

MISTAKE

I. The remedy for mistake in the formation of a contract is rescission.

(A) Mutual mistake

- 1) What are the standards? See #1, page 853.
- 2) Give an example.
- 3) Jeweler: "This diamond is worth \$700." After purchase, buyer discovers the stone is only a topaz. Can buyer rescind?
- 4) Jeweler: "I will sell you this topaz ring for \$25." Buyer believes it is a topaz; seller also believes it is a topaz; it turns out to be a diamond. Can jeweler rescind?
- 5) Should the standards be different in personal injury cases?
- 6) Should the standards be different in real estate cases?

(B) Unilateral mistake

- 1) What are the standards? See #2, page 128.
- 2) Give an example.
 - A] Jeweler: "I don't know what this stone is worth. You can have it for \$10." Buyer knows it is a diamond. Can jeweler rescind the sale?
 - B] Jeweler: "I will sell you this topaz ring for \$30." Buyer knows it is a diamond. Can jeweler rescind?
- 3) A grocery store marks turkey \$10 instead of \$15. Buyer suspects the mistake and purchases for \$10. Can the store rescind the sale?
- 4) Seller at garage sale asks \$.25 for baseball cards. Savvy 12 year old boy rummages through the stack, finds an old Alex Rodriguez rookie card, and purchases it for \$.25. The price guide lists it at \$1000. Can the seller rescind?
- 5) The insurance company pays life insurance policy in good faith. But then the dead person reappears. See Kansas Farm Bureau, page 851.

- 6) Should the standard be different in bidding contracts? See § 31-3.
- 7) Should the standard be different for a mistake by the donor of a gift?

II. The remedy for mistake in performance of a contract is restitution.

- 1) What are the standards? See pages 843-844
- 2) Give an example.

III. The remedy for mistake in integration of a contract is reformation. See 1998 Ark. L. Notes 1.

- 1) What are the standards?
- 2) Give an example.

IV. What are the defenses?

- 1) the "mistake" is not a legally recognized mistake;
- 2) negligence.
- 3) changed position;
 - A] Bank mistake.
 - B] Alexander Hamilton Life Ins. v. Lewis, page 920.
- 4) compromise; settlement; assumption of the risk; Southern Farm Bureau Mut. Ins. Co. v. Burney, 590 F.Supp. 1016 (E.D. Ark. 1984), noted at 39 Ark. L. Rev. 124 (1985).
- 5) mistake of law;
- 6) discharge for value