

Contracts II
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Sample Exam Question #3 - Model Answer

Lestrade, an unusually virtuous insurance defense attorney, found Watson lying gravely injured and unconscious by the side of the road, where Watson had apparently crawled from his overturned car. The car was leaking fuel and appeared to be at risk of catching fire. Lestrade carefully placed Watson in the back of Lestrade's Range Rover and drove Watson to the local hospital, where Lestrade had Watson admitted and promised to pay Watson's expenses if he was unable to do so himself. Word of Lestrade's good deed soon spread, and the local DEF network affiliate ran a story on the evening news that was picked up a few days later by the network news. Watson's cousin, Holmes, saw the story and tracked down Lestrade, who told Holmes where to find Watson. Unable to attend to Watson personally, Holmes told both Lestrade and hospital officials to spare no effort or expense to return Watson to good health. Holmes promised to pay the hospital, or reimburse Lestrade, whatever the arrangement between Lestrade and the hospital might be, for all expenses. Alas, Watson did not recover, and Holmes met an untimely end while mountain climbing. The hospital sent Lestrade a bill for Watson's room and care, which Lestrade paid as he had promised to do. Lestrade has come to you seeking legal advice. Assume that Holmes's estate is equally liable to Lestrade or the hospital as Holmes would be were he still alive, and that Watson died without any estate or kin to sue.

- A. Does Lestrade have a viable claim against Holmes's estate for the expenses he incurred in seeing to Watson's care *before* Holmes promised to reimburse him? Please explain.**

Probably not. Lestrade cannot claim breach of contract because there was no mutual assent. R2 § 17. Lestrade cannot claim promissory estoppel because Holmes's promise did not cause Lestrade to detrimentally rely by agreeing to pay for Watson's care up to the date of Holmes's visit. Lestrade had already agreed to do that. R2 § 90(1). R2 § 86 provides that a promise, made in recognition of a benefit already received, is binding to the extent necessary to prevent injustice, as long as (1) the promisee did not render the benefit gratuitously, (2) not enforcing the promise would unjustly enrich the promisor, and (3) the promise is not disproportionate to the benefit the promisor received. *Restatement of Restitution* § 116 permits recovery for services rendered to prevent (or treat) serious bodily harm or pain (or death), undertaken without the beneficiary's knowledge or consent, if (1) the benefactor acted unofficially and with intent to charge for the services, (2) the benefactor had no reason to know the beneficiary would not consent to the services if asked, and (3) the beneficiary's condition prevented consent. Lestrade's problem with both provisions is that he clearly did not act with the expectation of being compensated for his services and he may well have considered his intercession on Watson's behalf a gift. So, as to the pre-visit expenses, Lestrade seems to be out

of luck. Moreover, *RoR* § 116 only authorizes recovery from the beneficiary of the services. Under these facts, that would be Watson or Watson's estate, but not Holmes or Holmes's estate.

B. Does Lestrade have a viable claim against Holmes's estate for the expenses he incurred in seeing to Watson's care after Holmes promised to reimburse him? Please explain.

Lestrade clearly has a promissory estoppel claim for post-visit expenses because he agreed to continue to pay for Watson's care only after Holmes promised to reimburse him. Holmes's promise induced Lestrade to reasonably and foreseeably rely to his detriment, and Lestrade would suffer an injustice if Holmes were not held to his promise, R2 §§ 90 & 139 – unless Lestrade and Holmes had an enforceable contract. If they did, then avoiding injustice would not require the court to enforce Holmes's promise using the rubric of promissory estoppel. Lestrade could be made whole by awarding him damages for breach of contract.

Whether Lestrade and Holmes had an enforceable contract is unclear because Holmes's promise might fall under the category of a contract "to answer for the duty of another"; and, therefore, require a signed writing under R2 § 110(1)(b). Holmes signed no writing. If no writing was required, Lestrade should have a good breach of contract claim because (1) Holmes offered to reimburse Lestrade for Watson's care; (2) Lestrade accepted by agreeing to pay Watson's bill; and (3) Holmes's promise to repay Lestrade whatever he paid on Watson's behalf was consideration for Lestrade's promise to the hospital to pay Watson's expenses. *See* R2 §§ 71 & 75. If a writing was required, Lestrade would have to fall back on promissory estoppel. *See* R2 § 139. R2 § 139 requires Lestrade to prove that (1) Holmes made a promise, (2) Holmes could reasonably foresee that his promise would induce Lestrade to act in reliance on the promise, (3) Lestrade, in fact, acted in reliance on the promise, (4) as a result of which injustice can be avoided only by enforcing the promise. As discussed in the preceding paragraph, Lestrade should be able to satisfy these elements.

C. Suppose that Lestrade did not pay the hospital bill. If the hospital elected to sue Holmes's estate rather than Lestrade, would the hospital have a viable claim against Holmes's estate for the reasonable expenses of Watson's care before Holmes promised to reimburse the hospital? Please explain.

Probably not. The hospital seems, unlike Lestrade, to have a claim under *Restatement of Restitution* § 116 because it would reasonably have expected to be paid for the life-sustaining services its doctors and nurses provided. The problem is that *RoR* § 116 entitles the hospital to restitution from the beneficiary (or his estate). Based on our facts, Holmes is neither. As for R2 § 86, the hospital did not render its services gratuitously; however, it is not all that clear how Holmes would be unjustly enriched by not having to pay for the unsuccessful care rendered to Watson. As with Lestrade, the hospital does not have a viable breach of contract or promissory estoppel claim against Holmes's estate for the reasonable expenses of caring for Watson before Holmes promised to reimburse the hospital because breach of contract and promissory estoppel both require that Holmes make a promise or perform an act signifying mutual assent before he can be bound. Holmes made no promise and performed no act prior to his visit to the hospital.

- D. Same facts as subpart “C.” If the hospital elected to sue Holmes’s estate rather than Lestrade, would the hospital have a viable claim against Holmes’s estate for the reasonable expenses of Watson’s care *after* Holmes promised to reimburse the hospital? Please explain.**

Yes, for the same reasons given in response to subpart “B.”

- E. Return to the facts of subpart “A,” but now suppose that Holmes never told Lestrade and the hospital that he would pay for Watson’s care, but that Holmes was Watson’s sole heir; and, under applicable state law, Holmes’s estate would be liable to the same extent as Watson (if he had survived) or Watson’s estate (if there was one). Would Lestrade have a viable claim against Holmes’s estate for the expenses he incurred in seeing to Watson’s care? Please explain.**

Without a promise of any sort from Holmes, Lestrade cannot recover based on breach of contract, promissory estoppel, or promissory restitution because breach of contract, promissory estoppel, and promissory restitution all require that Holmes make a promise or perform an act signifying mutual assent before he can be bound. Without a promise, Lestrade’s only avenue is *Restatement of Restitution* § 116, which is foreclosed because, as discussed in the answer to subpart “A,” Lestrade did not act expecting compensation.

- F. Same facts as subpart “E.” Would the hospital have a viable claim against Holmes’s estate for the expenses incurred in seeing to Watson’s care? Please explain.**

Without a promise of any sort from Holmes, the hospital cannot recover based on breach of contract, promissory estoppel, or promissory restitution for the same reasons Lestrade cannot. However, unlike Lestrade, the hospital can recover under *Restatement of Restitution* § 116 because it acted with the reasonable expectation of being compensated; and here, unlike subpart “C,” Holmes and his estate are deemed to be beneficiaries of the hospital’s care for Watson.