

RELEASE OF CLAIMS

A release, a surrender of a claim, may be given for less than full consideration or even gratuitously. *DeNike v. Mowery*, 69 Wn.2d 357, 366, 418 P.2d 1010, 1017 (1966) A release is a contract and as such its construction is governed by contract principles subject to judicial interpretation in light of the language used. *Nationwide Mutual Fire Ins. Co. v. Watson*, 120 Wn.2d 178, 187, 840 P.2d 851, 856 (1992). Under contract law, a release is voidable if induced by fraud, misrepresentation or overreaching or if there is clear and convincing evidence of mutual mistake. *Id.* In *Hooper v. Yakima County*, 79 Wn. App. 770, 773, 904 P.2d 1193, 1195 (1995), the court seemed to say that a release may also be avoided on grounds less than those required for other contracts, but that case was disapproved in *Del Rosario v. Del Rosario*, 152 Wn.2d 375, 97 P.3d 11 (2004). In *Del Rosario*, the court held that a passenger, in the absence of unknown or latent injuries, was not entitled to a jury instruction on avoidance of release.

In *Finch v. Carlton*, 84 Wn.2d 140, 524 P.2d 898 (1974), the court said a release may not be avoided merely by the discovery of a previously unknown injury. Instead, the courts will inquire into whether the release was fairly and knowingly made. The factors to be considered are: (1) the peculiar dignity and protection to which the law cloaks the human person, as contrasted with articles of commerce; (2) the inequality of the bargaining positions and relative intelligence of the contracting parties; (3) the amount of consideration received; (4) the likelihood of inadequate knowledge concerning future consequences of present injury to the human body and brain; and (5) the haste, or lack thereof, with which release was obtained. *Id.* However, the “fairly and knowingly made” standard for avoiding a release is an exception that only applies where injuries develop after parties sign a release. *Del Rosario v. Del Rosario*, 116 Wn. App. 886, 68 P.3d 1130 (2003), *reconsideration denied, Affirmed in Part, Reversed in Part (on different grounds)* by *Del Rosario v. Del Rosario*, 152 Wn.2d 375, 97 P.3d 11 (2004). The burden lies with the party relying upon a release executed by an injured party to show that the release was fairly executed and that the defendant fairly represented the amount to which the injured party was entitled.

A release may be rescinded. However, in order for a release to be rescinded, all the parties to it must consent. *Bunting v. State*, 87 Wn. App. 647, 943 P.2d 347 (1997).