

Contracts I
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Sample Exam Question #7 - Model Answers

Bamm Bamm, age twenty-five, lived with his parents, Barney and Betty, in a nice neighborhood in Bedrock. Bamm Bamm had his own bedroom, but wanted a place to play his drums. He contacted Slate Construction Company (“Slate”) to get an estimate on adding a music room to the house. His parents had no particular need for the additional room, but they wanted to support his musical interests and preferred that he not play the drums in his bedroom.

Fred, one of Slate’s supervisors, came to the house and met with Bamm Bamm to discuss the addition. Fred had Bamm Bamm fill out a credit application and explained that Slate would only agree to perform the work on credit if Bamm Bamm’s credit rating was satisfactory. Fred also gave Bamm Bamm a written “offer” detailing the specifics of the project, the expected cost and time of completion, and the payment schedule. The “offer” clearly indicated that it was conditional on Bamm Bamm having satisfactory credit. It also stated: “This agreement shall become binding only upon written acceptance by Slate Construction Company or upon commencing performance of the work.” The total cost was to be \$10,000.

After a few weeks passed without word from Slate, Bamm Bamm assumed that his credit rating had proved unacceptable. (He was rather destructive, at times, and had promised to make amends to several neighbors and area businesses, but he was not always able to do so in a timely manner.) Bamm Bamm wrote to Fred: “I have changed my mind and no longer want the construction work done which we discussed.” Slate never received the letter. Bamm Bamm sold his drums and took up power lifting at the local gym – a hobby that did not require adding on to his parents’ house.

A month or so later, while Barney and Betty were vacationing at Yellowrock Park and Bamm Bamm was out of town at a power lifting competition, a Slate crew quickly (but in a workmanlike manner) built the addition, leaving behind an invoice billing Bamm Bamm for the work. When Barney, Betty, and Bamm Bamm returned to Bedrock, they discovered the new music room and the bill from Slate, with the first payment due in one month.

No longer needing the room, and unable to pay for the work (having squandered his meager savings on steroids and baby oil), Bamm Bamm telephoned Fred. Fred referred the call to in-house counsel, Stonewall, who replied: “Sorry, we did not receive your letter. According to our agreement, we were to perform the work once your credit check was approved. It was. We did. You owe us \$10,000.00.” Stonewall subsequently sent Bamm

Bamm several letters demanding payment, and then threatening suit for nonpayment, but Bamm Bamm could not pay.

Betty eventually met with Stonewall and asked her to stop harassing Bamm Bamm. When Stonewall insisted that *someone* pay Slate for the work it performed, Betty orally agreed to pay Slate the remaining balance due (\$10,000 plus interest), in twelve monthly installments of \$950 each, if Slate would stop all efforts to collect from Bamm Bamm. Stonewall agreed, on Slate's behalf, not to pursue Bamm Bamm any further. Betty made only three payments. Meanwhile, Bamm Bamm fled the jurisdiction and was last seen working in a circus side show in a distant land.

A. Were the improvements that Slate made to Barney and Betty's house consideration to support Betty's agreement to pay Slate \$11,400? Please explain.

No. Slate's construction work could not serve as consideration for Betty's promise because Slate had completed its work before Betty made her promise. Past acts do not constitute consideration.

B. Whether or not the improvements that Slate made to Barney and Betty's house were consideration to support Betty's promise to pay Slate, was Betty's promise supported by other consideration? Please explain.

Probably so. Stonewall promised to stop pursuing Bamm Bamm for the prior debt; and, in fact, she ceased trying to collect from Bamm Bamm, which at that time she (on Slate's behalf) had a legal right to do. If Betty sought that forbearance when she promised to pay Slate, and if Stonewall forbore because of Betty's promise to pay Slate, then the R2 § 71 test should be satisfied. Although Betty did not recite that she was giving her promise in order to keep Slate from suing Bamm Bamm for the outstanding debt, Betty's request to "take it easy" on Bamm Bamm indicates that was her motivation. There is, then, a reasonable argument that Betty's promise was supported by Slate's forbearance.