228 Iowa 919, 292 N. W. 801 (1940); Trenhaile v. Quaker Oats Co., 228 Iowa 711, 292 N. W. 799 (1940). It is not clear whether the result is based on the unilateral character of mistake, negligence, estoppel, statutory in-

criticized.[28] One Iowa case decided during this period, *Connecticut Mutual Life Ins. Co. v. Endorf*,[29] is a case illustrating the objection of a mistake being only unilateral. In that case the plaintiff, mortgagee, sought cancellation of a release of a mortgage effectuated as part of an agreement to satisfy the debt by conveyance of the mortgaged property, on the allegation of a mutual mistake as to whether a certain subordinate lien claim against the mortgaged property had been discharged in bankruptcy. The court denied relief, saying, among other reasons,[30] that the mistake was unilateral. This is not convincing. There was no showing of reliance by the mortgagor or anyone else; the parties may be restored to the status quo; there seems to be no reason why an inferior lien should receive a windfall as seems to be the situation in this case. However, there has been some relief granted for unilateral mistake. In *Vermeulen v. Meyer*,[31] the court applied the principle that, even though rescission of an agreement might not be affirmatively granted for unilateral mistake, the discretionary remedy of specific performance might be denied because of it. This was a case of mistake by prospective seller as to identity and existence of prospective purchasers for certain property, allegedly caused by the broker. The court stated that even though the eventual purchaser might not have been a party to the mistake or misrepresentation so it could not be said the mistake was mutual, the court would not grant specific performance where it would be inequitable to do so, a conclusion apparently influenced by inadequacy of price.

Another objection to granting of relief sometimes asserted is that the mistake is only a mistake of law. Such a position has been criticized.[32] The commonly stated reason for denying relief, that "ignorance of the law excuses no one", has relevance only in cases where an attempt is made to avoid liability for violation of tort or criminal duty. It has also been pointed out that in many cases in which such a proposition has been asserted there is an independent reason for denying relief, such as lack of evidence of

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terpretation, or just some thought that a problem ought to be laid to rest.

[28] See CORBIN § 608. Compare this discussion with WILLISTON § 1579.

[29] 220 Iowa 1301, 263 N. W. 284 (1935). Other Iowa cases using unilateral mistake as at least partial reason for denying relief are: Messer v. Washington National Ins. Co. 233 Iowa 1372, 11 N. W. 2d 727 (1943); Bakke v. Bakke, 242 Iowa 612, 47 N. W. 2d 813 (1951) settlement of will contest—claim of mistake as to contents of will at best unilateral and court doubted there was any mistake).

[30] Other objection was that it was a mistake of law. See note 35 *et seq., infra,* and accompanying text discussion.

[31] 238 Iowa 1033, 29 N. W. 2d 232 (1947). Relief was also granted for unilateral mistake in *Rheenen v. Windell,* 220 Iowa 211, 262 N. W. 120 (1935), where the court affirmed, in action to compel satisfaction of judgment, action of the sheriff in permitting the creditor bidder under an execution sale to withdraw his bid, made under a mistaken impression as to quantity of property bid on. CORBIN § 612; WILLISTON § 1578.

[32] CORBIN § 616 *et seq.*; WILLISTON § 1581 *et seq.*

a mistake or the unilateral character of the mistake. The Restatement of Contracts treats mistake of law as a mistake of fact.[33]

The Iowa cases decided during this period, however, display a strong adhesion to the concept that mistake of law is not a basis for relief.[34] *Bakke v. Bakke,*[35] an action to cancel a settlement agreement of the will contest in a mother's estate illustrates this problem. The arguments presented were mutual mistake and fraud as to the terms of the father's will, leaving property to the mother, and mutual mistake as to the ownership interests in certain property left by the father, a mistake apparently as to the interpretation of words in the father's will. The court rejected the argument of mistake as to the terms of the will by stating there would be no fraud in nondisclosure by the sister, as executrix, of the terms and by a conclusion that the mistake would have been only unilateral and unbelievable.[36] As to the claimed mistake as to ownership of property the court said this was not available because it was a mistake of law. Even apart from the theory that relief should be granted even if it is a mistake of law, there is authority, including in Iowa, that ownership of property is a question of fact.[37] An added argument for denying relief was that this was a compromise situation and that ordinary mistake of law or fact could not be a basis for avoidance. As discussed below, that is not persuasive because, apparently, the question of the extent of the interest in land left by the father was not one of the matters in issue to be compromised.

