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# The Voluntary Payment Doctrine – The Most Profoundly Evil Legal Doctrine

This week's post is dedicated to what I, and many others, consider to be a profoundly evil legal doctrine. It is known as the Voluntary Payment Doctrine. I have recently spent a great deal of time researching the doctrine for a journal article that I am drafting to which I have given the working title *The Practitioners Guide to the Voluntary Payment Doctrine*. While this post will not but scratch the surface of this doctrine of law, I think it is important to understand how this seemingly innocuous concept has entrenched itself into American jurisprudence and earned the ire of countless lawyers throughout the nation.

The doctrine has its origins, like much of American law, in English courts. Created by the 1802 case *Bilbie v. Lumley*, the doctrine stands for the proposition that money voluntarily paid with knowledge of the facts cannot be recovered back. The doctrine derives from a criminal law concept that holds that as a general rule a failure to know the law – i.e. mistake of law – is not a defense to a crime. An example of this concept came out this past week in northwest Indiana where a former pastor admitted to having sexual relations with a 16-year-old parishioner, but contended that he did not realize that his actions were illegal. Despite

potentially having a firm basis for confusion, his mistake is not a defense to the crime for which he is charged. *Bilbie*took that concept and applied it to civil law.

Lord Ellenborough, the presiding jurist, in *Bilbie*, adopted the position "that the money having been paid . . . with full knowledge, or with full means of knowledge of all the circumstances could not now be recovered back again." Now let us recognize for a moment what this doctrine says in its most benign setting. It says that if you make an error and give someone money that you did not owe that person, you cannot go after the fact and demand the money be returned. Think about this for a second. If you went to the bank and sought to cash a $100 check only to discover when you arrived home that the bank had actually given you $120, would you honestly believe that you were entitled to keep that extra $20? Sure, you may rationalize why you should get to keep the money, but certainly you would not actually think you were now entitled to it. Guess what? According to the strictest reading of the voluntary payment doctrine, you would be entitled to keep that money. Now, mind you, it has been 210 years since *Bilbie*, clearly the law has evolved some exceptions to this rule. However, the basic point is still that the good old Monopoly card, "Bank Error in Your Favor" is actually a legal concept.

Some of those exceptions to application are where the payment was derived by fraud, mistake *of fact*, and duress. The exception of fraud is a fairly obvious one when you think about it. If fraud were not an exception then, as a functional matter, fraud would not be against the law as the perpetrator of the fraud would have the voluntary payment doctrine to fallback on. The mistake of fact exception flows directly from the language in *Bilbie*. The person had to have "full knowledge" of the surrounding facts. The third common exception – duress – is perhaps the most interesting.

What makes the exception of duress so interesting is the various cases all across the country that have found the duress exception to apply. Some good examples are that there have been cases that found the doctrine will not apply when rent is involved. The point in such cases is basically that the risk of not paying your rent is so substantial that you would functionally lose your right to legal redress if you could not pay the demanded rent payments and later challenge the demand. Rent is, in many jurisdictions, deemed to be a necessity and thus a demand made that threatens a necessity is not subject to the doctrine.

If you have been following along, you may be wondering, what about this doctrine is so profoundly evil? Where the doctrine becomes so apparently evil is not in concept but rather in application. The doctrine has often provided a safe haven to actions that are utterly unconscionable and has given rise to business practices designed to utilize this defense. This most frequently occurs with fraudulent billing

being placed either on a credit card or on a phone bill. In the phone bill context, the practice is often referred to as cramming. Basically, a business tacks on charges onto your phone bill in the hope that you do not instantly notice them. Then when you seek to dispute those charges you find yourself barred by the doctrine. The doctrine has actually been used as an effective shield for these ludicrous practices.

Perhaps the most galling part of the doctrine is the lack of a rational basis for its existence. The law is typically weary of providing a windfall to a person. However, in the case of the voluntary payment doctrine, it has absolutely no qualms with allowing a person to retain undeserved and even illegally obtained money. Fortunately, there has been a modern trend by courts to drastically limit the reach of this unduly harsh legal doctrine. Nevertheless, as it stands today, the voluntary payment doctrine is a dangerous weapon to be wielded by those who seek to abscond with ill-gotten gains from innocent consumers.

## Sources


- *Bilbie v. Lumley*, 2 East 469 (102 ER 448) (1802).

- Colin E. Flora, *Practitioner's Guide to the Voluntary Payment Doctrine*, 37 S. Ill. U. L.J. 91 (2012).