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CALIFORNIA JURISPRUDENCE

SECOND EDITION

A COMPLETE AND MODERN
STATEMENT OF THE LAW
AND PRACTICE OF THE
STATE OF CALIFORNIA

Volume 11

COMPROMISE AND SETTLEMENT
TO
CONSTITUTIONAL LAW



By the Editorial Staff of the Publisher

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TABLE OF ABBREVIATIONS

AC	Advance California Reports
ACA	Advance California Appellate Reports
Adm C	Administrative Code
Ag C	Agricultural Code
ALR	American Law Reports Annotated
ALR2d	American Law Reports Annotated, Second Series
Am Jur	American Jurisprudence
Anno	Annotation
Bank C	Banking Code
B & P C	Business and Professions Code
C	California Reports
C2d	California Reports, Second Series
CA	California Appellate Reports
CA2d	California Appellate Reports, Second Series
CC	Civil Code
CCP	Code of Civil Procedure
ch	Chapter
CLR	California Law Review
Cof	Coffey
Const Art I § 1	Article and section California Constitution
Corp C	Corporations Code
CU	California Unreported
Deering's Gen Laws	Deering's California General Laws
Ed C	Education Code
Elec C	Elections Code
F	Federal Reporter
F2d	Federal Reporter, Second Series
F Supp	Federal Supplement
FRD	Federal Rules Decisions
F & G C	Fish and Game Code
Fin C	Financial Code
Gov C	Government Code
H & N C	Harbors and Navigation Code
H & S C	Health and Safety Code
Hast L J	Hastings Law Journal
Ins C	Insurance Code
Lab C	Labor Code
L ed	Lawyers' Edition U. S. Supreme Court Reports
Mil & Vet C	Military and Veterans Code

Ops Atty Gen	Opinions of the Attorney General
P	Page
P	Pacific Reporter
P2d	Pacific Reporter, Second Series
Pen C	Penal Code
Pol C	Political Code
Prob C	Probate Code
Pub Res C	Public Resources Code
Pub U C	Public Utilities Code
Rev & Tax C	Revenue and Taxation Code
SCLR	Southern California Law Review
S Ct	Supreme Court Reporter
Stan LR	Stanford Law Review
St B J	State Bar Journal
Sts & H C	Streets and Highways Code
subd	Subdivision
US	United States Reports
US Const	United States Constitution
Veh C	Vehicle Code
W & I C	Welfare and Institutions Code
Wat C	Water Code

TABLE OF PARALLEL REFERENCES

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The reader should consult the indexes of CALIFORNIA JURISPRUDENCE, 2d, for detail and for new matter not appearing in CALIFORNIA JURISPRUDENCE.

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COMPROMISE AND SETTLEMENT

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II. REQUISITES (§§ 6-9).

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I. IN GENERAL

§ 1. Scope; Definitions; Distinctions.—The present article deals with questions arising from or in connection with the

compromise and settlement of disputes respecting claims or other controversies, in or out of litigation. Related matters discussed in other articles include accord and satisfaction,¹ composition with creditors,² novation,³ release,⁴ the effect of compromise and settlement of claims under the Workmen's Compensation Act,⁵ and the effect of an unaccepted offer to compromise a debt as tolling or removing the bar of the statute of limitations.⁶ Also excluded from this treatment are such matters as the authority of an attorney to compromise his client's cause of action⁷ and the compromise of pending actions,⁸ although the statutory offer of compromise before trial of an action is discussed.⁹

An agreement or arrangement by which, in consideration of mutual concessions, a controversy is terminated is a "compromise." The word embraces controversies both in and out of court, and is employed to denote either the act of compromise, the agreement therefor, or the physical instrument by which the arrangement is carried into effect. The word "settlement" is sometimes used as synonymous with "payment," and sometimes as synonymous with "compromise."¹⁰ The expressions "accord and satisfaction" and "compromise and settlement" are sometimes used interchangeably, but there is a distinction. Thus, although performance of the new agreement is necessary to complete an accord and satisfaction, this is not essential to a valid compromise. Moreover, a compromise must be based upon a disputed claim, whereas an accord and satisfaction may be based on an undisputed or liquidated claim.¹¹

1. ACCORD AND SATISFACTION.

2. COMPOSITION WITH CREDITORS.

3. NOVATION.

4. RELEASE.

5. WORKMEN'S COMPENSATION.

6. LIMITATION OF ACTIONS.

7. ATTORNEYS AT LAW.

8. TRIAL.

9. §§ 12-15, *infra*.