Another case denying relief because of mistake of law is *Connecticut Mutual Life Insurance Co. v. Endorf,*[38] in which the court refused cancellation of a release of a mortgage given after a conveyance of the property by the mortgagor to the mortgagee in satisfaction of debt even though there was an allegation of mutual mistake as to whether another claim, originally inferior, had been discharged in bankruptcy. The court denied relief because the mistake was only unilateral and was a mistake of law. Neither argument is convincing. As discussed previously, unilateral mistake should not be a sword to permit a junior lienor to advance in priority.[39] Also the mistake could just as well have been called one of fact if that were significant.[40] In *First National Bank of*

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[33] §§ 502, 504.

[34] For reference to cases in Iowa prior to this period, see IOWA ANNOTATIONS, § 504-II, and 24 IOWA L. REV. 337 (1939). An independent examination of these early cases has not been made but these discussions indicate a divergence of holdings and statements.

[35] 242 Iowa 612, 47 N. W. 2d 813 (1951).

[36] Support for this is placed by the court partly on the fact that the protestant was an Iowa State College Professor.

[37] CORBIN § 620; see particularly the reference to Iowa cases in Note, *Mistake of Law in Iowa,* 24 IOWA L. REV. 337, 340 (1939).

[38] 220 Iowa 1301, 263 N. W. 284 (1935).

[39] See note 27, *et seq.* and accompanying text, *supra.*

[40] See note 37, *supra,* and accompanying text.

Logan v. Mether,[41] where a wife, signing on a note of her husband, claimed there were representations made to her that all she was doing in signing the note was waiving dower, the court denied any legal effect to such understanding, stating a party may not avoid an obligation simply because he did not anticipate the legal effect; the court also doubted such representations were made. Lack of anticipation of legal effect of words used might be a strong argument where there is simply unilateral mistake, but should not be an insurmountable hurdle where representations, innocent or not, are made by the other party.[42] All these cases indicate the Iowa court is still apparently strongly committed to the idea that mistake of law is not a basis for relief.[43]

Disposition of the argument of mistake as basis for avoidance is most troublesome in cases of releases and settlement agreements. Permitting avoidance by the argument of mistake, however just that may seem in view of subsequent developments, particularly as to personal injuries to the releasing party not previously known, for instance, goes contrary to the very purpose of the compromise agreement, which is to settle the dispute and to avoid future litigation. Here, as in so many other areas of the law, two equally good policy considerations clash. Four Iowa cases during this period particularly illustrate these problems. In *Jordan v. Brady Transfer & Storage Co.*,[44] the court supported an avoidance of a release for personal injuries because of mutual mistake of fact as to whether a fractured bone had healed at the time of release. In *Wieland v. Cedar Rapids and Iowa City Railway Co.*,[45] subsequent to the *Jordan* case, the court sustained the release for personal injuries as against the argument of mutual mistake as to a congenital defect which might have affected the extent of injuries. In *Bergman v. Bergman*,[46] the court sustained a family

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[41] 217 Iowa 695, 251 N. W. 505 (1933).

[42] See CORBIN §§ 618, 619; WILLISTON § 1586. In *Northern Trust Co. v. Anderson*, 222 Iowa 590, 262 N. W. 529 (1935), the wife was not allowed, as defense to personal liability on notes signed with husband, to assert she did not intend to become personally liable. This was apparently a case solely of unilateral misunderstanding with no representations by the other side; there are similar facts in *First Trust Joint Stock Land Bank v. Diercks*, 222 Iowa 534, 267 N. W. 708 (1936). Also in *McMurray v. Faust*, 224 Iowa 50, 276 N. W. 95 (1937), the court refused a defense, of a physician in a case of a promise not to compete after leaving employment followed by an injunction suit to prevent practicing, that he misunderstood the terms of contract and thought the liquidated damage clause included was an exclusive remedy; there was no apparent representation by the other side.

