

Contracts II
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Sample Exam Question #8

Romeo had been courting Juliet for several years. Finally, he decided to propose marriage. Having the heart of a true romantic, Romeo decided to propose on the anniversary of their first date. Having the limited means of a true romantic, Romeo shopped around quite a bit to find the best deal on the right ring.

After lots of shopping, and with a week before the appointed date, Romeo found the ring (and the price) he was looking for at Old Will's Jewelers for \$5,000. Romeo was unable to pay the entire purchase price immediately. After some haggling, Old Will, the owner, agreed to let Romeo pay \$1,500 prior to taking delivery and the rest in ten monthly installments of \$350 each. Romeo asked Old Will to hold the ring for him and promised to return the next day with the down payment.

Romeo returned to Old Will's Jewelers the next afternoon with a check for \$1,500, drawn on Romeo's account at the Padua Bank & Trust ("PB&T"). Old Will assured Romeo that the ring would be sized, polished, and ready to pick up the following morning. Old Will agreed to hold Romeo's check until Romeo picked up the ring. Later that afternoon, however, Old Will called PB&T to make sure that Romeo's account contained sufficient funds to cover the check. PB&T informed Old Will that the account had, at that moment, "less than \$500," and that, "over the past 12 months, the balance in this account has averaged less than \$1,000." Old Will then called the local credit bureau to obtain a credit report on Romeo. The report characterized Romeo as "a questionable credit risk for any amount greater than \$500."

Old Will promptly called Romeo and chastised him for writing "a rubber check" and demanded that Romeo pay the entire purchase price in cash before Old Will would give him the ring. Romeo told Old Will that he had transferred funds into his PB&T account to cover the check, but that, because he had done so after 3:00 p.m., the additional funds would not show up in his account balance until tomorrow. Romeo offered to bring \$1,500 cash the next day when he came to pick up the ring. Old Will insisted that Romeo pay the full price in cash or the deal was off. Unable to muster \$5,000 in cash by the next day, Romeo did not pick up the ring as planned.

Romeo later bought a ring of comparable size and quality from another jeweler for \$7,500. He then proposed to Juliet, she accepted, and they are happily married.

Romeo has sued Old Will's Jewelers for breach of contract. Old Will's has answered with the defense of anticipatory breach. Assuming that (1) Romeo had an enforceable contract to purchase the ring from Old Will's Jewelers for \$1,500 plus ten monthly installments of \$350

each, and (2) Romeo did transfer the \$1,500 into his PB&T account in time to cover the check if Old Will's had deposited it the same day that Romeo was to pick up the ring, should Romeo prevail on his breach of contract claim against Old Will's Jewelers? Please explain.