

Contracts II
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Sample Exam Question #10

On March 1, 2001, Gwyneth and Russell agreed that Gwyneth would pay Russell \$100 each for two tickets to the March 15, 2001 New York premiere of “The Orange Pumpernickel.” The parties further agreed that Russell would deliver the tickets to Gwyneth no later than March 14, 2001.

The New York premiere of James Cameron’s new movie, “The Orange Pumpernickel,” starring Chris Rock, Jet Li, Dame Judi Dench, and the Olson Twins, was scheduled for March 15, 2001 at the Radical City Musik Hall. That same night, the 41st Street Playhouse scheduled the premiere of a stage production of “The Orange Pumpernickel,” directed by David Mamet, and starring Adam Sandler, Christopher Reeve, and Pamela Anderson Lee.

On March 2, 2001, Russell purchased two tickets from the 41st Street Playhouse for \$75 each. At the time they made their contract, Russell knew that Gwyneth wanted tickets to the movie premiere and, despite that knowledge, Russell provided her with tickets to the play.

On March 14, 2001, when Russell delivered the play tickets to Gwyneth, Gwyneth refused to pay, claiming that Russell had agreed to sell her tickets to the movie, not the play. Russell did not have any tickets to the movie, and none were commercially available at that late date. Russell tried unsuccessfully to find another buyer for the play tickets and to obtain a refund from the Playhouse. Unable to use them himself, he left the tickets with Gwyneth in case she changed her mind.

Gwyneth hoped to star in the much-anticipated sequel to “Titanic” and planned to schmooze James Cameron while at the movie premiere. Gwyneth was unable to obtain tickets to the movie premiere from any other source, and was relegated to watching coverage of the premiere on “E! Television.” During the post-premiere coverage on “E! Television,” James Cameron announced that he had decided to cast Jennifer Lopez as the female lead in “Titanic 2: Jack is Back.” Mr. Cameron candidly stated that he met Ms. Lopez for the first time at the premiere, and that he had gone to the premiere for the purpose of finding someone for the role. Hollywood newspaper “Weekly Variety” reported in its next issue that Ms. Lopez will be paid \$10 million for her performance in “T2:JiB.”

Gwyneth, devastated by the news of Cameron’s casting decision, sues Russell for failing to provide her with the movie tickets. Russell counterclaims against Gwyneth for failing to pay for the tickets he delivered to her.

- A. Discuss the effect of each of the following on the viability of Gwyneth's claim(s) against Russell and/or Russell's defense(s) and what remedy or remedies Gwyneth might be entitled to:
1. Despite his best efforts, Russell was unable to obtain any movie tickets at any price.
 2. Despite his best efforts, Russell could not obtain any movie tickets for less than \$150 per ticket – a price he considered to be “too high” in light of Gwyneth's promise to pay him only \$100 per ticket.
 3. Gwyneth decided to use the tickets to attend the play, where she met Kenneth Branagh, who offered her the lead in his live-action adaptation of “Fritz the Cat,” also starring Sir Derek Jacobi and Steve Buscemi. Ken doesn't have Jim Cameron's bankroll, but he assures Gwyneth that she will make at least \$500,000 for the role, even if he has to give her part of his salary.
 4. Gwyneth purchased tickets to the movie premiere at the last minute for \$500 each, attended the premiere, had a wonderful time, but didn't get to meet James Cameron.
 5. Gwyneth had the chance to purchase tickets to the movie premiere at the last minute for \$500 each but did not purchase them.
- B. Suppose that, on March 2nd, instead of buying play tickets, Russell bought two tickets to the movie premiere for \$75 per ticket. Their “fair market value” on March 2nd was \$125 (Russell got them at a discount because the ticket broker recognized him from the Academy Awards). By March 14th, the “fair market value” of the movie premiere tickets had risen to \$175. When Russell attempted to delivered the tickets to Gwyneth on March 14th as called for by their contract, she was not home, so he slipped them through her mail slot with a note saying “You can pay me tomorrow.” Unbeknownst to Russell, Gwyneth heard later that day on “Entertainment Tonight” that James Cameron had suddenly become ill and would not be coming to New York for the premiere. Gwyneth decided not to attend the premiere and returned the tickets to Russell the next day. Nonplussed, Russell demanded to be paid for the tickets. Gwyneth refused. On March 15th, the “fair market value” of the movie premiere tickets had fallen slightly to \$150, due to the now-publicized non-appearance of Cameron. However, due to circumstances beyond his control, Russell was unable to use, sell or return the tickets. If Russell sues Gwyneth, on what theory or theories might he prevail? Please explain.