[43] See also the cases in note 6, *supra*, on the parol evidence rule that arguably involve a mistake of law in using words to express the intentions of the parties.

Beh Co. v. City of Des Moines, 228 Iowa 895, 292 N. W. 69 (1940), involving an argument of mistake of law as to the issuance of special assessment certificates, indicated in its opinion a situation might arise where relief would be granted for misapprehension of established law.

[44] 226 Iowa 137, 284 N. W. 73 (1939).

[45] 242 Iowa 583, 46 N. W. 2d 916 (1951).

[46] 247 Iowa 98, 73 N. W. 2d 92 (1955).

settlement agreement against the argument, among others, of mutual mistake as to the valuation of the property in the estate to be settled. In *Bakke v. Bakke*,[47] the court upheld a settlement of a will contest, as against allegations, among others, of mutual mistake as to the ownership of certain property in the estate, and mutual mistake as to the terms of a will.

Have these cases reached a fair reconciliation of these competing policy factors? One important, if not decisive, point to observe is the court's general attitude toward mistake and compromise agreements. In the *Jordan* case, the following was stated as a guide:

> "Appellant has insisted that an affirmance will be a reversal of our previous holdings in matters of this kind, and that it will be a departure from the policy of this court in looking with favor upon compromises and of interfering with reluctance with private settlements. It is in error in this. The attitude of the court is not changed in that respect. There is nothing in the nature of a compromise contract, a release of liability or a covenant not to sue, that calls for any different construction or treatment at the hands of a court, than that accorded to other contracts. There is nothing so sacrosanct about them that courts should disregard the intentions of the parties to them. The courts in administering equitable relief are not bound by mere terminology, and make no distinctin between an unjust compromise and any other unjust contract."[48]

A different attitude is evidenced, however, in the subsequent *Wieland* case, in which it was stated:

> "In Pahl v. Tri-City Ry. Co., 190 Iowa 1364, 1367, 1368, 181 N. W. 670, 671, a case quite analogous to this one said: 'It is well settled that compromises and settlements will not be disturbed for any ordinary mistake, either of law or fact, since their very object is to settle disputes without judicial controversy. In the absence of fraud, misrepresentations, concealment, or other misleading incidents a compromise into which parties voluntarily enter must stand and be enforced, although the final issue may be different from what was anticipated. "In such classes of agreements and transactions, the parties are supposed to calculate the chances, and they certainly assume the risks, where these is no element of bad faith, breach of confidence, misrepresentation, culpable concealment, or other like conduct amounting to constructive fraud." 2 Pomeroy on Equity Jurisprudence (4th Ed.) Section 855'. There is no subsequent decision in which we have modified or repudiated the language from the Pahl case."[49]

Similar sentiments to those in the *Wieland* case were expressed in the *Bakke* and *Bergman* cases where it was stated that in the

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[47] 242 Iowa 612, 47 N. W. 2d 813 (1951).
[48] 226 Iowa 137, 155, 284 N. W. 73, 82 (1939).
[49] 242 Iowa 583, 586, 46 N. W. 2d 916, 918 (1951).

absence of fraud, misrepresentations, concealment or other misleading incidents, a voluntary compromise must stand.

The statement in the *Jordan* opinion seems preferable; there seems to be no reason for distinguishing compromise agreements from others in requiring something more than *ordinary* mistake. Many of the compromise cases, however, may be supported by the theory that where there is a dispute as to an issue and a compromise reached, there is really no mistake as to the matter in issue; the parties are then assuming the risk.[50] Cases then should be analyzed on the basis of determining what was the matter in issue to be compromised; the compromise should stand as against the mistake only as to matters in issue. On this basis, the *Wieland* case and the *Jordan* case, *supra*, have a striking similarity in facts, but differences in results. In the *Wieland* case, the *Jordan* case was distinquished in the following language:

