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The Economic-Loss Rule and Robinson Helicopter Carve-Out

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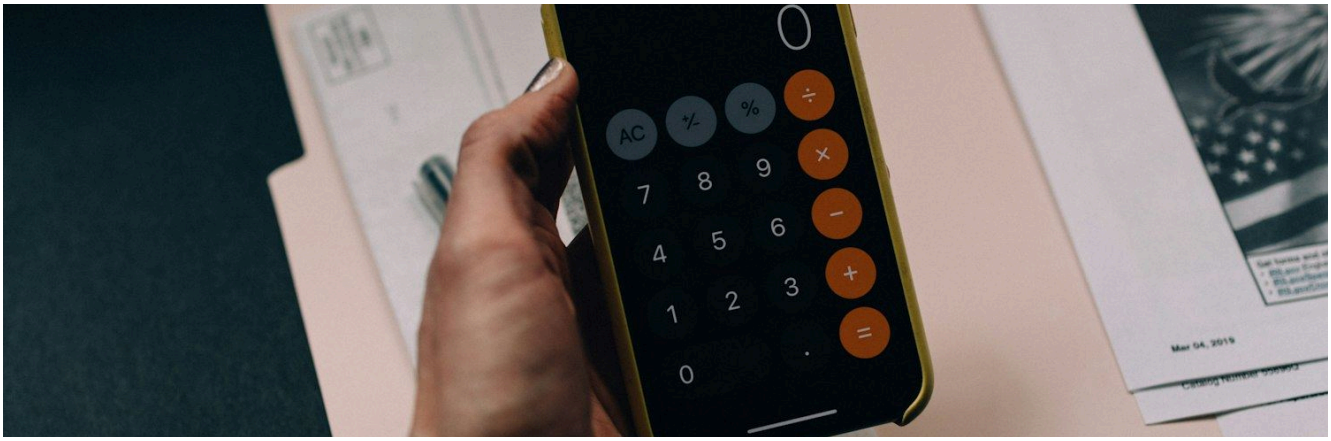

A. **Origins of the Rule (Aas, Erlich)**

The economic-loss rule provides that, in general, a party may not recover in tort for purely economic losses arising out of the breach of a contract or out of the failure of a product or service to perform as expected. The rule's modern California formulation comes from two cases. *Aas v. Superior Court* (2000) 24 Cal.4th 627, addressing construction-defect claims, held that homeowners could not recover in negligence for defects that had not yet caused property damage or personal injury. *Id.* at 636. *Erlich v. Menezes* (1999) 21 Cal.4th 543, 552, held that emotional-distress damages were unavailable for negligent breach of a residential construction contract, emphasizing that "[c]onduct amounting to a breach of contract becomes tortious only when it also violates a duty independent of the contract arising from principles of tort law."

The doctrinal point is that contract law allocates economic risk through the parties' agreement; tort law steps in only where there is an independent duty (e.g., the duty not to commit fraud, the duty not to convert, fiduciary duties).

B. **The Robinson Helicopter Carve-Out for Intentional Misrepresentation**

The Supreme Court carved out an important exception in *Robinson Helicopter Co., Inc. v. Dana Corp.* (2004) 34 Cal.4th 979. Dana, a parts supplier to Robinson, had altered its manufacturing process without notice and provided false written certifications of compliance with FAA-required specifications. *Id.* at 985–86. The Court held that the economic-loss rule did not bar Robinson's intentional-misrepresentation claim because the false certifications were tortious conduct "inde-

pendent of [Dana's] breach of contract." *Id.* at 990. The Court emphasized that Dana's "affirmative intentional misrepresentations of fact" exposed Robinson to FAA liability and that holding Dana liable in tort would "discourage[] such practices in the future while encouraging a 'business climate free of fraud and deceptive practices.'" *Id.* at 992.

The *Robinson Helicopter* exception is narrow. It applies to affirmative intentional misrepresentations causing damages independent of plain contractual losses; lower courts have largely declined to extend it to fraudulent-concealment or promissory-fraud theories absent independent tort damages. *Compare Food Safety Net Servs. v. Eco Safe Sys. USA, Inc.* (2012) 209 Cal.App.4th 1118, 1130–31 (declining extension), *with United Guar. Mortg. Indem. Co. v. Countrywide Fin. Corp.* (C.D. Cal. 2009) 660 F.Supp.2d 1163, 1186 (extending). Practitioners should plead the *Robinson Helicopter* theory carefully, isolating the misrepresentation and the independent tort damages.

C. Application to M&A and Commercial Fraud Cases

In M&A litigation, a common pattern is post-closing fraud claims based on representations and warranties in the purchase agreement. Defendants frequently invoke the economic-loss rule and contract-integration provisions to seek dismissal of fraud claims. *Manderville v. PCG&S Group, Inc.* (2007) 146 Cal.App.4th 1486 is instructive: the Court of Appeal held that an integration clause does not bar a fraud-in-the-inducement claim premised on extra-contractual misrepresentations. *Id.* at 1500–01. *Manderville* reaffirmed the longstanding rule that "[t]he law does not permit a promisor wishing to escape liability for fraud to rely upon an integration clause to immunize his fraud."

Practical drafting takeaway: anti-reliance and exclusive-representations clauses are increasingly used to attempt to limit fraud exposure. California courts have been more willing to enforce specifically negotiated, sophisticated-party anti-reliance clauses in some contexts, but blanket integration clauses remain ineffective against fraud claims after *Manderville*.

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