

# CONSTRUCTION LAWLETTER

For Industry Professionals, Managers, Contractors, Subcontractors, Trades & Suppliers

**J. NORMAN STARK, ATTORNEY and REGISTERED ARCHITECT**

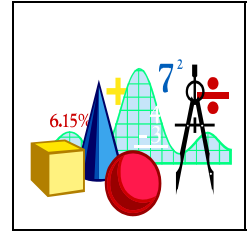
JURIS DOCTOR, B. ARCHITECTURE, B.F.A.

The Stark Building • 1310 East 49<sup>th</sup> Street • Cleveland, Ohio 44114-3803

Tel.: (216) 426-8400 • Fax: (216) 426-8411 • E-Mail: [www.Normstark@aol.com](mailto:www.Normstark@aol.com)

In Florida • 6500 Midnight Pass Rd. #105 • Sarasota, FL 34242 • (941) 349-2061 •

Homepage: [www.Jnormanstark.com](http://www.Jnormanstark.com)



Vol. 2005-2

February, 2005

## CONTRACT MISTAKES

(Continued from previous issue)

**P**roof of mutual mistake must be by clear and convincing evidence by the party requesting reformation. *Weiner*, supra; see, also, *Frate v. Rimenik* (1926), 115 Ohio St. 11, syllabus; *Stewart v. Gordon* (1899), 60 Ohio St. 170, paragraph one of the syllabus. See, also, *Cross v. Ledford* (1954), 161 Ohio St. 469, paragraph three of the syllabus (defining clear and convincing evidence). Nevertheless, "[n]o reformation of an instrument can be made that does not conform to the intention of both parties; the court cannot, by reformation, make a new contract." *Stewart* at 170, paragraph two of the syllabus.

"A unilateral mistake occurs when only one party has an erroneous belief as to the facts. (In a sense, of course, even in a case of unilateral mistake, both parties are mistaken: one is mistaken as to some fact and the other is mistaken in thinking that the first party is not mistaken)." 2 Farnsworth on Contracts (2 Ed.1998) 585-586, Section 9.4. See, also, Restatement of the Law 2d, Contracts (1981) 394, Section 153; *Marshall v. Beach* (2001), 143 Ohio App.3d 432, 437, quoting *Gen. Tire, Inc. v. Mehlfeldt* (1997), 118 Ohio App.3d 109, 115, appeal not allowed, 79 Ohio St.3d 1449 ("A unilateral mistake generally 'occurs when one party recognizes the true effect of an agreement while the other does not'").

"Generally, a contract may not be reformed in the case of a unilateral mistake. \* \* \* However, where the mistake occurred due to a drafting error by one party and the other party knew of the error and took advantage of it, the trial court may reform the contract. \* \* \* Reformation is appropriate if one party believes that a contract correctly integrates the agreement and the other party is aware that it

does not, even though the mistake was not mutual." *Galehouse Constr. Co., Inc. v. Winkler* (1998), 128 Ohio App.3d 300, 303. (Citations omitted.) But, see, *Kruppa v. All Souls Cemetery of the Diocese of Youngstown* (Feb. 22, 2002), Trumbull App. No. 2001-T-0029, quoting *Midwest Mut. Ins. Co. v. Lightning Rod Mut. Ins. Co.* (Mar. 15, 1994), Belmont App. No. 92-B-53 ("[t]here may be rescission for unilateral mistake if the position of the parties has not changed in such a way that they cannot be restored to their original rights"); *Marshall* at 437, citing *Convenient Food Mart, Inc. v. Con. Inc., No. 3-007* (Sept. 30, 1996), Lake App. No. 95-L-093 ("While [a unilateral mistake] may provide the grounds for rescission of an otherwise valid contract, it is well established in Ohio that relief for a unilateral mistake of material fact will not be provided where such mistake is the result of the negligence of the party seeking relief"). (Emphasis sic.) *L.B. Trucking Co., Inc. v. C.J. Mahan Construction Co.*, No. 01AP-1240, 02-LW-6311 (10th).

\* \* \*

**If a little knowledge is dangerous,  
where is the man who has so much  
as to be out of danger?**

Thomas Henry Huxley (1825-95), British biologist and educator

Author: **J. NORMAN STARK** is an Attorney-at-Law, a Registered Architect, (AIA, NCARB) Registered Landscape Architect, Interior Architectural Designer, Planner and Senior Appraiser (ASA). He is admitted to practice law before the Bar of Ohio, the US District Courts of Ohio and Illinois (Central Dist.), the US Court of Appeals, and the U.S. Supreme Court. A former Member of the Ohio Board of Building Standards, he has professional experience in Business, Construction, Real Property, Mechanics' Liens, Litigation, Collections, and Construction-Legal Claims, Project Management and Litigation Expert Support.