

**MISTAKE IN CONTRACT: A
STUDY IN COMPARATIVE
JURISPRUDENCE, PP. [147-
275]**

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Mistake in Contract: A Study in Comparative Jurisprudence, pp. [147-275] by Edwin C. McKeag

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EDWIN C. MCKEAG

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275]**

MISTAKE IN CONTRACT

A STUDY IN COMPARATIVE JURISPRUDENCE

BY
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FOR THE DEGREE OF DOCTOR OF PHILOSOPHY
IN THE
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1905

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PREFACE

THE discovery of the *echt* and *unecht* classes of mistake, however inappropriate these designations may be, has been said by Windscheid to have been one of the finest services which Savigny has rendered to jurisprudence. The former term comprises all those cases of contract in which consent exists, and which, though impeachable because of mistake, are valid until impeached. The latter term comprises those cases in which real consent is lacking, resulting in the nullity of the contract, while the mistake is simply an accompanying feature.

It has been the object of this dissertation to examine the latter, or *unecht*, class of mistake in the Roman law, to show the present development of the theory in modern civil law, mainly in Germany, and then to present some original treatment of the same subject in the common law. To the writer the latter theme has proved very interesting, for outside of the adjudicated cases there is no material, except in the writings of Pollock and Leake, who have treated the subject only as ancillary to the general law of contract. Proof, it is submitted, is given that the *unecht* class of mistake is unquestionably recognized in the common law, although a further important distinction has been made between mistake as to the act and mistake as to the content of the act, which distinction has not received general recognition in Germany. The paper will at least be an attempt to make a beginning in a field little cultivated heretofore by the writers on the common law.

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Gratitude must be expressed to Professor Munroe Smith, under whom the writer pursued his work, not only for the use of some volumes not to be found in the Columbia Library, but especially for suggestions as to the proper scope and limitations of the paper as a dissertation and for criticism in the matter of style.

E. C. McK.

NEW BRUNSWICK, NEW JERSEY, APRIL, 1905.

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