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. Who should win and on what theory or theories? Please explain.

This is a case in the classic mold of *Raffles v. Wichelhaus*. Per Raffles, there was never any “meeting of the minds” between Russell and Gwyneth; and therefore, under classical contract theory, no contract was ever formed. Applying the more modern test of *Restatement (Second) of Contracts*, “[w]here the parties have attached different meanings to a promise or agreement or a term thereof, . . . neither party is bound by the meaning attached by the other, even though the result may be a failure of mutual assent.” R2 § 201(2)-(3). Absent mutual assent, there is no contract for Gwyneth to enforce against Russell or vice versa. R2 § 17(1).

This is also a case of mutual mistake. R2 § 152(1) provides that, “[w]here a mistake of both parties at the time a contract was made as to a basic assumption on which the contract was made has a material effect on the agreed exchange of performances, the contract is voidable by the adversely affected party unless he bears the risk under the rule stated in § 154.” This problem doesn’t seem to fit either of the first two subparts of R2 § 154, and § 154(c) is purely at the discretion of the trial court, so we can’t really predict how it would come out. Assuming that § 154 doesn’t apply, Gwyneth is the party most adversely affected by her and Russell’s mutual mistake regarding which “The Orange Pumpernickel” (“TOP”) she wanted tickets to – to wit: if forced to pay Russell as promised, Gwyneth wouldn’t get what she bargained for. Thus, Gwyneth can avoid the contract under § 152(1), releasing both herself and Russell from liability. Russell does not appear to have been adversely affected by the mutual mistake – if Gwyneth paid him, he would still get what he bargained for. Therefore, he doesn’t seem able to invoke § 152 to relieve himself of liability. If the option to avoid the contract under § 152 rests solely with Gwyneth, and she refuses to avoid the contract (which, presumably, she would do if she was suing Russell for breach), Russell’s best bet appears to be R2 § 201, discussed above.

B. Suppose that, at the time they made their contract, Russell knew that Gwyneth wanted tickets to the movie premiere and, despite that knowledge, Russell provided her with tickets to the play. Who should win and on what theory or theories?

Knowing which TOP Gwyneth meant, this problem should be controlled by R2 § 201(2), which provides that “[w]here the parties have attached different meanings to a promise or agreement or a term thereof, it is interpreted in accordance with the meaning attached by one of them if at the time of the agreement that party did not know of any different meaning attached by the other, and the other knew [or had reason to know] the meaning attached by the first party.” Thus, per R2 § 201(2), Russell agreed to provide Gwyneth with two tickets to the TOP movie premiere for $200. This agreement appears to be enforceable, as there was mutual assent, consideration (in the form of mutual promises) exchanged, and no statute of frauds issue. (If tickets are “goods,” the contract was for less than $500, so no writing required by UCC § 2-201; if tickets are not goods, this contract doesn’t fall into one of the categories of transactions set forth in R2 § 110.) Therefore, Russell has breached his contract with Gwyneth.

Gwyneth may also have a claim against Russell for breach of the duty of good faith; however, not every breach of contract constitutes a breach of the duty of good faith.