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 816.

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) 1) What are the standards? See #5, page 126.

2) 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) Should the standard be different in bidding contracts? See § 31-3.

6) 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 #2, page 817.

2) Give an example.

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.

III. What are the defenses?

1) the "mistake" is not a legally recognized mistake;

2) negligence; Winslow, page 814.

3) changed position;
A] Bank mistake.
B] Alexander Hamilton Life Ins. v. Lewis, pages 878.

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