

Settlement Agreement

1. Definition

A settlement agreement becomes effective when the parties agree to terminate a specific existing dispute between them as to the existence, extent and nature of a party's legal rights or obligations. Art. 731.

What is the difference between price negotiation and settlement negotiation?

2. May not be unsettled on the basis of a mistake

- Settlement agreement may not be rescinded on the ground of a mistake. If, however, the mistake was about whether a party had the powers to settle or about matters other than the dispute which was settled, the settlement agreement may be rescinded on the ground of a material mistake. Art. 733
- "matters other than the dispute which was settled": matters which were not subject to mutual concession; matters which both parties accepted as 'given', undisputed and therefore formed the basis of the negotiation, matters which were not open to negotiation.
- Settlement agreements, like any agreement, may be rescinded on the ground of deception or duress (Art. 110).

3. Court's approaches

Allowing rescission:

95Da48414: Car accident victim settled with the aggressor on the assumption that the accident occurred due to the victim's fault. The amount was much less than the loss sustained by the victim. When it emerged that the aggressor was also at fault,

the court allowed rescission on the basis of a mistake. The aggressor's fault was not open to mutual concession, thus not part of the dispute which was settled.

2001Da49326: A doctor agreed with the survivors of a patient who died 2 hours after a metoclopramide injection was administered by the doctor. The doctor thought the death was not related to the shot but could not rule out the possibility that the death occurred as a result of the shot. The doctor accordingly agreed to pay a substantial amount in settlement of the dispute. It turned out that the death was unrelated to the injection. The court ruled that the settlement was made on the assumption of the doctor's liability and that the assumption was undisputed and was not open to concession. Thus doctor may rescind the settlement showing that he was mistaken as to his liability.

Narrowly construing the scope of settlement:

97Da423: A three year old child was hit by a car. Soon after the accident, the mother settled with a small amount of payment (about USD300). The injury, however, turned out to reduce the working capacity of the victim by 38% and the loss amounted to more than USD40,000. The court ruled that the settlement is valid only to the extent of claims reasonably foreseeable at the time of the settlement. If the terms of settlement are such that the victim, had he expected the true scope of injury, would not have agreed upon, then the claims which are beyond the damages expected by the victim are not covered by the settlement. 99Da63176

Unknown claims: 2001Da70337 (parties settled as to the 'leakage' (shortage) of the fish sauce, without realising that a substantially larger quantity of the fish sauce which was stored in the tank was 'rotting' due to infiltration of water)

- What was the 'scope' of the settlement? Regarding the 'loss' or the 'rotting' of the sauce.

- Is it possible to rescind the settlement? Court suggested that the settlement was only to the extent of the 'loss' of the sauce.