> "The distinction between that and the instant case is obvious. In the Jordan case plaintiff's doctor, after setting the fractured arm (fractured in two places), mistakenly told him on September 18th the bones were uniting and that there would be complete union by December 1. On the strength of this assumed situation an agreement not to sue was made for *an amount sufficient to cover loss of wages and expense on that basis.* . . . Here there was a settlement for a lump sum having no relation to any computation based on estimated loss of time and expense. The parties clearly intended to cover future developments whatever they might be. . . . Plaintiff testifies that if she had known she would 'experience and suffer the condition' that has since arisen she would not have made the settlement. But that does not help her case. Practically every settlement for personal injury involves the element of chance as to future consequence and development. There are usually unknown and unknowable conditions (congenital or otherwise) that may affect the ultimate recovery or failure of recovery. Mutual ignorance of their existence cannot constitute 'mutual mistake' . . . Where, as here, there is no serious dispute as to defendant's liability, the only unknown element is the one that concerns what may eventually be the consequences of the injury. If that could be known, the transaction would not be compromise but payment. The fact, if it be a fact, that plaintiff's unknown congenital spinal deformity delayed her recovery and aggravates her suffering does not constitute ignorance of its existence a mistake of fact."[51]

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[50] See CORBIN §§ 589, 1292.

[51] 242 Iowa 583, 588, 46 N. W. 2d 916, 918 (1951). Carlisle, *Avoidance of Personal Injury Releases for Mutual Mistake of Fact*, 7 CLEVELAND-MARSHALL L. REV. 98 (1958) refers to the difficulties courts have with determining whether there is a mistake of fact or prophecy and opinions of future developments, disapproves of the use of mutual mistake of fact concept as a basis for avoiding general releases, and cites the *Jordan* case for the proposition that a release may be avoided in Iowa for mutual mistake of fact, without referring to the *Wieland* case.

It is submitted that the cases are not sufficiently different on the facts to call for different conclusions. Both cases apparently involved an issue of the extent of the injuries; in both there was apparently no dispute as to basic liability; in both cases the releases purported to be a release of all liability for injuries future and present;[52] in both cases there was allegedly mutual ignorance of a condition. The difference is that in the *Jordan* case the amount paid was more directly calculated by giving an amount sufficient to cover loss of wages and expenses calculated on the basis of the facts as they knew them, whereas in the *Wieland* case there was a lump sum not so directly related. It is not apparent wherein that factor is significant, why they any less intended to cover future developments in one case than in the other, why the extent of injuries was any less involved in one than the other, why the principle of compromise of an issue of the extent of injuries is not equally present in both cases.[53]

The *Bergman* case, *supra*, while also referring to the rule as to no avoidance for ordinary mistake, is apparently supportable for the independent reason that there was not sufficient evidence of mistake as to valuation of property. The *Bakke* case, *supra*, is not so clear; the matter apparently originally contested was the validity of the mother's will. Therefore, mistake as to other matters, such as the terms of the father's will, leaving property to the mother, the extent of the interest left to the mother in certain property which allegedly induced the settlement, should have been considered, if there had been sufficient evidence as to the mistake. The court was not convinced that there was a mistake as to the terms of the will but makes no point that there was no mistake as to the extent of the property interest left by the father's will. Rather, this latter element of mistake was rejected on the added stated reason it was a mistake of law, a subject discussed above.[54]

Finally, we have the argument of mistake as it bears on the question whether the person really consented to the matter in issue. Factually this arises commonly in a case where the person, when confronted with a written document bearing evidence of consent through a signature, states "But I didn't know that clause

[52] Documents, used for this purpose in the insurance industry, containing such clauses, are apparently common.

[53] As a practical matter, of course, persons would apparently be well advised, to avoid the mistake argument, to never calculate a settlement amount too closely to a particular set of facts.

