

## **The Origin and Evolution of the Institution of Expression of Intent under a Mistake**

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### **Abstract**

This article explores the origin and evolution of the institution of expression of intent under a mistake. Through the lens of legal historiography and comparative jurisprudence, it analyses and critically reviews aspects of expression of intent under a mistake as set forth in the General Provisions of the Civil Code. Unilateral false expression of intent occurs when the disagreement between expression and intent is willfully caused by the expresser. Expression of intent under a mistake occurs when the disagreement is resulted from negligence of the expresser. According to the mainstream scholarly opinion, “negligence” as stipulated under the proviso of article 88 of the Civil Code should be interpreted as “abstract minor negligence”. Therefore, the expresser may not revoke what he has expressed upon the finding of negligence as such and the expression of intent in question stands as in the case of unilateral false expression of intent. That is to say, here, “abstract minor negligence” and “willfulness” are treated as the same. In its 1973 Taiwan Appeal No. 140 decision, the Supreme Court ruled that, in this context, negligence shall be construed as “concrete minor negligence. Thus, “concrete minor negligence” is treated the same as “willfulness”. Should expression of intent under a mistake and unilateral false expression of intent be viewed as the same in the eyes of the law? Article 95 of the Japanese Civil Code as amended in June, 2017 and paragraph 1 of article 119 of the German Civil Code provide different rules, which should be able to enlighten us on the interpretation and legislative policy of the proviso of article 88 of the Civil Code.

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In addition, paragraph 1 of article 184 of the Civil Code provides that a person who, intentionally or negligently, unlawfully injures the right of another person is liable to make compensation to the other party for the damage arising from this and paragraph 1 of article 220 provides that the obligor is responsible for intention and negligence. In other words, the award of damages is based on intent or negligence. According to the mainstream scholarly opinion, however, the expresser becomes liable for the loss of the bona fide other or third party by revoking his mistakenly expressed intent, he himself is of no fault is not a defense. The reason, and theoretical foundation, for imposing this liability without fault seem to require further study.

**Keywords: expression of intent under a mistake, unilateral false expression of intent, abstract minor negligence, concrete minor negligence, gross negligence, willfulness**