

Contracts II
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Sample Exam Question #7 - Model Answer

On February 15, Oliver Ajax and James Bond entered into a written contract whereby Ajax, a professional entertainer, was to perform at Bond's resort hotel for the week of July 1-7 for \$20,000. In late spring, Ajax had a hit record which virtually overnight made him a star who could command at least \$50,000 for a one-week engagement. In early June he contacted Bond to renegotiate their contract, demanding \$50,000 for the July 1-7 period. Initially, Bond refused to renegotiate, but when Ajax said he would not appear, Bond relented. After several discussions, including a lengthy discussion the morning of June 8th, Bond dictated a new contract to his stenographer, in the exact words of the first contract and running for the same period with the compensation changed to \$35,000. As they signed the new contract they tore up the old one. Thereafter, Ajax kept the engagement, but Bond refused to pay more than \$20,000. Ajax filed suit.

- A. Who should win in Ajax's suit against Bond for the difference between the renegotiated contract price (\$35,000) and the amount paid by Bond (\$20,000) and why?

The first question, here, is whether this appear to be a (forced) modification or a (voluntary) substituted agreement? If it is a forced modification (a la *Alaska Packers*), then it will require additional consideration, because this contract does not fall within the ambit of § 2-209(1). If it is a substituted agreement, then any consideration not yet performed that would have been sufficient to support the original contract will support the substituted agreement.

The facts here suggest that the June 8th agreement replaces the February 15th agreement. There is no indication that the terms of the June 8th agreement were "subject to" the earlier agreement (even though the June 8th agreement does contain the identical terms, except for compensation, as the February 15th agreement). What's more, Bond and Ajax destroyed the old agreement at the same time they executed the new one. Therefore, as long as Ajax still owed Bond unperformed consideration under the original agreement, that unperformed consideration would also support the substituted agreement.

If for some reason the court were to find that the June 8th contract was merely a modification that was not supported by separate consideration, Ajax may have a claim in promissory estoppel for the unpaid balance. Bond's promise to pay \$35,000 – even if he was not required to do so as a matter of contract law – induced Ajax to rely to his detriment on the promise by performing. Ajax's response to Bond's promise to pay him \$35,000 was reasonably foreseeable to Bond at the time he made the promise. The question for the court will be whether

Ajax would have performed anyway for the original \$20,000 if he had not secured Bond's promise to pay him \$35,000.

B. Suppose that, when Ajax contacted Bond in early June to demand more money, Bond told Ajax that “a deal is a deal” and Bond would not agree to pay Ajax any more than they had previously bargained for. Under those circumstances, would Ajax have been justified in refusing to perform? If so, why? If not, why not?

No, Ajax would not be justified in refusing to perform, absent some defense to the otherwise binding 2/15 agreement. There is no evidence that Ajax agreed to the 2/15 contract on account of some mental defect or illness or other incapacity, or under duress or undue influence. There is no evidence that Bond defrauded or negligently misled Ajax with regard to any fact material to their agreement. There is no evidence that Ajax was “dominated” by Bond or lacked any meaningful choice or that the terms of the contract were grossly unfair to Ajax *at the time the contract was formed*. Nor is there any evidence to support a claim by Ajax that the contract should be set aside on the ground of mistake, frustration of purpose, impossibility, or impracticability. Basically, he's stuck.

C. Same facts as “A,” except, after Bond told Ajax he would not pay him more than the previously-agreed \$20,000, Ajax told Bond: “Then find yourself another act, bucko, because Oliver doesn't sing for \$20,000 anymore.” Bond called his booking agent and located a replacement act, the Grammy-award winner, Gem, who agreed to perform at Bond's hotel July 1-7 for \$25,000. On July 1st, Ajax appeared at Bond's hotel to perform. Upon being told that Bond had booked a replacement act, Ajax called his lawyer and instructed him to file suit. Under these facts, who should win in Ajax's suit against Bond for breach of contract and why?

Ajax's statement constitutes a definite and unequivocal manifestation of his intent not to perform the contract as called for. As such, Bond was entitled to treat Ajax's statement as an anticipatory breach and was, therefore, both entitled and, to some extent, obligated to make other arrangements. Therefore, Bond should prevail against Ajax's claim of breach of contract, and may have a viable counter-claim against Ajax to recover some or all of the additional expense of booking and paying for Gem to perform in Ajax's stead.