[54] See note 34 *et seq.*, *supra*, and accompanying text. A better case for the compromise principle as it concerns mistake of law is contained in *Beh Co. v. City of Des Moines*, 228 Iowa 895, 292 N. W. 69 (1940), where the court refused to permit avoidance of some special assessment certificates issued by the city on the grounds of misapprehension of the law, pointing out that there had been differences of opinion as to the city's liability before such certificates were issued to replace prior ones. Also see *Waltz v. Ellinghouse*, 165 F. 2d 596 (8th Cir. 1948) upholding a release of claim against an estate arising out of prior agreements, as against an argument of mutual mistake as to legal status of claim; this is obviously a compromise case.

was there. I didn't agree to *that*". The usual answer to that complaint is that if a person indicates an assent to a document he knows to be a contract he is bound by all the terms that appear therein whether he reads it or not; mental assent is not required.[55] This was illustrated in a case involving a bond which contained words relieving directors from certain statutory liabilities,[56] and in a case of a release of a claim under a health and accident policy in which the insured, a lawyer, claimed he had not read the release or contract.[57]

The argument about consent to all the terms has been met in some cases by an argument there has been misrepresentation as to the contents of the instrument, which in return has been met by a contention that there was negligence in not reading the document and discovering the terms. For instance, in *International Transportation Association v. Atlantic Canning Co.*,[58] the allegation was misrepresentation by form and appearance of document, as to its contents, so that the signer thought he was signing a request for information rather than a promise to take advertising space. The court affirmed a finding for the defendant signer, stating:

> "It is a general rule of law recognized by the courts of this and other jurisdictions that one who signs a written instrument without reading it is bound thereby, and will be precluded by his own negligence from claiming he did not

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[55]Rasmus v. A. O. Smith Corp., 158 F. Supp. 70 (N.D. Iowa 1958) (buyer signing purchase order for corn storage bin bound by terms on back not read, limiting warranty liability of seller); RESTATEMENT § 70; CORBIN §§ 33, 106; WILLISTON §§ 90A, 94, 95; cf. Martin v. Stewart Motor Sales, 247 Iowa 204, 73 N.W. 2d 1 (1955) (minor's action to cancel automobile contract failed because of alleged misrepresentation of majority, found by prevailing opinion in signing by minor of purchase order which contained printed certification of majority, and against minor's statement he didn't read contract); Kraetsch v. Stull, 238 Iowa 944, 29 N. W. 2d 341 (1947) (court wouldn't permit party, mortgagee, who signed consent to accept HOLC bonds in payment of debt, to say he didn't know what he was signing); Durst v. Board, 228 Iowa 463, 292 N. W. 73 (1940) (held, for purposes of determining if employment as school janitor was for specific period of time for veteran's removal procedure, that, when he accepted employment, he was bound by the provisions of minutes of board meeting stating a fixed time); Allen v. Hume, 227 Iowa 1224, 290 N. W. 687 (1940) (wife estopped and not allowed to assert she signed deed without knowing contents, which was entrusted to husband to secure husband's debts). The strength of the objective test of agreement as opposed to mental or subjective assent, is also illustrated in the following cases with overtones of mistake: Hotz v. Equitable Life Assurance Society, 224 Iowa 552, 276 N. W. 413 (1937), 36 MICH. L. REV. 1008 (1938) (granted specific performance to a prospective buyer who had signed an offer to buy and sent a check in part payment containing words "To be cashed when contract is signed", which was cashed by a clerk in violation of instructions); Industrial Products Mfg. Co. v. Jewett Lumber Co., 185 F. 2d 866 (8th Cir. 1951) (buyer bound by specific terms of order although changes had been made in it with jobber through whom order was originally placed).

[56]Preston v. Howell, 219 Iowa 230, 257 N. W. 415, 97 A.L.R. 1140 (1934).

[57] Messer v. Washington Nat. Ins. Co., 233 Iowa 1372, 11 N. W. 2d 727 (1943).

[58] 216 Iowa 339, 249 N. W. 240 (1933).

