

**Contracts**  
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**Equitable Claims**

**I. Review**

**A. Elements of a Contract:** To establish a contract, a plaintiff must prove

1. **Offer:** The offeror's manifestation of his willingness to enter into a bargain, so made as to justify the offeree to understand that the offeror invites her assent and that her assent will conclude the bargain;
2. **Acceptance:** The offeree's assent to the terms of the offer, demonstrated "in a manner invited or required by the offer"; and
3. **Consideration:** A return promise, act, or forbearance that
  - a. the offeror sought in exchange for his promise, act, or forbearance (*e.g.*, the purchase price), and
  - b. the offeree gave in exchange for the offeror's promise, act, or forbearance (*e.g.*, payment or a promise to pay).

**B. Enforceability:** To enforce a contract thus proved, the plaintiff must

1. refute any **formation defenses** (*e.g.*, lack of capacity, mistake) the defendant might try to prove and either
2. refute the defendant's assertion that a **statute of frauds** applied to the transaction (*e.g.*, because the contract could be fully performed in less than a year) or
3. prove either that one or more signed or authenticated writings or records satisfy the relevant statute of frauds or that an exception renders the evidence sufficient or relieves the plaintiff from satisfying the statute.

**C. Parol Evidence Rule:** A fully integrated and unambiguous written agreement

1. supersedes all prior or contemporaneous oral agreements and all prior written agreements between the parties regarding the transaction's subject matter and renders them unenforceable *as contracts*, and

2. bars any evidence other than the agreement and the circumstances surrounding its formation from proving a *contractual* right or duty, unless
  3. an **exception** sustains the prior or contemporaneous agreement or allows extrinsic evidence of a right or duty in addition to or different from those the agreement and its surrounding circumstances create or recognize, or
  4. positive law **implies** a right or duty in addition to, or abrogates or limits the effect of, those that the agreement and its surrounding circumstances create or recognize.
- D. **Breach or Repudiation:** Having proven the existence of an enforceable contract, one or more terms of which the plaintiff seeks to enforce against the defendant, the plaintiff must prove that the defendant
1. **failed to perform** how and when the contract's terms required or
  2. **repudiated** the contract before her performance was due and failed to retract the repudiation before the plaintiff materially changed his position in reliance on her repudiation or before performance was due, whichever happened earlier.
- E. **Excuses:** The plaintiff seeking to enforce a contract must refute any excuse the defendant asserts for failing to perform as and when promised, such as
1. the nonoccurrence of a **condition precedent** to the defendant's obligation to perform or the plaintiff's right to enforce the contract;
  2. an agreed or implied **change to the agreement's terms** or to the plaintiff's right to enforce one or more terms;
  3. the occurrence of an **unforeseen event**, the nonoccurrence of which was a basic assumption on which the parties formed their agreement, and the occurrence of which either makes the defendant's performance impracticable or frustrates the defendant's purpose for entering into the agreement in the first place, or
  4. the plaintiff's own repudiation or prior material breach.
- F. **Remedies:** The plaintiff who successfully navigates the requisites for proving an actionable breach (or repudiation) of contract may seek one or more remedies that should, collectively, make the plaintiff whole – either *ex ante* (as if the plaintiff and defendant had never interacted) or *ex post* (as if both parties had fully performed as promised) – without punishing the breaching defendant.

