



# CONSTRUCTION LAWLETTER

For Industry Professionals, Directors, Officers, Managers, Agents, Trades and Suppliers

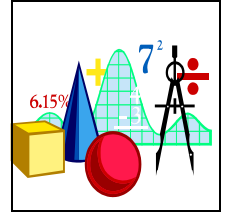
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Vol. 2005, Issue 7

July, 2005

### LEGAL DEFINITIONS

In response to many requests, the following are a few of the most frequently used legal definitions:

**BREACH OF CONTRACT:** A breach of contract occurs when a party to the contract fails to perform a contractual duty.

**CONTRACT INTERPRETATION:** A specific provision in a contract controls over a general provision.

**CONTRACT INTERPRETATION; Meaning of Words:** "Common words appearing in a written instrument will be given their ordinary meaning unless manifest absurdity results, or unless some other meaning is clearly evidenced from the face or overall contents of the instrument."

**ORAL MODIFICATIONS TO CONTRACT:** A party which passively accepts the benefits of an oral modification to a written contract waives the protections provided by a no-oral-modification clause.

**PRINCIPAL / AGENT LIABILITY:** Ohio law provides that a party seeking to hold a principal liable for the acts of an agent who exceeds his authority must show that he had reason to believe that the agent had the authority that the party assumed.

**LIABILITY OF PRINCIPAL:** Ohio law provides that a party seeking to hold a principal liable for the acts of an agent who exceeds his authority must show that he had reason to believe that the agent had the authority that the party assumed.

**EXTRA WORK:** In *Hastings v. Columbus* (1885), 42 Ohio St. 585, the court held that a contractor could recover for extras in a public improvement project, even though there had been no publication and public bidding for the extras, as required under the statutes in effect at that time, based upon a finding that the extra work was necessary for the contractor to do a good job as part of the public works contract.

**N.B.: However, this case holding may not now be the applicable law of Ohio.**

**FRAUD:** The basic elements necessary to prove fraud are: (1) a material false representation or concealment; (2) knowingly made or concealed; (3) with the intent of misleading another into relying upon it; (4) reliance, with a right to do so, upon the representation or concealment by the party claiming injury; and (5) injury resulting from

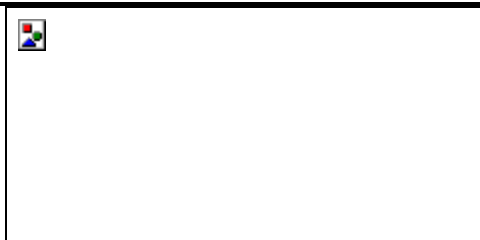
the reliance. Fraud does exist, however, when one makes statements of future intentions with no present intent to ever, in fact, perform them.

**UNJUST ENRICHMENT:** The doctrine of unjust enrichment is that a person will not be allowed to profit or enrich himself inequitably at another's expense. \* \* \* As ordinarily defined, the concept of unjust enrichment includes not only loss on one side but gain on the other, with a tie of causation between them.

**QUANTUM MERUIT:** The elements of quantum meruit are: a benefit conferred upon another and the circumstances render it unjust to permit the other to retain the benefit without making payment therefor.

**ABUSE OF PROCESS:** The three elements of the tort of abuse of process are: (1) that a legal proceeding (lawsuit) has been set in motion in proper form and with probable cause; (2) that the proceeding has been perverted to attempt to accomplish an ulterior purpose for which it was not designed; and (3) that direct damage has resulted from the wrongful use of process.

**BUSINESS INTERFERENCE:** This tort occurs when a person, without a privilege, induces or otherwise purposely causes a third party not to enter into, or continue, a business relationship, or perform a contract with another. Liability for business interference is established if the defendant's acts are without privilege and interfere with the plaintiff's right to conduct business.



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