> know its contents. . . . It is equally well established, however, that if a person is induced to sign an instrument without reading it, through some trick or artifice or false representation on the part of another, he will not be estopped to deny the validity of the instrument to which his signature was thus procured."[59]

This is an eminently reasonable position. The only reason that negligence plays a part in determining if there has been a consent is not because negligence is imposing liability upon anyone, but because, under the circumstances, the other party may take the conduct of signing as a manifestation of consent to the terms either because he has actually read them or does not care to find out. However, if misrepresentation of contents is present the person committing the misrepresentation has no reason to believe there is consent to all the terms. Objective manifestation of consent by signing should not prevail here. Even though the quoted statement seems a reasonable one, it is implicitly contrary to the result and statement in *Crum v. McCollum*,[60] a case decided before the period being surveyed, in which the court stated that the failure of a party to read the document, when there was opportunity to do so, was inexcusable negligence and prevented the party from asserting the alleged fraudulent representations of an adjuster as to the contents of the document that the document was a release only for medical services and property damage. *Engle v. Ungles*,[61] a case involving a release for personal injuries, instead of throwing out the objections of negligence when fraudulent representations are made, acknowledged the rule that negligence in not reading bars the argument of fraud, but stated there was no negligence in failing to read under the circumstances which included the poor physical condition of the party in a hospital soon after the injury. In *Griffiths v. Brooks*,[62] an action for damages for alleged fraud and deceit in inducing plaintiff to sign a note and conditional sales contract for a car, later transferred to a bank, by misrepresentation as to the nature of what was being signed, the court affirmed a directed verdict against plaintiff, relying upon the inadequacy of evidence as to the misrepresentations and also on this same idea that negligence somehow prevents fraud from being asserted. The court stated:

> "It is true, as stated by plaintiff, that courts look upon fraud with abhorrence and are reluctant in any case to permit a cheater to profit by his wrongdoing. . . . But at the same time courts are constrained, by another consideration that is for the public welfare, from affording parties to written agreements such ready avenues of escape from their obligations that the purpose of lastingly recording such obligations in writing would be quite in-

[59] 216 Iowa 339, 343, 249 N. W. 240, 242 (1933).
[60] 211 Iowa 319, 233 N. W. 678 (1930). See especially the reconciliation in the opinion of prior Iowa cases.
[61] 223 Iowa 780, 273 N. W. 879 (1937).
[62] 227 Iowa 966, 289 N. W. 715 (1940).

> differently attained. The aim is to follow a rule that will minimize both evils without accentuating either of them."[63]

Such a comment assumes too much for the objective manifestation of consent; it is not simply a question of "escape from obligation", but a question of whether there is a manifestation of consent that should even be recognized as an obligation. A requirement of burden of proof as to fraud should be sufficient to prevent destroying the sanctity of written documents, without adding a further independent rule that the party relying must be free from negligence.[64]

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[63] 227 Iowa 966, 972, 289 N. W. 715, 718 (1940).

[64] Other cases involving allegations of misrepresentation as to contents of documents are: Mosher v. Snyder, 224 Iowa 896, 276 N. W. 582 (1937) (the injured party claimed fraud by the adjuster as to the contents of the release; the court found insufficient evidence of such fraud); Johnson v. Cedar Memorial Park Cemetery Assn., 229 Iowa 749, 295 N. W. 136 (1940) (overruled motion to strike, by defendant cemetery association, plaintiff's allegation of fraudulent procurement of consent to contract for cemetery lot when distracted by grief; no reference is made to this in subsequent opinion in 233 Iowa 427, 9 N. W. 2d 385 (1943)); Shadduck v. Chicago, Milwaukee, St. Paul & Pacific R. Co., 218 Iowa 281, 252 N. W. 772 (1934) (affirmed jury finding for newsboy (81 years old) against railroad for personal injuries as against release signed when plaintiff alleges he did not know what he was signing because of misrepresentations by representative of plaintiff's employer, who presented release); cf. Bates v. First Trust & Savings Bank, 222 Iowa 407, 269 N. W. 437, (1936) (Purchaser of shares of stock in bank not charged with statutory liability because there was no "meeting of the minds" when purchaser was led to believe he was purchasing stock from bank, not from bank officer, as bank officer intended); Maffitt v. Miller, 246 Iowa 712, 68 N.W. 2d 740 (1955) (in habeas corpus action by mother for custody of children released for adoption, insufficient evidence as to misrepresentation of "import" of release; trial court reversed.)