

Contracts II
Professor Keith A. Rowley
William S. Boyd School of Law
University of Nevada Las Vegas
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Sample Exam Question #12 - Model Answer

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.

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. Suppose that, at the time they made their contract, Gwyneth knew about the movie premiere, but not about the play, and Russell knew about the play, but not the movie; and, therefore, they had no contract, due to lack of mutual assent, mutual mistake, or both. What if, despite her bitter disappointment at not getting to attend the movie premiere, and despite not having paid Russell for the play tickets, Gwyneth decided to use the play tickets. To what remedy or remedies might Russell be entitled? Please explain.**

If, despite the fact that they were not what she wanted, Gwyneth kept and used the play tickets without paying for them, Russell would now have a claim against Gwyneth for damages. Russell could not recover his expectations damages – the \$200 he expected Gwyneth to pay him under the contract – under R2 § 347, because there was no contract to breach (unless he wants to make a convoluted argument that, by leaving the tickets with Gwyneth, he offered to amend their agreement or to replace it with a new one, which she could accept by using the tickets – but there are too many “missing” elements for that argument to fly). However, he may be able to recover restitutionary damages equal to the “reasonable value” to Gwyneth of the play tickets “in terms of what it would have cost [her] to obtain [play tickets] from a person in [Russell’s] position.” R2 § 371(a). R2 § 376 specifically authorizes the recovery of benefits conferred by way of part performance of or reliance on a contract which proves to be voidable on the grounds of, *inter alia*, mistake. Russell may also argue for reliance damages in the amount of \$150 – the price he paid for the tickets – under R2 § 349.

- B. Suppose, instead, that Russell knew, at the time he agreed to buy the tickets for Gwyneth, that Gwyneth wanted tickets to the movie premiere and, despite that knowledge, Russell provided her with tickets to the play. Assuming that Russell breached his agreement with Gwyneth when he delivered the play tickets to her, to what remedy or remedies might Gwyneth be entitled as a consequence of Russell’s breach? Please explain.**

If Gwyneth sues Russell for breach, she may recover her expectations damages, including any foreseeable, unavoidable, and sufficiently certain consequential damages, less any costs she avoided by reason of Russell’s failure to perform. What did Gwyneth expect to get? She expected to get two tickets to the movie premiere and the chance to meet, dazzle, and be cast by James Cameron in his upcoming movie. What did she get? She got two tickets to a play she didn’t want to see and no tickets to the movie premiere – and, therefore, no the chance to meet, dazzle, and be cast by James Cameron in his upcoming movie. In fact, she “lost” the role to Jada Pinkett. What did she expect to pay? She expected to pay \$200. What did she pay? Nothing. So, under R2 § 347, Gwyneth should recover her expectations damages, including any foreseeable, unavoidable, and sufficiently certain consequential damages, minus \$200. Her odds of recovering the estimated value of the movie role (probably based on the \$1 million paid to Ms. Pinkett), are slim, because such damages do not appear to be either “reasonably foreseeable” to Russell (no facts, thus far, indicate that he knew why Gwyneth wanted to attend the movie premiere), nor sufficiently “certain” (even if she went to the movie premiere, there was no guarantee that she would meet, much less dazzle, much less be cast by Cameron).

Alternatively, if Gwyneth incurred expenses in reliance on her expectation of attending the premiere – *e.g.*, new dress, hair styling, limo reservation, etc. – and those expenses exceed her expectations damages, she may elect to recover reliance damages instead. Absent such expenses, she has no reliance damages, because she has not yet paid Russell; and, therefore, is not “out of pocket” anything.

Mitigation – which applies to both expectations and reliance damages – doesn’t appear to be an issue, because the facts tell us that there were no other tickets to the movie premiere “commercially available” at the time Gwyneth realized that Russell had “goofed.”