10. Am Jur Compromise and Settlement § 2.

11. Am Jur Compromise and Settlement § 2. And see ACCORD AND SATISFACTION.

§ 2. Policy of Law.—It is the policy of the law to discourage litigation and to favor compromises and voluntary settlements of doubtful rights and controversies, made either in or out of court.¹² Accordingly, when such a settlement has been made, acted upon, or acquiesced in, the parties will not be permitted to violate the compact unless it be shown that it was entered into under circumstances of fraud or undue influence;¹³ and, unless such a showing is made, the plaintiff in an action to set aside the settlement and to open up the controversy is properly nonsuited.¹⁴ The policy favoring compromise agreements is peculiarly applicable to family settlements; and probate contests are favored sources of compromise agreements for the preservation of family ties and adjustment of equities which the courts are powerless to arrange. In such cases the courts will not undertake, unless there has been an imposition, to weigh actual gain or loss, and will not set aside a compromise agreement merely because a party made a bad bargain.¹⁵

Compromise agreements are governed by the legal principles applicable to contracts generally. The primary object in applying those principles is to ascertain the intention of the parties. Such intention is determined from the writing evidencing the agreement, construed in the light of the circumstance surrounding its execution.¹⁶

12. *McClure v McClure* 100 C 339, 34 P 822; *Downing v Murray* 113 C 455, 45 P 869; *Rohrbacher v Aitken* 145 C 485, 78 P 1054; *Union Collection Co. v Buckman* 150 C 159, 88 P 708; *Armstrong v Sacramento Val. Realty Co.* 179 C 648, 178 P 516; *Hamilton v Oakland School Dist.* 219 C 322, 26 P2d 296; *Johanson Estate* 62 CA2d 41, 144 P2d 72; *Howe Estate* 88 CA2d 454, 199 P2d 59.

13. *Bree v Wheeler* 4 CA 109, 87 P 255; *Dickie v Steiger* 4 CA 622, 88 P 814; *Lamb v Herndon* 97 CA 193, 275 P 503.

14. *Downing v Murray* 113 C 455, 45 P 869.

15. *McClure v McClure* 100 C 339, 34 P 822; *Howe Estate* 88 CA 2d 454, 199 P2d 59; *Silver v She-manski* 89 CA2d 520, 201 P2d 418.

16. *Shriver v Kuchel* 113 CA2d 421, 248 P2d 35.

§ 3. Subject Matter.—Any dispute, whether arising from agreement or from a claimed or asserted right, which may be the subject matter of litigation, whether in fact in litigation or not, may be the basis of a compromise agreement.¹⁷ For example, a compromise of a will contest will be enforced, if fairly made.¹⁸

If there is no dispute as to either the facts or extent of the right asserted, there can be no compromise settlement. Thus, a mere refusal to pay an obligation cannot be made the basis of a compromise agreement.¹⁹

As to criminal offenses, the Penal Code provides that a civil liability arising out of a misdemeanor for which the person injured has a remedy by a civil action may be “compromised” by the injured party’s appearing in court and acknowledging that he has received satisfaction for the injury. Upon payment of the costs, the court may discharge the defendant.²⁰ Otherwise, a liability arising out of a public offense may not be compromised.¹

The rules as to what constitutes an honest or bona fide dispute which may properly form the basis of a compromise agreement are the same as in cases of accord and satisfaction

17. Am Jur Compromise and Settlement § 5.

18. Garcelon Estate 104 C 570, 38 P 414.

Anno: Right to settle or compromise will contest; validity of agreement to induce others to do so, 81 ALR 1187.

19. Berger v Lane 190 C 443, 213 P 45.

20. Pen C §§ 1377, 1378 (the order is a bar to another prosecution for the same offense).

Payment by the defendant to the plaintiff at the instance of a judge

of a justice court for the suspension of a sentence upon a charge of reckless driving does not constitute the basis of a compromise and settlement of the plaintiff’s claim, where the plaintiff was not present in the justice court and the amount paid was not accepted as a compromise of the plaintiff’s claim for damages. Hence the plaintiff was not bound to restore the money received as a condition to maintaining his action. Harvey v Aceves 115 CA 333, 1 P2d 1043.