- II. **Query:** What claims are available to a plaintiff who cannot prove one or more of the elements required to enforce a contract, fully refute one or more defenses to contract enforcement, or obtain an adequate remedy at law? In a nutshell,
- A. A plaintiff that can establish offer, acceptance, and consideration, but neither a writing satisfying nor an excuse from the statute of frauds, may claim **promissory estoppel (R2 § 139)**, if
    1. the defendant's promise induced the plaintiff's detrimental reliance, and
    2. injustice would result from not enforcing the promise.
  - B. A plaintiff that can establish offer and acceptance, but in some other regard fails to prove the elements required to enforce a promise as a contract, may claim
    1. **promissory estoppel (R2 § 90)**, if the defendant's promise induced the plaintiff to detrimentally rely and injustice would result from not enforcing the promise; or
    2. **promissory restitution (R2 § 86)**, if the defendant's promise did not induce the plaintiff to detrimentally rely, but injustice would (nonetheless) result from not enforcing the promise.
  - C. If the plaintiff can establish an offer and detrimental reliance on that offer prior to acceptance, the plaintiff's **pre-acceptance reliance** may make the defendant's promise enforceable even though the plaintiff did not accept it.
  - D. In the absence of even an offer or a promise, where the plaintiff can establish that
    1. she performed acts necessary to prevent or to mitigate serious bodily harm to the defendant, or
    2. she performed acts necessary to prevent or to mitigate damage to, or destruction of, the defendant's property, or
    3. she conferred an uncompensated material benefit on the defendant (or on some third party at the defendant's request),the plaintiff may have a **restitution** or **quasi-contract** claim in order to prevent the defendant from being unjustly enriched.

### III. Promissory Estoppel

- A. **R2 § 90:** In order to establish her entitlement to promissory estoppel, a promisee must prove
1. that the promisor made a **promise**,
  2. which the promisor could **reasonably foresee** would induce action or forbearance (reliance) by the promisee and,
  3. in fact, **induced** the promisee to (reasonably) rely
  4. to the promisee's **detriment**, and
  5. **injustice** can be avoided only by enforcement of the promise.
- B. **§ 139 Elements:** In order to establish her entitlement to promissory estoppel notwithstanding the lack of a writing satisfying an applicable statute of frauds, a promisee must prove the same elements required to satisfy § 90.
- C. **Avoiding Injustice:** R2 § 139(2) identifies five "significant" factors a court may consider when determining whether injustice may be avoided only by enforcing the promise. While R2 § 90 provides no parallel list, nor does it explicitly incorporate – either in the text of the section or in the comments – the factors identified in R2 § 139(2), a good argument can be made that the R2 § 139(2) factors can be used to satisfy the injustice element of R2 § 90. *See id.* cmt. a.

### IV. Unjust Enrichment Claims

- A. **Promissory Restitution (R2 § 86):** 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** (*i.e.*, the promisee expected to be compensated in some way for her services),
  2. not enforcing the promise would **unjustly enrich** the promisor, and
  3. the promise is **not disproportionate** to the benefit the promisor received.
- B. **Non-Promissory Restitution Under the *Restatement of Restitution* (1937)**
1. **Generally (§§ 1-2):** A person who has been unjustly enriched at the expense of another [must] make restitution to the other, unless the other confers the benefit officiously or as a gift.

2. **Preventing or Mitigating Bodily Harm (§ 116):** A party may recover for services rendered to prevent (or treat) serious bodily harm, pain, or death, *undertaken without the beneficiary's knowledge or consent*, as long as
  - a. the benefactor acted **unofficially and with intent to charge** for the services,
  - b. the benefactor had **no reason to know the beneficiary would not consent** to the services if asked, and
  - c. the beneficiary's **condition prevented consent**.
  
3. **Preventing Property Damage or Destruction (§ 117(1)):** A party may recover the value of services rendered to prevent the loss, damage, or destruction of another's property as long as
  - a. the benefactor acted **lawfully and without any pre-existing duty** owed to the beneficiary as a result of
    - i. their **relationship** or
    - ii. the **benefactor's own acts or omissions**;
  - b. the benefactor acted without the beneficiary's permission out of **necessity**;
  - c. the benefactor had **no reason to believe that the beneficiary would not consent** if asked;
  - d. the benefactor **intended to be compensated** for his services; and
  - e. the **beneficiary accepted** the property when the benefactor returned it to her, or otherwise ratified the benefactor's actions.
  
- C. **Quasi-Contract:** A proper claim for unjust enrichment not falling under either R2 § 86 or the foregoing provisions of the *Restatement of Restitution* requires that the plaintiff show that
  1. she conferred a **material benefit** on the defendant (or on some third party on the defendant's behalf);
  2. the defendant **knew of or appreciated** the benefit conferred; and
  3. permitting the defendant (or the third party) to retain the benefit conferred without compensating the plaintiff would be **unjust**.