1. Pen C § 1379.

of disputed claims, and are discussed in detail in the article on that subject.²

§ 4. Parties.—Since the right to compromise is only a form of the right to contract, questions relating to the capacity of the parties must be determined in the light of the broader principles governing the capacity of parties to enter into contracts.³ The agreement presupposes that the parties were legally competent to enter into the compromise settlement. Hence it may be shown that a party was incapable of contracting intelligently because of his intoxication.⁴

A compromise can affect only the rights of the parties there-to or those in privity with them.⁵ Hence a compromise agreement is ineffective to extinguish or bar a pending cause of action where it is not entered into between the parties to the action or their privies. For example, an agreement entered into between the plaintiff and a third party, such as the defendant's insurance carrier, has no extinguishing effect while it is still executory.⁶ Similarly, a compromise and settlement

2. ACCORD AND SATISFACTION.

3. Am Jur Compromise and Settlement § 12. See CONTRACTS.

4. Phelan v Gardner 43 C 306.

5. People's Home Sav. Bank v Rickard 139 C 285, 73 P 858; Kline v Mohr 142 C 673, 76 P 650; Richman v San Francisco, N. & C. R. 180 C 454, 181 P 769.

6. Jones v Noble 3 CA2d 316, 39 P2d 486.

Anno: Employee's compromise of right of action against third person causing injury as affecting rights of employer or insurance carrier under Workmen's Compensation Act, 19 ALR 766, 27 ALR 493, 37 ALR 838, 846, 67 ALR 249, 88 ALR 665, 106

ALR 1040; Settlement by third person with conditional vendee for damage to or conversion of property, as affecting conditional vendor, 49 ALR 1458; Right of insurer as against assured and without his consent, in case of claim or proceeding against him, to make a settlement or permit a consent judgment prejudicial to him, 79 ALR 1118; Settlement or compromise by one party to chattel mortgage, with third person, on account of conversion of or damage to property, as affecting other party, 92 ALR 205; Bailor's action against third person for damage to, or destruction or conversion of, bailed property as affected by defendant's settlement with bailee for same wrongful act, 118 ALR 1338; Settle-

of a cause of action as to one person is not available as an estoppel against some other person not a party thereto or to the judgment entered upon such compromise, where such other person was not a successor in interest by title subsequent to either of the parties.⁷

A compromise entered into by one defendant is not binding upon the other defendants, in the absence of consent or approval by the latter.⁸ And a compromise settlement, by one cotenant, of an action to recover damages for trespass to land, without the consent, knowledge, or acquiescence of the other cotenant, is not binding upon the latter.⁹

Although generally speaking a case may be compromised by the client without notice to the attorney,¹⁰ a compromise by a plaintiff of a claim in suit for personal injuries, in consideration of a judgment of dismissal, made without the consent of his counsel who had an assignment of an undivided interest in the judgment, of which assignment the defendant had knowledge, has been held not binding as to the counsel's interest in the judgment.¹¹

The power of municipal corporations or other political subdivisions to enter into a compromise agreement of disputed rights through their authorized officers or agents is, in the absence of any legislative expression, to be determined by their ordinary powers to contract, sue, and be sued.¹² The power to compromise claims may be inferred from other broad

ment by co-obligee as affecting rights of other co-obligees, 142 ALR 371; Compromise or settlement by statutory beneficiaries without assent of personal representative of death action commenced by latter, 29 ALR 2d 1452.

7. *People's Home Sav. Bank v Rickard* 139 C 285, 73 P 858.

8. *Jones v Noble* 3 CA2d 316, 39 P2d 486.

9. *Wagoner v Silva* 139 C 559, 73 P 433.

10. ATTORNEYS AT LAW.

11. *Richman v San Francisco, N. & C. R.* 180 C 454, 181 P 769.

12. *Am Jur Compromise and Settlement* § 12.

Anno: Power of city, town, or county, or their officials, to compromise claim, 15 ALR2d 1359.